ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER M7

MAINTENANCE OF CHILDREN ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 8/2019, in force 7 September 2020

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MAINTENANCE OF CHILDREN ACT

PART 1

PRELIMINARY PROVISIONS

Interpretation

1. In this Act—

"access" means the opportunity to participate in the upbringing of a child and to regularly visit or have contact with that child;

"attachment order" means an Order to have funds for the maintenance of a child deducted from the emoluments of a person so that they may be utilised according to the terms of a maintenance order;

"child" means—

(a) a person 18 years or younger; or

(b) a person 18 years or older who—

(i) is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment, or

(ii) has a serious illness or physical or mental disability;

"child of the family" in relation to parties to a marriage, or to 2 people who are cohabiting, means—

(a) a child of both of them; or

(b) any other child who has been treated by both of them as a child of their family, but this does not include a child placed with them as foster parents by the Commissioner or a voluntary organisation;

"clear days" means that in computing the number of days the following are not included—

(a) the day on which the period begins and ends;

(b) Saturdays and Sundays; and

(c) public holidays;

"cohabiting" means a person who is living or has lived with a person as a husband or wife although not legally married to that person;

"Commissioner" means the Commissioner of Social Development;

"Court" means the Magistrate's Court or the High Court;

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"custodian" means a person granted custody of a child under law;

"custody" means the physical or legal control and responsibility for a child, whether joint or individual, including providing for the normal daily requirements relating to the care and development of a child;

"guardianship" means the legal responsibility and authority for making decisions with respect to a child;

"joint" in relation to custody, means—

(a) joint physical custody, where the child spends time with both parents and both contribute to the provision for the normal daily requirements related to the care and development of the child;

(b) joint legal custody, where irrespective of where the child resides both parents are involved in making decisions regarding the welfare of the child;

"Judicial Officer" means a Magistrate or a Judge;

"liable person" means a person liable under a maintenance order;

"mediation" means a process in which a certified mediator facilitates communication between parties to assist them in reaching a voluntary parenting agreement regarding their responsibilities in maintaining their child;

"parent" means the biological, birth or adoptive parent or another person who is presumed under the Status of Children and Parentage Testing Act to be the parent, but a child cannot have more than 2 parents at any one time;

"respondent" means a person who has an obligation to maintain a child;

"step-parent" means a person who—

(a) is not a parent of the child;

(b) is, or has been, married to a parent of the child or is or has been cohabiting with the parent of the child; and

(c) treats, or at any time while married to, or cohabiting with the parent, treated the child as a child of the family.

Responsibility

2. (1) Each of the parents of a child has parental responsibility for their child who is under 18 years.

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(2) Subject to the direction of the Court, each parent of a child shall have the responsibility to pay maintenance for their child after they are 18 years of age and before they are 25 years of age if the child—

(a) is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(b) has a serious illness or physical or mental disability.

(3) Subject to the direction of the Court, parental responsibility or the responsibility to pay maintenance does not change despite any changes in the nature of the relationship of the child's parents, for example, by the parents becoming separated or by either or both of them marrying or re-marrying.

Objects of Act

3. (1) The principal objects of this Act are to—

(a) ensure that children receive a proper level of financial support from their parents;

(b) ensure that parents have proper and reasonable access to their children;

(c) promote children's welfare and best interests;

(d) ensure that parents share equitably in the support of their children;

(e) ensure that children receive adequate and proper parenting to help them achieve their full potential; and

(f) ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children.

(2) The welfare and best interests of the child, which include the child's right to care, support and development, and also the right to be respected, shall be the first and paramount consideration in the administration and application of this Act.

Conducting Court proceedings for child maintenance matters

4. In determining the conduct of child maintenance proceedings, the Court shall—

(a) consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child;

(b) consider how to promote co-operative and child focused parenting by the parties;

(c) use as little formality and legal technicality and form as possible and in this regard the Court must not adhere strictly to the rules of evidence and must give such weight (if any) as it thinks fit to evidence admitted as a consequence of this;

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(d) make appropriate use of technology such as email, fax, electronic meetings, teleconferences, and in this regard the Court must deal with the matter, where appropriate, without requiring the parties' physical attendance at Court;

(e) deal with as many aspects of the matter as it can on a single occasion in order to reduce undue delay; and

(f) encourage the settlement of disputes between the parties through mediation and consensual agreement conducted and concluded in a manner that respects the objectives and principles of this Act.

PART 2

MAINTENANCE ORDERS

Parent's obligation to maintain a child

5. (1) Each parent of a child has the obligation to provide reasonably for the child's maintenance, whether or not the child is in that parent's custody.

(2) The duty of a parent to maintain a child is not affected by the duty of any other person to maintain the child.

Obligation of step-parents and others to maintain a child

6. (1) The following persons may have an obligation to maintain a child if, and only if, a Court by order under section 10, determines that it is proper for that person to have that obligation—

(a) the step-parent of a child;

(b) the person who has the custody of a child; or

(c) the person who has guardianship of a child.

(2) Any obligation of a person under subsection (1)—

(a) is a secondary obligation subject to the primary obligation of the parents of the child to maintain the child; and

(b) does not derogate from the primary obligation of the parents to maintain the child.

Access to a child

7. (1) Each parent of a child or each person named under section 6(1) is entitled to have access to that child unless it is not in the child's best interest.

(2) Where an application for an order for maintenance is being heard, the Court shall also deal with the issue of access to the child for whose benefit the application was made.

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Application for a maintenance order

8. (1) The following persons may apply for a maintenance order requiring a parent or other person having an obligation to maintain a child to do so—

(a) a child who is 14 years or more;

(b) a parent, step-parent or grandparent of a child;

(c) a person who has the custody or guardianship of a child;

(d) a person who has accepted a child as a "child of the family"; or

(e) the Commissioner.

(2) A person who makes an application for an order under subsection (1) shall file together with the application—

(a) the birth certificate of the child for whose benefit the application is being made;

(b) a statement of the expenses of that child with supporting documents;

(c) where the applicant is not the Commissioner, a statement of his or her income and expenses with supporting documents;

(d) any guardianship or custody order if applicable; and

(e) any other existing orders with respect to the child.

Referral to mediation by the Court

9. (1) Subject to subsection (3), where an application has been filed for maintenance of a child and one or both of the parties is unrepresented by a legal practitioner and, based on the information in the application form, the Court is of the view that the matter is not an emergency, then the Court shall refer the matter to the Commissioner for mediation.

(2) To avoid doubt in relation to subsection (1), the Court may hear an application for maintenance without referring the matter to the Commissioner where the Court determines that—

(a) it is an emergency; or

(b) both parties are represented by a legal practitioner.

(3) Subsection (1) does not apply to a maintenance matter being adjudicated before the High Court as a part of divorce or judicial separation proceedings unless the Judge is of the view that the matter should be referred to the Commissioner for mediation.

(4) Where the Court proceeds to hear the application for maintenance without referring the matter to the Commissioner, the Court—

(a) shall encourage parties to enter into a parenting agreement;

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(b) may on the request of both of the parties and, if it considers it reasonable to do so, suspend the proceedings and order mediation.

(5) Any parenting agreement entered into in accordance with subsection (4) shall be registered.

Court order for maintenance

10. (1) The Court may make a maintenance order requiring a parent, step-parent, custodian, or guardian to maintain a child.

(2) The Court in considering an application under subsection (1) shall have regard to the matters referred to in section 11.

Matters considered by the Court in making maintenance orders

11. The Court, in deciding whether to make a maintenance order and, if so, in what manner, shall have regard to all the circumstances of the case including the following matters—

(a) the best interest of the child;

(b) the income, earning capacity, property and other financial resources which each parent, custodian or guardian of the child has or is likely to have in the foreseeable future;

(c) the financial needs, obligations and responsibilities which each parent, custodian or guardian of the child has or is likely to have in the foreseeable future;

(d) the financial needs, obligations and responsibilities of the person who has accepted a child as a "child of the family" has or is likely to have in the foreseeable future;

(e) the financial needs of the child and the standard of living of the child;

(f) the income, earning capacity, property and other financial resources of the child;

(g) any physical or mental disability of the child;

(h) the manner in which the child was educated or trained and the manner in which the parents, custodian, guardian or the person who has accepted a child as a "child of the family" expected him or her to be educated or trained;

(i) the standard of living enjoyed by the family while the parents and the child resided together, if applicable;

(j) any non-monetary contributions made to the child's care;

(k) whether there are other children to be maintained by the applicant or the respondent;

(l) the relationship between the parties to the application and the child for whose benefit the application is being made and the effect of that relationship on the child; and

(m) any other matter that the Court considers just and equitable.

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When step-parents have a duty to maintain a child

12. In making an order for a step-parent to pay maintenance the Court shall consider—

(a) the matters referred to in section 11;

(b) the length and circumstances of the marriage to, or relationship with, the parent of the child;

(c) the relationship that has existed between the step-parent and the child;

(d) the arrangements that have existed for the maintenance of the child;

(e) the particular circumstances of the parent that does not have custody of the child; and

(f) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

Maintenance order for a child 18 years or older but under 25 years

13. (1) A Court shall not make a child maintenance order in relation to a child that extends beyond the day on which the child will turn 25.

(2) A maintenance order stops being in force when the child turns 18 unless the order is expressed to continue in force after then.

(3) The Court may make a maintenance order in relation to a child who is 17, to take effect when or after the child turns 18.

(4) A Court shall not make a maintenance order in relation to a child who is 18 years or older but under 25 years unless the Court is satisfied that the provision of the maintenance is necessary—

(a) to enable the child to complete his or her education; or

(b) because of a mental or physical disability of the child.

Court may hear the evidence of a child

14. (1) Where the Court is requested to make an access order pertaining to a child who is 12 years of age or older and it appears necessary to the Court to hear evidence from the child regarding his or her relationship with the parties in the matter, the Court shall adjourn the matter and hear the evidence of the child in chambers.

(2) It is a matter exclusively within the discretion of the Court to determine who may be in chambers during the taking of the child's evidence.

Court may engage with persons

15. (1) Where an application is made for maintenance, the Court may engage the Commissioner, government department or agency, family counsellor, family dispute resolution practitioner, a civic group or any person who in the opinion of the Court is capable of providing knowledge or expertise necessary to assist the Court in determining the matter.

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(2) If it appears to the Court that the child's interests in the proceedings ought to be independently represented by a lawyer, the Court may—

(a) order that the child's interests in the proceedings are to be independently represented by a lawyer; and

(b) make such other orders as it considers necessary to secure that independent representation of the child's interests.

Court to be satisfied before making a maintenance order

16. (1) Before making a maintenance order the Court shall be satisfied that—

(a) a child for whose benefit the application is being made is entitled pursuant to this Act to be maintained by the respondent; and

(b) the respondent is able to maintain the child.

(2) Before making an order for access to a child, the Court shall be satisfied that the person in whose favour the order is to be made is entitled to have access to the child and that access to the child by that person would be in the best interest of the child.

Powers of the Court in making maintenance orders

17. (1) The Court may make a maintenance order—

(a) that the respondent shall, for the benefit of a child, pay to a specified person periodic payments for a specified term;

(b) which adopts or enforces a parenting agreement irrespective of whether that agreement was registered;

(c) for the payment of expenses in respect of a child's birth and the prenatal care of the child's mother to be made by the father;

(d) which includes payment for specified goods or services including but not limited to the provision of food, clothing, medical attention and medication, school attire, school fees, school texts, school stationery, child care services and insurance benefits;

(e) which includes access to the child;

(f) for a lump sum be paid or held in trust; and

(g) that allocates parental responsibility for a child including the provision of non-monetary maintenance and care of the child.

(2) In proceedings for a maintenance order, a Court may do all or any 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 amount;

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(c) order that payment of an amount ordered to be paid be wholly or partly secured as the Court specifies;

(d) order that payment be made to the Commissioner, a specified person or into the Court; and

(e) make a permanent order, an interim order, an order pending the disposal of proceedings, an order for a fixed period, an order until a child attains a specified age or an order until further ordered.

(3) An order made in accordance with subsections (1) and (2) does not prevent a Court from making a subsequent order in relation to the maintenance of the child.

(4) In addition, a maintenance order may require the respondent to pay a specified lump sum to a specified person or to a specified person for the benefit of a specified child, including a lump sum in respect of the expenses reasonably incurred in relation to or for that child before the maintenance order was made.

(5) Unless the maintenance order specifies otherwise, all payments of money and all collection of money shall be facilitated by the Commissioner.

Additional Court orders

18. (1) In addition to the powers under section 17, the Court, if it considers that it is necessary, may also order a person who has an obligation to maintain a child to—

(a) attend family counselling, family dispute resolution sessions, substance abuse counselling, anger management counselling, financial management classes and life coaching classes;

(b) attend an appointment with the Commissioner; or

(c) participate in a course, programme or other service necessary for the benefit of the child or the wider family or both.

(2) The Commissioner shall assist the Court in facilitating any order made under subsection (1).

Methods of payment

19. Payments for maintenance shall be made by the respondent using the method specified by the Court, including payment to the specified person—

(a) by an arrangement whereby one person gives his authority for payments to be made from an account of his, or on his behalf, to another person or to an account of that other person;

(b) by cheque; or

(c) in cash.

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(2) The Court may make an Attachment Order in respect of any pension or income that is capable of being attached, directing the person paying the pension or income to periodically deduct a sum for maintenance and to pay that sum to the Collections Officer referred to in section 40.

(3) An Attachment Order made pursuant to subsection (2) must contain a penal notice notifying the person ordered to make the deduction and subsequent payment that he will be personally liable for the payment if he fails to make the deduction in compliance with the Attachment Order.

Financial disclosure

20. (1) A party whose financial information is necessary to determine an amount of maintenance, shall, on the request of the Magistrate, present to the Magistrate any financial information and any person needed to give evidence of financial information may be summoned before the Magistrate.

(2) A person requested or summoned under subsection (1) who refuses to give the financial information requested, or who gives false financial information, commits an offence and is liable on summary conviction to a fine of five thousand dollars and a term of imprisonment of six months.

Referral of matters by the Magistrate to a Judge

21. Where a Magistrate, after reviewing the evidence, is of the view that the application for maintenance may be better handled before a Judge, the Magistrate may adjourn the proceedings and refer the file or an aspect of the file, to the Registrar for the direction or an order by a Judge.

Interim maintenance order

22. (1) Where the hearing of an application for a maintenance order or for the discharge, variation, extension or suspension of a maintenance order is adjourned for any period exceeding 7 days, the Court may make an interim maintenance order under this section.

(2) An interim maintenance order shall direct the respondent or the applicant to do anything in relation to maintenance in accordance with section 17 or 18 until the final determination of the case, but any interim maintenance order shall not remain in operation for more than 6 months from the date on which it was made.

(3) An interim maintenance order under this section may be enforced, varied, extended or discharged in the same manner as if it were a final maintenance order of the Court and proceedings for the enforcement of any such interim maintenance order may be taken immediately after default has been made in payment of any periodical sum.

(4) An interim maintenance order made under this section shall be treated as if it were a maintenance order and the same form may be used for an interim maintenance order and a final maintenance order.

Variation, suspension, discharge or revival of maintenance orders

23. (1) The Court may vary, suspend or discharge a maintenance order or revive a suspended maintenance order in such a manner as the Court thinks fit on application by—

(a) any of the parties to the proceedings in which the maintenance order was made;

(b) any person having actual custody of a child; or

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(c) the Commissioner.

(2) Where, on an application under this section for the variation or discharge of a maintenance order for the making of periodical payments, the Court varies the payments required to be made under that maintenance order, the Court may provide that the payments as so varied shall be made from the date as the Court may specify, not being earlier than the date of the making of the application.

(3) The power of the Court to vary or discharge a maintenance order for the making of periodic payments includes the power to make a maintenance order for the payment of a lump sum.

(4) Where a maintenance order is made for the payment of a lump sum by instalments, the Court may, on application made either by the person liable to pay or the person entitled to receive the sum, vary that maintenance order by varying the number and date on which an instalment is payable.

(5) Where the Court makes a maintenance order, any previous maintenance orders for the same child made by the same Court shall cease to have effect.

(6) On an application for the enforcement, variation, revocation, discharge or revival of a maintenance order, the Court may only waive the obligation to pay part of any amount due under the maintenance order.

(7) Where a Court revives a suspended order, then the reasons for the suspension and the revival and the date of the revival shall be noted on the maintenance order.

Duration of a maintenance order

24. (1) A maintenance order shall not, except for the purpose of recovering money previously due under the maintenance order, be of any force or validity where—

(a) the child has died;

(b) the child has married;

(c) the child has attained an age specified in the order;

(d) the child ceases to have the disability;

(e) the child has completed their education; or

(f) the period specified in the order has ended.

(2) Where there is money due and payable under a maintenance order, the child or the Commissioner may bring a claim for the payment of the outstanding sums, up to 12 years after the maintenance order ended in accordance with subsection (1).

(3) Where a claim under subsection (2) is made, the child or the Commissioner may indicate how the sums should be disbursed, including a disbursement to the Commissioner for any funds issued by his department for the maintenance of the child, but the decision about disbursement remains with the Court.

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(4) A person who was entitled to receive maintenance for a child under a maintenance order but did not receive some or all of the sums ordered to be paid may approach the Commissioner to make an application under subsection (2).

(5) The enforcement and repayment procedures under Part 4 apply to a claim under subsection (2).

(6) Where a maintenance order also deals with access to the child, the provisions pertaining to access shall not remain in force when the child turns 18 years old.

Costs and fees

25. (1) The Court in making a maintenance order may also order that a party pay legal costs or Court fees or both in such amount as the Court may determine.

(2) The Minister may from time to time charge an application fee but the payment of the fee shall not be applicable to a child over 14 years but under 18 years.

(3) This section does not apply to the Commissioner.

Depletion of property

26. The High Court may, on application, make an interim or final order restraining the depletion of a person's property that would impair or defeat the making of a maintenance order.

PART 3

ROLE OF THE COMMISSIONER, PARENTING AGREEMENTS AND MEDIATION

The Commissioner and the Court

27. (1) The Commissioner is responsible for assisting the Court in fulfilling its functions in ensuring that the best interest of the child is fostered, developed and protected.

(2) The Commissioner is responsible for overseeing and facilitating the development of parenting agreements.

(3) The Court may, before exercising a power, seek the advice of the Commissioner as to the services appropriate to satisfy the needs of the parties to an application for maintenance and the child and to determine the most appropriate provider of those services.

(4) During maintenance proceedings, the Court may make an order directing one or more parties to the proceedings to—

(a) attend an appointment with the Commissioner;

(b) arrange for a child to attend an appointment with the Commissioner.

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Commissioner facilitating a parenting agreement

28. (1) A person who has an obligation to maintain a child may approach the Commissioner for directions relating to the development of a parenting agreement.

(2) The following persons may also approach the Commissioner to facilitate the development of a parenting agreement relating to the maintenance of a child—

(a) a child who is 14 years or more;

(b) the grandparent of the child; or

(c) the person who has accepted a child as a "child of the family".

(3) The Commissioner may, of his own initiative, facilitate the development of a parenting agreement relating to the maintenance of a child.

(4) A person may approach the Commissioner under this section without making an application to the Court for maintenance.

(5) Any parenting agreement entered into under this section may be registered in accordance with section 32.

Application of parenting agreement

29. (1) A parenting agreement applies in proceedings under this Act if the care, welfare and development relates to a child who is under the age of 18 years.

(2) The application form for a maintenance order may be used to apply for a parenting agreement.

Parents encouraged to enter into a parenting agreement

30. The parents of a child are encouraged—

(a) to agree about matters concerning the child;

(b) to take responsibility for their parenting arrangements and for resolving parental conflict;

(c) to use the legal system as a last resort rather than a first resort;

(d) to minimise the possibility of present and future conflict by using or reaching a parenting agreement; and

(e) in reaching their parenting agreement, to regard the best interests of the child as the paramount consideration.

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Parenting agreement

31. (1) A parenting agreement is a plan that is entered into with the assistance of a certified mediator and is—

(a) in writing between—

(i) the parents,

(ii) the guardians,

(iii) those who have custody, or

(iv) any combination of the above;

(b) signed and dated by the persons named in paragraph (a); and

(c) witnessed by at least one of the following persons—

(i) a certified mediator, or

(ii) the Commissioner.

(2) A parenting agreement may deal with any of the following—

(a) the person with whom a child is to live;

(b) the time a child is to spend with a parent or another person;

(c) the allocation of parental responsibility for a child;

(d) where 2 or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;

(e) the communication a child is to have with another person or other persons;

(f) maintenance of a child, including the payment for specified goods or services such as the provision of food, clothing, medical attention and medication, school attire, school fees, school texts, school stationery, child care services, insurance benefits and other relevant maintenance matters;

(g) the payment of expenses in respect of a child's birth and the prenatal care of the child's mother, to be made by the father;

(h) the process to be used for resolving disputes about the terms or operation of the agreement;

(i) the process to be used for changing the agreement to take account of the changing needs or circumstances of the child or the parties to the agreement; and

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(j) any other aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

(3) A parenting agreement may provide for the payment of monies reasonably incurred in relation to the maintenance of the child before the parenting agreement is made.

(4) A parenting agreement may only be varied or revoked by agreement in writing between the parties to the parenting agreement and witnessed by a person named under subsection (1)(c).

(5) A parenting agreement is invalid unless it is made free from any threat, duress or coercion.

(6) The Commissioner may refer a matter to the Court for a maintenance order where the parties are unable within a reasonable time to enter into a parenting agreement.

Registration of parenting agreement

32. (1) The Commissioner shall register a parenting agreement where—

(a) both parties agree that it should be registered; or

(b) the Commissioner believes that one or both parties behaved unreasonably by breaching the terms of the parenting agreement and that the matter is such that the best interest of the child would be compromised if the parenting agreement is not registered.

(2) A parenting agreement that is registered is deemed to be a maintenance order.

Certified mediator for maintenance of children matters

33. (1) A certified mediator is a person whose name appears on the list of mediators as determined by the Eastern Caribbean Supreme Court.

(2) Notwithstanding subsection (1), for the purposes of mediating maintenance of children matters, the Commissioner and a social worker working in the Department of Social Development are certified mediators.

Mediation

34. (1) The purpose of mediation is for the certified mediator to assist parties who apply for maintenance of a child to resolve any parenting issues and to develop a parenting agreement.

(2) Where parties who were referred by the Court to attend mediation—

(a) enter into a parenting agreement, the certified mediator shall immediately file a copy of that parenting agreement with the Court copied to the Commissioner;

(b) do not reach a parenting agreement, the certified mediator shall immediately refer the matter back to the Court for a maintenance order and inform the Commissioner.

(3) Where mediation is facilitated by the Commissioner, the certified mediator shall file a report of the mediation with the Commissioner and attach any resulting parenting agreement.

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(4) A certified mediator who fails without reasonable excuse to file a parenting agreement with the Court or the Commissioner commits an offence and is liable on summary conviction to a fine of $200.

(5) The Commissioner shall, from time to time, report to the Court and the Minister about the conduct of mediation.

Assignment of work to a certified mediator for maintenance of children matters

35. When an application has been received for the maintenance of a child, the Commissioner may—

(a) assign a social worker to act as a mediator for a file;

(b) on the request of the applicant, coordinate the assignment of a matter to a certified mediator working in the private sector; or

(c) on his own initiative, coordinate the assignment of a matter to a certified mediator working in the private sector.

Maintenance of list of certified mediators

36. (1) The Commissioner shall maintain in an electronic format a list of certified mediators.

(2) The list shall show the first and last name, date of birth, the identification of the other profession of the certified mediator, their professional address and academic title.

Confidentiality

37. (1) A certified mediator is obliged to secrecy about the facts which he has become aware of in the course of the mediation or which have otherwise become known to him.

(2) A certified mediator shall deal with documents obtained in the course of the mediation in a confidential manner.

(3) Subsections (1) and (2) apply to the supporting staff of a certified mediator as well as to persons who act for the mediator under his direction in the course of mediation.

(4) A person who breaches this section commits an offence and is liable on summary conviction to a fine of $5,000.

Fees regarding certified mediators

38. (1) Certified mediators who are not public officers working as social workers may charge fees for their services.

(2) The Commissioner and social workers working in the Department of Social Development shall not charge fees for providing mediation services in accordance with this Act.

Delegation by the Commissioner

39. The Commissioner may delegate administrative duties under this Act to members of his department as he sees fit.

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PART 4

ENFORCEMENT AND REPAYMENT

Designation of Collections Officer

40. (1) The Commissioner shall designate a member of his staff to be the Collections Officer for maintenance files.

(2) The Collections Officer shall be responsible for making a record of all payments directed to be collected and paid by the Commissioner or the Court.

(3) The respondent shall be responsible for ensuring that payment is made at the Department of Social Development during regular office hours and must sign a receipt in the presence of the Collections Officer, who shall then pay out the amount.

Breach of maintenance order

41. (1) Where the respondent has breached a maintenance order without providing a reasonable explanation for the breach, or neglects or refuses to provide a reasonable explanation for the breach, the Court may in writing—

(a) inform the Commissioner of Inland Revenue or any relevant permanent secretary of the breach; and

(b) order that the respondent, from the date of the order, be denied a Certificate of Good Standing or any licence, permit or benefit issued or offered by Government until the Court is satisfied that the respondent is abiding by the non-monetary terms of the maintenance order and that—

(i) full payment of the outstanding sum has been made, or

(ii) satisfactory arrangements have been made by the respondent to pay the outstanding sums and at least part payment has been made.

Persistent breach of maintenance order

42. (1) It is a matter for the Court to determine, based on arguments presented by the applicant, the child who is 14 years and over and on whose behalf the maintenance order was made, or the Commissioner, whether the respondent is persistently in breach of a maintenance order.

(2) Where the respondent is persistently in breach of a maintenance order and where monies ordered under a maintenance order to be paid is in arrears by 14 clear days, the Court may on the application of the—

(a) person to whom payment is ordered to be made;

(b) Commissioner; or

(c) child who is 14 years and over and on whose behalf the maintenance order was made;

issue a warrant in the form prescribed ordering the liable person to be brought before the Court to explain the reason for the arrears.

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(3) The Court may—

(a) order the immediate payment of the sums due including the costs in relation to service of the warrant; and

(b) vary the maintenance order.

(4) Where the liable person further neglects or refuses without reasonable cause to pay the sum due under the maintenance order and the costs in relation to the warrant, the Court may commit the person to prison, including the option of intermittent prison custody, for a period not exceeding 3 months.

(5) Where on the date of sentencing or at any time during custody in prison, full payment of the maintenance order and the cost in relation to the warrant is made, the Court shall extinguish the remaining sentence and shall immediately order the release of the liable person from prison.

(6) Where an application for the enforcement of the payment under a maintenance order is made and no warrant of commitment to prison is issued, the application may be renewed on the ground that the circumstances of the respondent have changed but any payment made shall not relate to an amount waived.

(7) Where an amount under a maintenance order is payable to a person other than the Commissioner, a warrant shall not be issued unless the person has sworn or affirmed to the fact of non-payment.

(8) Where a person is committed to prison for breach of a maintenance order, the committal shall not operate to discharge the liability of the person to pay the sum for which he is so committed, but at any subsequent hearing relating to the enforcement, revocation, revival, variation or discharge of the order, the Court may waive the obligation to pay part of the amount due under the order.

(9) Section 92 of the Magistrate's Code of Procedure Act or the equivalent section limiting to 6 months the time within which summary proceedings are to be taken shall not apply to proceedings for enforcing a maintenance order.

Intermittent custody

43. (1) The Court may, when passing a sentence of imprisonment specify—

(a) periods during which the offender is to be released temporarily on licence until he has served the term of imprisonment; or

(b) the number of days that the offender must serve in prison under the sentence before being released on licence for the remainder of the term.

(2) If a person who has been temporarily released under subsection (1), without reasonable explanation remains at large after the expiry of the period for which he was temporarily released, that person commits an offence and is liable on summary conviction to a fine of $3,000 or to imprisonment for 3 months or to both.

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Repayment of money by biological parent

44. (1) Where a man has paid money to the mother of a child for maintenance and at the time of payment he believed that he was the biological father of the child, but subsequent evidence proves that he is not the biological father of the child, the Court may order the mother to repay a reasonable portion of the money paid.

(2) Where a person has maintained a child as a "child of the family" or as the custodian or guardian of the child, and the biological parent has assumed custody of the child, then the Court may order the biological parent to repay a reasonable portion of the maintenance money.

(3) Notwithstanding subsections (1) and (2), the Court shall not make an order for payment by the biological parent if—

(a) the order would result in the biological parent being unable to maintain the child or their family; or

(b) the financial resources of the applicant is such that he was able to afford to maintain the child and is not in financial jeopardy.

(4) Where a person has maintained a child as a "child of the family" or as the custodian or guardian of the child, and it is demonstrated that the biological parent has the financial resources to maintain that child, the Court may order the biological parent to—

(a) repay a reasonable portion of the amount of maintenance money paid;

(b) financially maintain the child; or

(c) do both (a) and (b).

Contempt of Court

45. (1) The Court has jurisdiction under this section to find a person guilty of contempt of Court if that person—

(a) breaches any term of a maintenance order, a registered parenting agreement or any other order or direction of the Court;

(b) having been summoned by the Court, refuses or neglects without sufficient cause to attend;

(c) being examined as a witness or being present in Court and required to give evidence, refuses to be sworn or to answer any lawful question or, without sufficient excuse, to produce any documents or things that the person is required to produce;

(d) immediately prior to, during or within a reasonable time after Court proceedings, wilfully insults the Magistrate, the Judge, the Commissioner, a certified mediator, any witness or any other officer of the Court; or

(e) wilfully interrupts the proceedings of the Court or otherwise misbehaves in Court.

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(2) Where the Court finds that a person is in contempt of Court, the Court may—

(a) order a police officer to arrest the offender and bring him before the Court;

(b) issue a warrant for the arrest of the offender and bring him before the Court; or

(c) where the issue of contempt occurs in the precincts of the Court, proceed to deal with the matter immediately.

(3) When a person is before the Court for the offence of contempt of Court, the Court shall cause the person to be informed of the contempt with which the person is charged and provide that person with an opportunity to be heard.

(4) Where the Court finds that a person is guilty of contempt of Court, the Court may order that the person be sentenced to a fine not exceeding $2,000 or to a term of imprisonment not exceeding one month or to both.

(5) If a person found guilty of contempt of Court is ordered to be imprisoned and that person makes an apology to the Court and the Court accepts that apology, then the Court shall—

(a) order the discharge of the person before the end of the term; or

(b) reduce the term of imprisonment as the Court sees fit.

(6) To avoid doubt, a finding of guilty of contempt of Court does not suspend, terminate or in any other way interfere with a maintenance order or any other order made by the Court.

False statements

46. (1) A person shall not submit false information in support of any application made pursuant to this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of $1,000 or to one week imprisonment or to both.

(3) Where on hearing an application the Court determines that any information submitted in support of an application or order is false, the Court may—

(a) dismiss the application; or

(b) order a person to re-submit the information with supporting documentation.

Change of address or employment of liable person

47. (1) A person who is under an obligation to make periodic payments under a maintenance order shall give notice of any change of address to the applicant and the Commissioner.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding $500.

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PART 5

MISCELLANEOUS

Payments under maintenance orders to be kept separate

48. The Commissioner shall ensure that the amounts received under maintenance orders are kept separate from any other amounts under the control of the Commissioner or in the Consolidated Fund.

Unclaimed amounts

49. (1) The Collections Officer shall forward any amounts received under the Act which remain unclaimed after 6 months of their receipt, together with a copy of the relevant accounting records and deposit voucher, to the Accountant General.

(2) A person who is entitled to receive an amount under a maintenance order that has been forwarded under subsection (1) may claim that amount by making a request to the Collections Officer.

(3) On receipt of a request under subsection (2), the Collections Officer shall issue a voucher headed "Unclaimed Amount", setting out the particulars of the unclaimed amount and forward to the Accountant General.

(4) Every year the Commissioner shall publish a list of any unclaimed amounts that have remained unclaimed for one year.

Electronic documents

50. (1) Where a written document, record or information is required under this Act, that requirement may be met by information in electronic form.

(2) A legal requirement under this Act that a person provide information in a prescribed paper format or other non-electronic form to another person is satisfied by providing the information in an electronic form that—

(a) contains the same or substantially the same information as the prescribed paper format or other non-electronic form;

(b) is accessible to the other person so as to be usable or retrievable for subsequent reference; and

(c) is capable of being retained.

Electronic links

51. (1) The Court may, for the purposes of any proceedings, direct or allow a person to make a submission to the Court by way of video link, audio link, email or any other appropriate technological means.

(2) The Court shall only exercise the power under subsection (1) if it is satisfied of—

(a) the standard of transmission; and

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(b) the quality of the communication and the security of the electronic link; and

in relation to video link the parties must be able to clearly see and hear each other and in relation to audio link the parties must be able to clearly hear each other.

(3) The power conferred on the Court under subsection (1) may be exercised on the application of a party to the proceedings concerned or on the Court's own initiative.

(4) Any testimony done in accordance with subsection (1) must be given on oath or affirmation unless the Court is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.

(5) Where the testimony is given otherwise than on oath or affirmation, the Court shall give the testimony such weight as the Court thinks fit in the circumstances.

Registering of parenting agreements and maintenance orders

52. (1) The Court shall maintain a manual or electronic system, or both, for filing and tracking of maintenance orders, including parenting agreements that have been registered.

(2) The Commissioner shall maintain a manual or electronic system or both for the filing and tracking of maintenance orders and parenting agreements.

Closed Court hearings

53. (1) Unless the Court otherwise orders, the hearing of an application made under this Act shall be in closed Court.

(2) A person shall not publish, whether by newspaper, radio, television or social media, electronic means or otherwise, the name of or any particulars relating to the identity of any person by whom, or in relation to whom, proceedings are taken under this Act without the authority of the Court before which such proceedings are taken.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction, to a fine not exceeding $3,000 or to a term of 3 months imprisonment or to both.

Regulations

54. (1) The Minister may make Regulations for giving effect to any of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

(a) providing for all forms;

(b) providing for all Rules required to be made under the Act;

(c) providing for the service of all notices, forms or other documents;

(d) prescribing matters required or permitted to be prescribed by this Act;

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(e) providing for matters as may be—

(i) contemplated by or necessary for giving full effect to this Act and for its administration, or

(ii) incidental to or consequential upon any provision of this Act;

(f) providing for fees and penalties; and

(g) guiding the selection of lawyers and the payment of legal fees when a lawyer is requested by the Court to independently represent a child.

(3) The Judicial Officer or the Commissioner may make minor adjustments to all forms to meet the justice of the case.

Citation

55. This Act may be cited as the Maintenance of Children Act, Revised Statutes of Anguilla, Chapter M7.

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