



## **ST. CHRISTOPHER AND NEVIS**

### **CHAPTER 12.07**

## **MAINTENANCE OF CHILDREN ACT**

### **Revised Edition**

showing the law as at 31 December 2017

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### **MAINTENANCE OF CHILDREN ACT**

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**CHAPTER 12.07**

**MAINTENANCE OF CHILDREN ACT**

AN ACT TO PROVIDE FOR MAINTENANCE OF CHILDREN AND FOR RELATED MATTERS.

PART I

PRELIMINARY

**Short title.**

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

**Interpretation.**

2. In this Act—

“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 utilized according to the terms of a Maintenance Order;

“certified mediator” means a person whose name has been entered on the list of mediators under section 15;

“child” means—

- (a) a person under the age of 18 years;
- (b) a person 18 years or older whose special circumstances are such that he or she is unable to reasonably provide for his or her daily requirements. Special circumstances means the person has—
  - (i) a serious illness; or
  - (ii) a physical or mental disability;
- (c) a person 18 years or older but under the age of 25 years who is receiving instruction at an educational establishment or under-going training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment;

“child of the family” means—

- (a) a child of both parties to a marriage;
- (b) a child, whether or not a child of either party to a marriage, who is or has been living in the household residence as a member of the family;
- (c) a child of a man and a woman who, although not married to each other are living together in the same household;
- (d) a child, whether or not a child of the man or woman referred to in paragraph (c) or either of them—
  - (i) who is or has been a member of their household;
  - (ii) who resides in that household resident on a regular basis; or
  - (iii) of whom the man or woman is a guardian;

“Commissioner” means the Commissioner of Police under the Police Act, Cap. 19.07;

“Court” includes the Magistrates’ Court;

“custodian” means a person granted custody 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;

“family law expert” means a person qualified or experienced in family law matters;

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

“*in loco parentis*” means assuming the duties and responsibilities of a parent;

“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;

“liable person” means a person liable under a Maintenance Order;

“maintenance” includes making financial provision for education and medical care;

“Maintenance Order” means an Order made under this Act or any other Act for the maintenance of a child;

“mediation” means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute;

“mediation party” means a person who participates in mediation and whose consent is necessary to resolve the dispute;

“Mediation Order” means an order made under section 20;

“mediator” means a neutral third party who conducts mediation;

“Minister” means the Minister with responsibility for Social Services;

“parent” means a biological or adoptive parent;

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

“social worker” means a person qualified or experienced in the professional activity of helping individuals, groups or communities enhance or restore their capacity for social functioning and creating societal conditions favorable to this goal;

“spouse” means a marriage partner, and includes a person who is living separate and apart from the other person.

### **Purpose, Administration and Application.**

3. (1) The purpose of this Act is to—

- (a) promote children's welfare and best interests, and facilitate their development, by helping to ensure that appropriate arrangements are in place for their maintenance and care; and
  - (b) recognise certain rights of children.
- (2) Pursuant to subsection (1), this Act—
- (a) defines and regulates—
    - (i) parents and guardians' duties, powers, rights, and responsibilities to maintain their children; and
    - (ii) the powers of the Court in relation to the maintenance and care of children;
  - (b) acknowledges that there must be shared family responsibilities for the care of a child and an equal duty must be placed on each parent to care for the child;
  - (c) provides for equal treatment of children without discrimination based on marital status of the parents or the status of the child at birth;
  - (d) encourages agreed arrangements for, and provides for the resolution of disputes about, the care of children;
  - (e) implements in Saint Christopher and Nevis the provisions of—
    - (i) the Convention on the Rights of the Child; and
    - (ii) the Convention on the Elimination of All Forms of Discrimination against Women relating to the maintenance of children;
  - (f) acknowledges that it is a general duty of the Government to safeguard and promote the welfare of children; and to mediate in any situation where the rights of a child are infringed upon and especially with regard to the protection of a child, a child's health and education.
- (3) The welfare and best interests of the child, which includes the child's right to care, support and development and also the right to be respected, must be the first and paramount consideration in the administration and application of this Act.

## PART II

### MAINTENANCE ORDERS

#### **Obligation to maintain a child.**

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

(2) A person who has the custody or guardianship of a child or a person who stands *in loco parentis* to a child or a person who has accepted a child as "a child of the family" has an obligation to provide reasonably for the maintenance of that child.

#### **Maintenance Order.**

5. (1) The Court may, on application in the prescribed form by a parent or by a child over the age of fourteen years on his or her own behalf or by a person on behalf

of a child, make a Maintenance Order requiring a parent, or any other person having an obligation under section 4(2) to maintain the child.

(2) The Court in considering an application under subsection (1) shall have regard to the matters referred to in section 7.

#### **Payments of Maintenance Orders.**

6. (1) Subject to subsection (3), 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) giving the force of law to an agreement whereby the respondent shall, for the benefit of a specified child, make to a specified person periodic payments for a specified term;
  - (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) that the respondent or applicant provide non-monetary maintenance and care of the child.

(2) In addition, a Maintenance Order may require the respondent to pay a specified lump sum to a specified person for the benefit of a specified child including a lump sum in respect of the expenses reasonably incurred in respect of that child, before the Maintenance Order was made.

(3) The Court may specify in a Maintenance Order that the payment referred to under subsection (1) shall—

- (a) be made to a specified person; or
- (b) be made through the Court.

(4) Where the Court orders that payment of all or part of a lump sum be deferred or paid by installments, the Court may order the amount deferred, or the installments, be at a rate specified by the Maintenance Order, from a specified date, not being a date earlier than the date of the Maintenance Order, until the date when payment is effected.

#### **Matters to which Court is to have regard in making orders for maintenance.**

7. The Court, in deciding whether to exercise its powers under this Part and, if so, in what manner, shall have regard to all the circumstances of the case including the following matters—

- (a) the income, earning capacity, property and other financial resources which each parent or any other person having an obligation under section 4(2) has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each parent or any other person having an obligation under section 4(2) has or is likely to have in the foreseeable future;
- (c) the financial needs of the child and the standard of living of the child;
- (d) the income, earning capacity (if any), property and other financial resources of the child;
- (e) any physical or mental disability of the child;

- (f) the manner in which the child was educated or trained and the manner in which the parents expected him or her to be so educated or trained;
- (g) the standard of living enjoyed by the family while the parents and the child resided together, if applicable;
- (h) any non-monetary contributions made to the child's care.

**Duration of a Maintenance Order.**

**8.** A Maintenance Order in respect of a child shall not, except for the purpose of recovering money previously due under the Maintenance Order, be of any force or validity after the child has ceased being a child, has married or has died.

**Interim Maintenance Order.**

**9.** (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 one week, the Court may, if it thinks fit, having regard to all the circumstances of the case, make an Interim Maintenance Order under this section.

(2) An Interim Maintenance Order under this section shall direct the respondent, or, as the case may be, the applicant, to pay such periodical sum as the Court thinks reasonable for the maintenance of the child until the final determination of the case, but the Interim Maintenance Order directing the payment shall not remain in operation for more than six 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 made under section 5.

**Variation or discharge of maintenance orders.**

**10.** (1) The Court may vary a Maintenance Order in such a manner as the Court thinks fit, suspend a Maintenance Order, revive a suspended Maintenance Order or discharge a Maintenance Order if circumstances so warrant on notice to the application of—

- (a) any of the parties to the proceedings in which such Maintenance Order was made; or
- (b) any person having actual custody of a child.

(2) The power of the Court under this section to vary a Maintenance Order for the making of periodic payments includes the power to suspend any of its provisions temporarily and to revive any suspended provision.

(3) 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 so varied shall be made from such date as the Court may specify, not being earlier than the date of the making of the application.

(4) 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.

(5) Where a Maintenance Order is made for the payment of a lump sum by instalments the Court may, on application on notice 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.

(6) Where pursuant to any other Act, the Court makes a Maintenance Order with respect to the maintenance of a child, any Maintenance Order in respect of the same child made by the Court under this Act shall prevail.

#### **Method of payment.**

**11.** (1) Payments for maintenance shall be made by the respondent by 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.

(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 21.

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

#### **Financial disclosure.**

**12.** A party whose financial information is necessary to determine an amount of maintenance, shall, on the request of the Court present to the Court any financial information and any person needed to give evidence of financial information may be summoned before the Court.

#### **Costs.**

**13.** The Court making a Maintenance Order may also order that a party pay costs in such amount as the Court may determine.

#### **Depletion of property.**

**14.** 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 III

SERVICES OF MEDIATORS AND FAMILY EXPERTS

**Maintenance of list of certified mediators.**

15. (1) The Minister shall maintain a list of certified mediators.

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

(3) The list of certified mediators shall be published in the *Gazette* or published electronically, in an appropriate way.

**Qualifications of certified mediators.**

16. A certified mediator shall include the following persons—

- (a) Psychotherapists;
- (b) Clinical Psychologists and Health Psychologists;
- (c) Lawyers;
- (d) Notaries;
- (e) Judges;
- (f) State Prosecutors;
- (g) Consultants;
- (h) Social Workers; or
- (i) Trained and Graduate School Teachers,

with practical experience in family matters or with a degree or extensive experience and training in social work, mental health matters, behavioural or social sciences or any other equivalent qualification.

**Confidentiality and secrecy.**

17. (1) Subject to the applicable law or the parties' agreement, a mediator is obligated to maintain secrecy about the facts which he has become aware of in the course of the mediation or which have otherwise become known to him or her.

(2) A mediator shall deal with documents provided to him or her in the course of the mediation in a confidential manner.

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

(4) A person who breaches this section commits an offence and is liable on summary conviction to a fine of one thousand dollars.

**Exclusion of Liability.**

18. A mediator, the supporting staff of a mediator as well as persons who act for a mediator shall not be liable to any party for any act or omission in connection with any mediation conducted under this Act, except that they may be liable for the consequences of conscious and deliberate wrongdoing.

**Services of persons other than social workers may be used.**

**19.** (1) Where in any proceedings under this Act the Court requires the services of a social worker or family law expert, the Court may nonetheless utilize the services of any person whose qualifications are at least equivalent to those in the case of a probation officer, or who in the opinion of the Court is qualified as a family law expert.

(2) A person, not being a public officer, whose services are utilized by the Court under subsection (1) shall enjoy the same protection as a probation officer.

**Mediation.**

**20.** (1) The Court may refer any proceedings commenced pursuant to this Act to mediation.

(2) Parties to the proceedings may notify the Court that they wish to have their matter referred to mediation and upon receipt of this notification the Court may make a Mediation Order referring the matter to mediation.

(3) A report shall be made by a mediator to the Court as to whether or not the mediation resulted in an agreement.

(4) Where a Mediation Order is made pursuant to subsection (1) or (2) and the mediation parties referred to mediation reach a Mediation Agreement, the mediator shall reduce the Mediation Agreement into writing in the prescribed form and the mediation parties shall sign the Mediation Agreement.

(5) Where a Mediation Agreement has been concluded pursuant to subsection (4), the mediator shall file the Mediation Agreement with the Court and within fourteen days of the date of filing the Mediation Agreement, the Court shall fix a date for further hearing of the matter and make an Order.

(6) Where a Mediation Order is made pursuant to subsection (1) or (2) and the mediation parties referred to mediation does not reach a Mediation Agreement, the Mediator shall refer the matter back to the Court.

**PART IV****ENFORCEMENT****Designation of Collections Officer.**

**21.** (1) The Court shall designate a person who may be a Clerk or Assistant Clerk of the Court to be the Collections Officer for each District for the purposes of this Act.

(2) The Collections Officer shall receive and make a record of all payments directed to be made to or through the Court under this Act.

(3) The person named in the Maintenance Order shall attend at the office of the Collections Officer during regular office hours to receive that payment and must sign a receipt in the presence of the Collections Officer, who shall then payout the amount.

**Arrears in payment.**

**22.** (1) Where an amount ordered under a Maintenance Order to be paid, is fourteen clear days in arrears, the Court may on the application of—

- (a) the person to whom payment is ordered to be made, on oath; or
- (b) the Collections Officer,

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

(2) If the liable person neglects or refuses to give a reasonable explanation for the arrears and to pay the sum outstanding under the Maintenance Order and the costs in relation to the warrant, the Court may—

- (a) order the immediate payment of the sums due if the Court is not satisfied with the explanation; or
- (b) vary the Maintenance Order accordingly if the Court is satisfied with the explanation.

(3) Subject to subsection (2), if the liable person 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, after considering all the evidence, commit the liable person, (including the option of intermittent custody) to prison for any period not exceeding two months unless the sum due under the Order and costs of commitment, are paid.

(4) Where a respondent is committed to prison in accordance with subsection (3) the provisions of subsection (9) shall apply.

(5) Any provision in any enactment limiting to six months the time within which summary proceedings are to be taken shall not apply to proceedings for enforcing the payment of sums under an Order made under this Act but no proceedings may be taken after 6 years from the date of the Order.

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

(7) Where on application for the enforcement of the payment of an amount payable under a Maintenance Order and no warrant of commitment to prison is issued, the application may be renewed on the ground that the circumstances of the person to whom the application relates have changed, except where it relates to the amount waived.

(8) Where an amount under a Maintenance Order is payable to a person other than the Collections Officer, a warrant shall not be issued unless the person has sworn (or affirmed) to the fact of non-payment.

(9) Where a person is committed to prison for default—

- (a) unless the Court otherwise directs, no arrears shall accrue under the Maintenance Order during the time that the person is in prison; and
- (b) the committal shall not operate to discharge the liability of the person to pay the sum in respect of which he or she is so committed, but at any subsequent hearing relating to the enforcement, revocation, revival, variation or discharge of the Order, the Court may, if in its opinion the circumstances so warrant, waive the obligation to pay all or any part of any amount due under the Order.

**Intermittent custody.**

**23.** (1) The Court may, when passing a sentence of imprisonment under this Act—

- (a) specify 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; and
- (b) by Order specify periods during which the offender is to be released temporarily on licence before he has served the number of days in prison.

(2) A person who has been temporarily released in pursuance of an Intermittent Custody Order made under this Act, if, without reasonable excuse, remains unlawfully at large at any time after becoming so at large by virtue of the expiry of the period for which he was temporarily released, commits an offence and on summary conviction is liable to a fine of one thousand dollars and a term of imprisonment of one month.

**Leaving State to evade order.**

**24.** (1) The Court may issue a summons requiring a person against whom a Maintenance Order has been made or who is a party to proceedings under this Act to appear at a specified time, to show cause why an Order should not be made against him prohibiting him from leaving the State where the Court is satisfied upon oath that there is reasonable ground for believing that the person is about to leave the State without making adequate provision during his absence for the payment of the Maintenance Order or for the maintenance of the child named in the proceedings.

(2) For the purposes of subsection (3) the Court may, either in the first instance or subsequent to the issue of a summons, issue a warrant addressed to the Commissioner, to apprehend a person and cause him to be brought before the Court within 24 hours of the apprehension.

(3) The Court may order a person against whom a Maintenance Order has been made or who is a party to proceedings under this Act not to leave the State where on the appearance of the person, the Court is satisfied that the person is about to leave the State without having made adequate provision for the payment of the Maintenance Order during his absence or for maintenance of the child named in the proceedings.

(4) A person commits an offence if an Order has been made against him or her under subsection (3) and he or she leaves or attempts to leave the State whilst the Order is in force and is liable on summary conviction to a fine not exceeding two thousand dollars or to a term of imprisonment not exceeding six months or to both.

**Misapplying monies.**

**25.** (1) A person who receives a sum of money for the maintenance of a child under this Act shall apply that sum of money for that purpose.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding one month.

**Change of address or employment of liable person.**

**26.** (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 person specified in the Order.

(2) Where an Order is made under section 11(2) the person ordered to make the deduction and subsequent payment shall inform the Court within one month if the liable person leaves, is no longer in his employ or cannot be found .

(3) A person who contravenes subsections (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

**False statements.**

**27.** (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 under the Perjury Act, Cap. 4.23.

(3) Where on hearing an application made pursuant to this Act, the Court determines that any information submitted in support of an application, or in pursuance of any Order made pursuant to this Act is false the Court may—

(a) dismiss the application; or

(b) order a person to resubmit the information with supporting documentation.

## PART V

## MISCELLANEOUS

**Appeal.**

**28.** (1) An appeal shall lie in respect of an Order under this Act to the Court of Appeal.

(2) The Court of Appeal upon hearing an appeal may—

(a) uphold, reverse or modify the decision of the Court;

(b) remit the matter to the Court for rehearing generally; or

(c) make such order as the Court of Appeal thinks just.

**Payments under maintenance orders to be kept separate.**

**29.** The Court shall ensure that the amounts received under maintenance orders are kept separate from any other amounts in the Court's control.

**Unclaimed amounts.**

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

(2) A person who is entitled to receive an amount under a Maintenance Order that has been forwarded under sub-section (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 Court will publish a list of any unclaimed amounts that have remained unclaimed for one year.

#### **Electronic documents.**

**31.** (1) Where a document, record or information required or permitted under this Act is to be in writing, that requirement, permission or description may be met by submission of that information in the form of an electronic record.

(2) A legal requirement under this Act that a person provides information in a prescribed paper 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 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.

#### **Regulations.**

**32.** The Minister may make Regulations for carrying into effect the provisions of this Act.

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**SCHEDULE**

*(Section 22(1))*

**FORM**

Saint Christopher and Nevis

MAINTENANCE OF CHILDREN ACT, CAP. 12.07

WARRANT OF APPREHENSION FOR  
DISOBEDIENCE OF ORDER

To all [Constables],

Whereas it has been made to appear to me ..... Magistrate  
(for District ..... ) on the oath of .....  
(hereinafter called the complainant) that by an order duly made on  
....., 20 .....

.....  
(hereinafter called the [respondent])\* was ordered to pay  
to .....  
.....having the care of a child or  
children .....  
which sum(s) is/are the weekly/monthly payment(s) which became payable on the  
..... day of..... 20 ..... and that the payment (s) so directed to  
be made by the

Order have not been made according thereto by the respondent and that there is now  
in arrears the sum of ..... being the amount due  
for .....

This is therefore to command you to apprehend .....  
..... and bring him/her before the  
Magistrate unless the sum(s) and the costs and charges of executing this warrant  
amounting to the further sum of..... shall be  
sooner paid.

And for your so doing this shall be your sufficient warrant.

\_\_\_\_\_