

THE MAINTENANCE ACT

ARRANGEMENT OF SECTIONS

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THE MAINTENANCE ACT

[31st March, 1881.]

Cap. 232.
Acts
25 of 1963,
26 of 1965,
38 of 1975,
41 of 1975,
2nd Sch.,
36 of 1976
Sch.
1 of 1979,
2nd Sch.
10 of 1987.

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

Short title.

2. Every man is hereby required to maintain his own children, and also—

Duty of man to maintain certain children.
36/1976
Sch.

- (a) every child, whether born in wedlock or not, which his wife may have living at the time of her marriage with him; and also
- (b) if he cohabits with any woman, every child which such woman may have living at the time of the commencement of such cohabitation; and also
- (c) the children of any child of his,

so long as such children respectively shall be unable by reason of tender years or bodily or mental infirmity to maintain themselves.

3. Every widow and unmarried woman is hereby required to maintain her own children, and every woman having any children which any man under the provisions of the next preceding section is primarily bound to maintain is hereby required to maintain such children in the event of such man failing to perform his obligation, and every woman is hereby required to maintain the children of any child that she may have had in the event of the parents

Duty of woman to maintain certain children.
36/1976
Sch.

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of such children and of any man primarily bound under the provisions of section 2 to maintain such children failing to do so, so long as such children respectively shall be, by reason of tender years or bodily or mental infirmity, unable to maintain themselves.

Duty of children to maintain parents.
36/1976
Sch.

4. Every person is hereby required to maintain his or her father and mother, grandfathers and grandmothers and if his father is not known, the man (if any) with whom the mother openly cohabited at the time of his birth if that man recognized and treated such person as his child during his or her infancy in case such father, mother, grandfather or grandmother or other person aforesaid is unable to maintain himself or herself.

Complaint and summons to issue on complaint.
26/1965
S 2.

5. Any person entitled to be maintained by any other person or persons under this Act, and any person having the actual care and custody of any child so entitled, may, in case the person or persons by whom such first-mentioned person or such child is entitled to be maintained or some or one of them shall fail to maintain such person or child, make a complaint before any one of the following persons, namely—

- (a) the Resident Magistrate of the parish wherein such first-mentioned person or child lives;
- (b) a Justice resident in such parish; or
- (c) the Clerk or Deputy Clerk of the Courts of such parish,

who shall thereupon issue his summons to the person or persons complained against to appear at a Resident Magistrate's Court (vested with jurisdiction respecting the parish

41/1975
2nd Sch.

aforesaid) to be held on a day specified in such summons at some place to be named in the summons.

6. In case it shall be necessary for the Parish Council of any parish or, in the cases of the parishes of Kingston and St. Andrew, for the Kingston and St. Andrew Corporation, to give any relief out of the funds available in the hands of such Council or Corporation for the relief of the poor, to any person entitled under this Act to be maintained by some other person or persons, it shall be lawful for such Council or Corporation, or for the almoner or other officer appointed by such Council, to administer or distribute the said funds, and such Council or Corporation or almoner or other officer as aforesaid is hereby required to make complaint in like manner as aforesaid on behalf of the person relieved; and thereupon the person before whom such complaint is made shall proceed in the same way as if the person relieved had himself made such complaint.

Parish Council or Corporation or its almoner may apply.

26/1965
S. 3(a)-(c).

7. At the time and place named in the summons the Resident Magistrate on the appearance of the party summoned, or on being satisfied by affidavit that such summons was served on such party, shall proceed to enquire into the case and if the Resident Magistrate shall be satisfied that the party complaining, or on whose behalf complaint is made as aforesaid, is entitled under this Act to be maintained by the party or parties complained against, and that such party or parties had or have neglected his or their duty in that respect, the Resident Magistrate shall proceed to enquire into the means of the party or parties complained against, and if satisfied that he or they or any of them are of ability to maintain or contribute to the maintenance of the party complaining, or on whose behalf complaint is made as aforesaid, the Resident Magistrate shall proceed to make an order (to be called an order of maintenance) against such party or parties, ordering him or

Manner of proceeding on summons.

26/1965
S. 4(a)-(c).

them to pay either to the party complaining, or to some person approved by the Resident Magistrate and to be named in the order, such periodical sum as, having regard to the means of the party or parties complained against and all the circumstances of the case, the Resident Magistrate shall think just :

Provided that if the complaint has been made under section 6 by or on behalf of a Parish Council or the Corporation it shall further be lawful for the Resident Magistrate in the said order to order the party or parties complained against, if the Resident Magistrate shall see fit, to pay to some person to be named in the order, beyond the periodical sum aforesaid, such periodical sum as the Resident Magistrate may think just, so, however, that the total amount payable pursuant to this proviso shall not exceed the aggregate amount of relief given by such Council or Corporation to the person entitled to be maintained under this Act.

38/1975
S. 2(b).

Collecting
Officer to
be appointed
for each
parish by
Resident
Magistrate.
38/1975
S. 3.

7A.—(1) The Resident Magistrate of each parish shall from time to time, appoint for the purposes of this Act a Clerk or Assistant Clerk of the Courts to be Collecting Officer who shall be styled “the Collecting Officer for the parish of _____”:

Provided, that whenever it may appear to any Resident Magistrate necessary to appoint an additional Collecting Officer or Officers for his parish, the Resident Magistrate may appoint such additional Collecting Officer or Officers.

(2) Where a Resident Magistrate makes a maintenance order he shall upon the application of any person entitled to be maintained by any other person under this Act, and any person having the actual care and custody of any child so entitled, either at the time of making the order or subsequently on an *ex parte* application to vary the same, provide in the order that all payments thereunder

be made to the Collecting Officer, and payments made under such order shall be made to the Collecting Officer.

(3) Payment of the amount ordered may be made to the Collecting Officer in person, or by letter sent by registered post properly addressed to the Collecting Officer and posted in time to be delivered to him on the day appointed for payment.

(4) It shall be the duty of the Collecting Officer to receive all payments directed to be made to him under this Act and to make payment fortnightly to the person named in the maintenance order of the sum directed to be paid under the order or such part thereof as he receives without making any deduction therefrom.

(5) Payment shall be made by the Collecting Officer directly to the person named in the maintenance order at the office of the Collecting Officer if such person named in the order is resident in the town in which such officer is situated, or otherwise payment shall be made by the Collecting Officer sending to the postmaster at the post office of the person to whom payment is to be made an original and a duplicate order specifying the amount to be paid. It shall be the duty of the person entitled to payment to attend at the post office and sign the receipt on the original and duplicate orders in the presence of the postmaster who shall then pay out the amount.

(6) It shall be the duty of the postmaster to keep the duplicate order and to return the original to the Collecting Officer.

(7) Where by a maintenance order it is provided that payment be made to the Collecting Officer, the applicant for the order shall thereupon give his nearest post office address to the Collecting Officer.

If payment
fourteen
days in
arrear
distress
may issue.
38/1975
S. 3.

7B.—(1) Where under a maintenance order, which provides that payment thereunder shall be made to the Collecting Officer, payment is fourteen clear days in arrear, the Resident Magistrate may, upon the application of the Collecting Officer, issue a warrant directing the sum due under such order or since any commitment for disobedience to such order as hereinafter provided, together with the costs attending such warrant, to be recovered by distress and sale of the goods and chattels of the person liable to make payment, and if upon the return of such warrant it shall appear that no sufficient distress can be had, the Resident Magistrate may issue a warrant to bring before him the person liable to make payment of the sum so due, and in case that person neglect or refuse without reasonable cause to make payment of the sum so due together with such costs, the Resident Magistrate may commit him to prison for any period not exceeding three calendar months with or without hard labour unless such sum and costs, together with the costs of commitment, be sooner paid.

10/1987
S. 2.

(2) Where a Resident Magistrate commits the person liable to make payment to prison under the foregoing provisions, the provisions of section 20 (3) shall apply.

(3) Notwithstanding anything to the contrary in any enactment limiting the time within which summary proceedings are to be taken to six months, such limitation shall not apply to proceedings for enforcing the payment of sums under an order made under the provisions of this Act.

Duration of
order of
mainten-
ance.
25/1963

8. Any order of maintenance made under this Act shall subject to the provisions of section 10, in the case of a child be made to hold good until such child attains the age of

sixteen years, or, if the Resident Magistrate shall think fit, until such child attains the age of eighteen years, and in the case of any other person for such period as may be named in the order :

S. 2 (a) & (b).

26/1965
S. 5 (a) & (b).
38/1975
S. 4.

Provided always, that any order may be renewed at any time by any Resident Magistrate having jurisdiction to make an order :

Provided also, that when the person to be maintained is unable to maintain himself by reason of old age, or by reason of an illness or infirmity which is likely to be permanent, it shall be lawful for the Resident Magistrate to make an order of maintenance for the rest of the natural life of such person :

Provided further that where the Resident Magistrate is satisfied that the child in respect of whom an order of maintenance has been made is or will be engaged in a course of education or training after he attains the age of eighteen years, and that for the purposes of such education or training it is expedient for payments under the order to continue after the child has attained that age, the Resident Magistrate may by order direct that that order of maintenance shall hold good for such period, not extending beyond the date on which the child shall have attained the age of twenty-one years, as may be specified in the order.

1/1979
2nd Sch.

9.—(1) Where an order of maintenance has been made either before or after the 22nd July, 1963, any Resident Magistrate having jurisdiction to make such an order may, in any case where there is any pension or income payable to the person on whom the order has been made and capable of being attached, after giving that person an opportunity of being heard, and provided that the Resident Magistrate is satisfied that that person has without reasonable cause made a default under the order, make an order (to be called an order of attachment) directing that such an

Pension or income liable to attachment.

25/1963
S. 3.

26/1965
S. 6(a)-(c).

amount periodically as is specified in the order of maintenance, or any part of such amount, be attached and paid either to the person to whom a periodical sum has in the order of maintenance been directed to be paid or to some other person approved by the Resident Magistrate and named in the order of attachment.

(2) An order of attachment made under the provisions of subsection (1) shall be an authority to a person by whom any pension or income affected by such an order is payable to make the payment ordered, 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.

Variation,
suspension
and cancel-
lation of
orders.

25/1963
S. 4.

26/1965
S. 7(a)-(e).

10. At any time after any order of maintenance or attachment has been made under this Act, any Resident Magistrate having jurisdiction to make such an order, may, upon the application of any of the parties to the proceedings in which such order was made, or of any person having the actual care and custody of any child entitled to be maintained under this Act, or of any person to whom any payment was directed in such order to be made, vary such order in such manner as the Resident Magistrate may think fit, or suspend such order, or, such order having been suspended, revive the same; and if the Resident Magistrate, upon application as aforesaid, shall be satisfied that the circumstances so warrant, he shall cancel the said order.

Burden of
proof.

11. For the purposes of this Act every child under fourteen years of age shall be deemed unable to maintain himself or herself by reason of tender years, unless the contrary be shown.

Liability of
husband to
support his
wife.

12. For the purposes of this Act, every man shall be liable and is hereby required to maintain his wife, irrespective of her being able to maintain herself:

Provided always, that no order for the payment of any sum of money by the husband of any married woman shall be made against such husband, under the provisions of this Act, if it be proved before the Court to which application for such order is made that the wife has committed adultery (unless such adultery has been condoned), or that the wife has wilfully and without just cause deserted her husband; and any order for payment of any such sum as aforesaid may be discharged by any Resident Magistrate upon proof that the wife has since the making thereof committed adultery.

26/1965
S. 8(a) &
(b).

13. Every person who, by work or other means, is able to maintain himself and his wife and children, and who shall refuse or neglect so to do, and every person who shall wilfully abandon his wife or children, whereby in either case such wife or children shall be left destitute, or dependent for support upon public or private charity, and every person who having had an order of maintenance made against him under this Act shall depart from his usual place of abode and thereby evade compliance with the said order, shall be deemed to be a rogue and vagabond, and shall, on summary conviction before a Resident Magistrate in the parish where the offence shall be committed, be for the first offence imprisoned with or without hard labour, for a period not exceeding thirty days, and for a second or any subsequent offence for a period not exceeding three months.

Penalties on
neglecting to
maintain
wife and
children or
abandoning
them.

26/1963
S. 5.

26/1965
S. 9.

14. Notwithstanding anything in the preceding section it shall be lawful for the Resident Magistrate to make an order for maintenance against a person refusing or neglecting to maintain his wife and children, or abandoning his wife or children, instead of, or in addition to ordering such person to be imprisoned.

Order for
maintenance
of wife and
children.

26/1965
S. 10.

15. All process under this Act shall be free.

Free process.

Minister's
power to
make rules,
etc.

25/1963
S. 6.

Practice
and pro-
cedure.

10/1987
S. 3.

Appeal.

16. The Minister may make rules and prescribe forms for carrying into effect the provisions of this Act.

17. Save in so far as is inconsistent with anything for the time being provided in rules made under section 16, the practice and procedure relating to proceedings in the Resident Magistrate's Court in pursuance of this Act shall, *mutatis mutandis*, be the practice and procedure which related to proceedings before Justices in pursuance of this Act prior to the 21st December, 1965, and, without prejudice to the generality of the foregoing, but subject to section 20, an order of maintenance may from time to time be enforced in the Resident Magistrate's Court, in the event of any default in any payment required by it to be made, in the manner prescribed by Parts I and III of the Justices of the Peace Jurisdiction Act for the enforcing of orders of Justices requiring the payment of a sum of money, as if the same were an order for the payment of money made by Justices under that Act.

18.—(1) An appeal shall lie to the Court of Appeal in manner provided by any law in force for the time being regulating appeals in cases tried by a Resident Magistrate on indictment or on information in virtue of a special statutory summary jurisdiction from any decision of a Resident Magistrate in respect of an order of maintenance or attachment.

(2) The Court of Appeal may upon the hearing of the appeal confirm, reverse, or modify the decision of the Resident Magistrate's Court or remit the matter, with the opinion of the Court of Appeal thereon or for rehearing generally, to the Resident Magistrate's Court, or may make such order as the Court of Appeal may think just, and may by such order exercise any power which the Resident Magistrate's Court 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 Resident Magistrate's Court. The Court of Appeal may also make such order as to costs to be paid by either party as the Court may think just.

19. In this Act, any reference—

L.N.
149/78
L.N.
64/80

(a) to a Resident Magistrate's Court, in so far as such reference may relate—

(i) to the Resident Magistrate's Court for the parish of Kingston or for the parish of Saint Andrew, shall, as respects any time on or after the 13th day of November, 1978, be construed as a reference to the Family Court—Corporate Area Region; and

(ii) to the Resident Magistrate's Court for a parish within the geographical jurisdiction of a Family Court established pursuant to Part II of the Judicature (Family Court) Act, shall as respects any time on or after the date on which such Court is established, be construed as a reference to that Family Court;

(b) to a Resident Magistrate, in so far as it may relate—

(i) to a Resident Magistrate for the parish of Kingston or for the parish of Saint Andrew, shall, with effect from the 13th day of November, 1978, be construed as a reference to a Judge of the Family Court—Corporate Area Region; and

(ii) to a Resident Magistrate for a parish within the geographical jurisdiction of a Family Court established pursuant to Part II of the Judicature (Family Court) Act, shall, with effect from the date on which any such Court is established, be construed as a reference to a Judge of that Family Court;

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- (c) to a Clerk, to a Deputy Clerk, or to an Assistant Clerk, of the Courts, in so far as it may, apart from this subsection, relate to Courts—
- (i) of a Corporate Area parish (as respects any time on or after the 13th day of November, 1978); or
 - (ii) of a parish within the geographical jurisdiction of a Family Court established under Part II of the Judicature (Family Court) Act (as respects any time on or after the date on which such Court is established),
- shall be construed as a reference to a Clerk, Deputy Clerk or Assistant Clerk, as the case may be, assigned to a Family Court under section 7 of the Judicature (Family Court) Act.

Committal
for non-
payment.
10/1987
S. 4.

20.—(1) A person shall not be committed to prison for default in payment under an order of maintenance unless the Court is satisfied that the default is due to the wilful refusal or culpable neglect of the person liable to make the payment.

(2) For the purpose of subsection (1), if the person liable to make the payment is not before the Court, a Resident Magistrate may, if he thinks it necessary or desirable, issue a warrant to bring that person before the Court.

(3) Where a person is committed to prison for default as aforesaid, then—

- (a) unless the Resident Magistrate otherwise directs, no arrears shall accrue under the order of maintenance during the time that the person is in prison; and
- (b) the committal shall not operate to discharge the liability of that person to pay the sum in respect of which he is so committed, but at any subsequent hearing relating to the enforcement, revocation, revival, variation or discharge of the order

of maintenance a Resident Magistrate may, if he thinks the circumstances justify such action, remit the whole or any part of the sum due under the order.