

MINISTRY OF HEALTH AND SOCIAL DEVELOPMENT

Child Rights Discussion Paper

on the proposed

Child Maintenance and Access Bill, 2016
Maintenance Orders (Facilities for Enforcement)
Bill, 2016



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Introduction

The right to child support and the responsibilities of parents to provide such support have been internationally recognized. The 1992 United Nations Convention on the Rights of the Child is a binding convention signed by every member nation of the United Nations and formally ratified by the United Kingdom on 16th December 1991, and was subsequently extended to the Virgin Islands on 7th September, 1994. It declares that the upbringing and development of children and a standard of living adequate for the children's development is a common responsibility of both parents and a fundamental human right for children, and asserts that the primary responsibility to provide such for the children rests with their parents.

The Magistrate's Code of Procedure (MCP, Chapter 44 of the Laws of the Virgin Islands, is the principal legislation that governs the jurisdiction of magistrates to hear and determine affiliation matters. The MCP was initially enacted in 1892 and has undergone many amendments, most recently in 1988; however there has never been any wholesale reform of its provisions. There are several challenges with the existing provisions in the MCP as it relates to the maintenance of children. The jurisdiction appears to be one-sided as far as the out-of-wedlock child is concerned, given that the Magistrate's jurisdiction under section 118 is not gender neutral. As a result the non-custodial father is duty bound to pay maintenance to the custodial mother, but the non-custodial mother is not duty bound to pay to the custodial father. Furthermore, an order is not enforceable after the 18th birthday of a child, and no account is taken of a child with special needs who may require support for the remainder of his/her life.

The principal method for enforcement of orders under sections 115 and 118 is way of a warrant to commit the defaulter to prison for non-payment. Unfortunately, the imprisonment of defaulters contributes to the overcrowding at Her Majesty's Prison. The term of imprisonment does not extinguish the debt, and while the defaulter is in custody, arrears are generally accrued.

The proposed Legislation makes no distinction between a child or children born in marriage and those born out of wedlock. It further makes provision where each parent of the child has an obligation to provide for the child or children.

To address these concerns of non-payment the proposed legislation seeks to introduce other intervention methods for failure to comply with the stipulations for maintenance. The alternatives of mediation or measures such as suspension of driver's license, garnishing of wages or an attachment order are proposed as a first line of intervention prior to a term of imprisonment.

In addition to maintenance, the proposed legislation would address the issue of access. It provides for the court to deal with the issue of access when an application for a maintenance order is being heard. It also provides for each parent and a person who has assumed responsibility for a child to be entitled to have access to that child. Provision is also made for the best interest of the child to be considered when making an order for access to a child. The proposed legislation would also include provision for the duration and contravention of access orders.

The Maintenance Orders Act which goes hand in hand with the Child Maintenance and Access Act sets the legal framework for reciprocity among the region and in the United States Virgin Islands. Major reform is obviously required if children are to receive adequate financial support from those parents who have the financial capacity to contribute towards their children's upbringing.

Overview

The Ministry of Health and Social Development is proposing the Child Maintenance and Access Bill and the Maintenance Orders (Facilities For Enforcement) Bill to strengthen its system of laws and policies that recognize children's right to special protection and care. These proposed pieces of legislation will help to enhance and protect the lives of children, by ensuring that they are properly provided for, and are able to maintain relationships with both their parents through appropriate access arrangements.

This paper is intended to provide a plain English description of the proposed legislations, and a brief analysis of why they are needed.

The purpose of the paper is to encourage discussion and input from the public on the proposed legislations.

Comments and Submissions Invited

Your comments and submissions on the matters raised in this discussion paper are important.

In submitting your response, please indicate the relevant section and/or heading that appear above the matter being commented on.

Some readers may find it useful to read the Discussion Paper in conjunction with the proposed legislation. Copies of the legislation can be obtained from the Help Desk at the Central Administration Complex (West Atrium).

You may also wish to raise other issues that are not included in the Discussion Paper. These would be welcomed and appreciated.

How to respond:

Comments may be given at public consultations or they may be mailed to *Child Maintenance and Access Bill Review, Ministry of Health and Social Development, #33 Admin Drive, Road Town, Tortola.*

Alternatively, you may forward your comments by email to ministryofhealth@gov.vg.

Please ensure that your comments are submitted prior to the **November 30, 2016 deadline.**

Child Maintenance and Access Bill

PART 1 – CHILD MAINTENANCE AND ACCESS

Section 2. Interpretation

This section provides definitions of the principal words used throughout the Act. Thirteen terms are defined in the Act – access, access order, attachment order, child, court, Department, maintenance, maintenance order, Minister, parent, prescribed, respondent and social worker. The Act defines a child as a person who is under the age of eighteen years; and has never married.

Section 3 provides that the best interest of the child must be the paramount consideration of the court in the administration of the Act.

Section 4 empowers the court to request a social inquiry report from the Chief Social Development Officer before an application for maintenance or access is considered.

Issues for consideration

- This definition is in line with the definition of a child in the UN Convention of the Rights of the Child (1989) Article 1.
- Article 3 of the CRC spell out that “The best interest of the child is a primary consideration” all decisions taken within the context of the administration of child maintenance and access, must be taken in the best interest of the child, especially since children have different psychological, physical, emotional and educational needs.

PART II OBLIGATION TO MAINTAIN A CHILD

Section 5. Obligation of parents to maintain child

Section 5 makes provision that every parent, who is capable of doing so, maintain his or her child except a child who has attained the age of sixteen years and who has voluntarily withdrawn from parental control, except if the child withdrew because of physical violence or abuse.

Issues for consideration

Article 27 of the CRC enjoins States Parties to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Thus, States are urged to "take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having responsibility for the child..."

According to the proposed Child Maintenance Act, every parent has an obligation to maintain his or her unmarried child if that child is a minor or is physically or mentally infirmed and includes children who are born out of wedlock

Section 6. Obligation of persons who assume responsibility for a child

Section 6 provides for persons who assume responsibility for a child to maintain that child.

Issues for consideration

Within the context of this Act, parent has an expanded meaning because it not only refers to a biological parent, it includes someone who has accepted any child as 'a child of the marriage', whether that child is a biological child of one of the parties to the marriage or not. Not only does a stepparent, have an obligation to maintain the stepchild whom was accepted as a child of the family, while the couple is married, but this obligation continues even after the marriage has ended.

- Should a person who is not the parent of a child assume responsibility for the child?
- Should a person assume responsibility for a child where that person becomes the step parent of the child and the child resides in the same household as that person?
- Should a person assume responsibility for a child where that person has custody of, or is the guardian of that child, whether by order of the court or otherwise and whether on a permanent or temporary basis?
- What about those full-time students that have some form of employment?
- In the case where a 'child' is a full time student over the age of 18, can the maintenance be required to be paid to the 'child' rather than the custodial parent?

PART III MAINTENANCE ORDERS AND ACCESS ORDERS

Section 7. Maintenance Order

Section 7 provides for the court to make a maintenance order, upon application by specific persons including a parent, where a person liable to maintain the child fails to do so.

Issues for consideration

Section 7(2) states that where a person liable to maintain a child fails to do so, “the following persons may apply to the court for a maintenance order: the child, a parent of the child, a person who assumes responsibility for the child, and a social worker.”

One of the challenges with the existing provision of the MCP Section 118 is that it is not gender neutral. The non-custodial father is duty bound to pay maintenance to the custodial mother, but the non-custodial mother is not duty bound to pay to the custodial father. The proposed Act assigns a legal responsibility on both parents, whether married or unmarried, to maintain dependent children in accordance with their means.

Another challenge with the existing provision of the MCP Section 121 is that an order for maintenance is not enforceable after the 18th birthday of a child. According to the Magistrate, “many children who are supported through the Courts are often still in secondary or tertiary education at their 18th birthday and when support ends this often leads to hardships.”

Section 8. Application for Maintenance Order

Section 8 provides for the manner in which the application is to be made and the documents that are necessary to support the application for maintenance.

Issues for consideration

Section 8 (2)(a) requires that a statement of the expenses of that child with supporting documents should accompany the application.

- Who determines what expenses are reasonable and necessary?
- How are special and extraordinary expenses considered?

Section 9. Matters to which the court is to have regards when making a maintenance order

Section 9 outlines the matters which the court may consider when hearing an application for maintenance including, the financial, educational and medical needs of the child, the age, income, and financial resources of the respondent and the applicant. It would also allow for the court to obtain assistance from any person or agency which may be capable of providing the knowledge or expertise necessary to assist the court in determining the matter.

Issues for consideration

Guidelines and Tables are used in other countries to give parents and Courts a set of rules, and determines basic child support amounts so that child support issues are decided consistently.

- Should standard guidelines and tables be developed for the VI to give the Magistrates better guidance?

Caution must be made when determining child maintenance; it is a difficult balancing act of assisting the children of the first family without impoverishing or de-stabilizing the second family.

- Does the court look at net income or the gross income?
- Should the parents decide on their own how much child support will be paid?
- What if the payer loses his or her job? Or the payee finds that they are struggling to make ends meet?
- Should provision be made to temporarily suspend an Order in instances of hardship to an existing family? Or should a Court exercise its powers to capitalize the remaining maintenance payments?

Section 10. Powers of court

Section 10 sets out the powers of the court to make various orders with respect to maintenance, including the power to make various interim or final orders such as:

- a. an order for payment of reasonable expenses incidental to the birth of the child, or
- b. an order for the payment of reasonable expenses towards the funeral of the child, or
- c. an order that a respondent who has an interest in a pension, designate the child as the beneficiary.

Issues for consideration

- The Court has the ability to award retroactive child support, but that the discretion to make such an order is not to be exercised as a matter of course.
- What are the factors to be considered when deciding whether to award retroactive child support?

Section 11. Manner of Providing Maintenance.

Section 11 allows for maintenance to be provided in the form of financial relief, or by payment for services such as medical care, education, accommodation or even insurance benefits.

Issues for consideration

Section 11 states that “The court may make an order requiring the respondent named in the application to provide maintenance in the form of financial relief or payment for services including but not limited to the provision of

- (a) food;
- (b) clothing;
- (c) health care;
- (d) education;
- (e) accommodation; and
- (f) insurance benefits.

Child maintenance is meant to help with the living expenses of the child. This includes things like food, diapers, clothing, personal care items, school supplies, and, generally, basic extracurricular activities. Child maintenance is also meant to help with the extra cost a parent has to pay to provide living space for a child. For example, having to pay for a 2 bedroom apartment instead of a 1 bedroom, once you have a child.

Section 12. Duration of Maintenance Order.

Section 12 provides for a maintenance order to remain in force until a child attains the age of eighteen years except where the child has a physical or mental disability or requires specialised care beyond his or her eighteenth birthday.

Issues for consideration

Maintenance payments under an order must be made until the child is 18 years old. If the applicant wants the payment to continue after the child is over 18 years old, he/she must ask the court to make specific direction to this effect in the order.

It is proposed in Section 12 (2) that a maintenance order shall “remain in force in respect of a child who

- (a) has a physical or mental disability;
 - (i) until the child attains the age of twenty three years if it is necessary to enable the child to complete his or her education; or
 - (ii) throughout the lifetime of the child if it is proved that the child is unable to adequately provide for himself; or

Issues for consideration (Section 12 cont'd)

- (b) is unable to maintain himself or herself by reason of an illness and will require specialised care which will extend beyond the child's eighteenth birthday.

Article 23 of the CRC enjoins all States parties to recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community. In this Section, the right of the disabled child to special care, financial assistance, education, training, health care services, rehabilitative services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and development is recognized and promoted.

Section 13. Paternity

Section 13 would provide for any issues related to paternity to be determined before a maintenance order is made.

Issues for consideration

Section 13 (2) states "for the avoidance of doubt, the provisions of the Status of Children Act, 2014 applies with respect to the determination of the issue of paternity."

Provisions in the Status of Children Act, 2014 provides for instances in which a declaration of parentage may be made by the Court, Section 8 and Section 9 provides for carrying out of parentage testing procedures.

Section 14. Access Order

Section 14 provides for the court to make an access order, at any time, upon application of a person who alleges that he or she is entitled to have access to a child. It also provides that the best interest of the child is paramount in determining issues of access, as well as the need for the child to have as much contact with each parent as is consistent with the best interest of the child.

Issues for consideration

Section 124(2) of the MCP states that “the father of an out of wedlock child cannot have custody of such child unless the mother of the child is dead, of unsound mind, or is incarcerated.

The proposed Act asserts equal rights of access and custody for the parents of out of wedlock children and applications for maintenance and access should be dealt with jointly as opposed to separate applications.

This section also allows the Court to hear evidence from a child who is thirteen years of age or older, regarding his or her relationship with the concerned parties.

Section 15. Duration of Access Order

Section 15 provides for the duration of an access order.

An access order will remain in force until a child in respect of whom the order is made attains the age of eighteen years unless the court otherwise orders.

Section 16. Variation, Suspension, etc. of an Order

Section 16 provides for the variation, suspension and revival of an order.

Issues for consideration

Either party can apply to vary or discharge the Maintenance Order. This application is made to the Magistrate’s Court in whom the Maintenance Order was made, and cause must be shown by fresh evidence to the satisfaction of the Court for the application to be granted.

Section 17. Mediation

Section 17 provides for the court to refer a matter to mediation upon the request of the parties.

Issues for consideration

Mediation is a process in which a mediator, who is a trained neutral third person, helps the parents negotiate a mutually acceptable agreement regarding child support (as well as any other issues the parents want resolved.) The parents, not the mediator, make the decision.

Section 18. Maintenance Collection Account

Section 18 provide for the establishment of a Maintenance Collection Account which would be used for the sole purpose of collection and payment of funds received pursuant to a maintenance order. It would also provide for the manner of paying those funds.

Issues for consideration

Section 18 (2) states that “all funds payable pursuant to a maintenance order may be paid or received

- (a) by cash;
- (b) by cashier’s cheque or bank draft;
- (c) debit card;
- (d) by any other manner prescribed.”

Section 19. Interest from maintenance collection account

Section 19 provides for the interest from the Maintenance Collection Account to be used to for the benefit of any children’s home in the Territory or any registered charity established for the benefit of children.

19. (1) Any interest earned from monies in the Maintenance Collection Account may, upon the directions of the Minister, in writing, be used to assist

- (a) with the expenses incurred with the operation of any children’s home; or
- (b) any registered charity established for the benefit of children.

Section 20. Collecting Officers.

Section 20 provides for the designation of collecting officers, as well as the duties of a collecting officer including receiving all payments directed to be made to the collecting officer and paying same to the person named in the order.

Issues for consideration

Collection Officers monitors, collects and distributes maintenance payments ordered by the court.

Any person ordered to make a payment under this Act to a collecting officer, and fails to do so, is liable on summary conviction to a fine not exceeding one thousand dollars.

PART IV COLLECTION AND ENFORCEMENT

Section 21. Payments under Act

Section 21 provides for maintenance payments to be made directly to the applicant as opposed to a collecting officer.

Section 22. Enforcement of maintenance orders

Section 22 provides for the enforcement of maintenance orders by various means including attachment of pension or income payable to the respondent, suspension of a benefit enjoyed such as a licence or permit until an order of the court is complied with or even the imposition of a sentence or imprisonment after all other sanctions have been considered and the respondent wilfully refused to make payments under the order.

Issues for consideration

This Act proposes various methods to enforce child maintenance:

- the seizure of property in order to obtain payment;
- garnishing of wages or pensions;
- suspension of driver's licence; and
- term of imprisonment.

These tools are used to encourage debtors to pay court-ordered maintenance.

Provisions are also made for a debtor (or respondent) to be heard by the court before an order is enforced.

Section 23. Enforcement of access orders

Section 23 provides for enforcement of access orders.

Issues for consideration

Access cannot be denied because of issues with child support. Even when the child is reluctant or uncooperative the parent with custody is expected to make every effort to ensure that the other parent can exercise their access to the child.

If one parent is not providing access as specified in the order the court may order that they...

- attend mediation with the other parent to try to resolve the issue
- provide additional access or parenting time to make up for periods when access was denied
- give security for the performance of their obligation to give access

Section 24. Attachment Orders

Section 24 provides for the making of attachment orders. It also protects persons subject to an attachment order from being dismissed or victimised by their employer.

Issues for consideration

The most essential tenet in the proposed legislation is Section 24 which speaks to attachment order or garnishing of wages.

A wage garnish is when the court issues an attachment order requiring an employer to withhold a certain amount of a person's pay check and sends it directly to the custodial parent before they ever see it.

Section 25. Committal for Non-payment

Section 25 provides for committal to prison for non-payment of maintenance.

Issues for consideration

When a person does not pay child maintenance as ordered by the court, the court has to determine whether the default of payment is due to the wilful refusal or culpable neglect of that person before committing the individual to prison.

Once committed to prison no arrears will accrue during the time the person is in prison, unless the court otherwise directs.

Section 26. Power of the court to prohibit a person from leaving the Virgin Islands or from removing a child.

Section 26 provides for the court to prohibit a person from leaving the Virgin Islands where the court is satisfied the person is about to leave without making adequate provision for the maintenance of a child or the court is satisfied that the person is about to leave the Virgin Islands with the child in order to frustrate an access order or without the permission of a parent of the child.

Issues for consideration

The court can issue a summons for a person to appear in court to show why an order should not be made against them prohibiting him or her from leaving the Virgin Islands before making adequate provision in their absence for maintenance of a child.

Section (2) states that the court can make an order preventing a person from leaving the Virgin Islands if the person has not made arrangements satisfactory to provide maintenance.

The court can also make an order preventing the removal of a child from the Virgin Islands if:

- it is intended to frustrate an order regarding access to the child;
- it is without permission of both parents; and
- it is without permission of a parent who has custody of the child.

The sole purpose of a Prohibition Order is to secure payments of child maintenance and access to the child.

Section 27. Power to arrest without warrant and detention

Section 27 provides for the arrest of a person, without a warrant, where that person is in default of a maintenance order and who is attempting to leave the Virgin Islands; or attempting to remove a child from the Virgin Islands in contravention of a court order.

PART V MISCELLANEOUS

Section 28. False Information

Section 28 makes it an offence to misapply funds received for the maintenance of a child. Persons in contravention are subject to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding 3 years or to both.

Section 29. Misapplying Funds

Section 29 makes it an offence to misapply funds received for the maintenance of a child.

Section 29 (1) A person who has received funds for the maintenance of a child shall apply those funds for that purpose.

Section 29 (2) states that “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 imprisonment not exceeding six weeks or both.”

Issues for consideration

Neither the court nor the Social Development Department will keep track of what the parent receiving child maintenance spends it on. Child support is meant to contribute to basic necessities, such as housing, food, and clothing etc. A child maintenance recipient can use child support money however he or she sees fit – even if it never benefits the children – so long as certain basic needs of the children are met.

A wilful misapplication occurs when child maintenance funds are spent for any purpose other than for necessary and proper home, food, clothing and the necessities of life, which expenditure results in depriving the child of the above named necessities. Thus, as expressed through this section, the court’s interest in child maintenance fund transfers is only in ensuring the funds are not so misused by the recipient as to deprive the child of necessities of life.

Section 30. Recovery of Expenses

Section 30 provides for the recovery of expenses incurred in the enforcement of any Order under this Bill.

Section 31. High Court

Section 31 preserves the jurisdiction of the High Court in maintenance and access matters.

Section 32 Appeal

Section 32 allows for appeals to be made to the Court of Appeal against an order made under this Bill.

Section 33. Immunity from Liability

Section 33 provides for a social worker, mediator and any other person acting in good faith in the discharge of their functions under this Bill to be immune from liability.

Section 34. Amendment of Schedule

Section 34 provides for the Schedule to be amended by Order published in the Gazette.

Section 35. Regulations.

Section 35 provides for the Minister to make Regulations with the approval of Cabinet.

Section 35 grants the Minister the right to make Regulations governing the provision of the Act with the approval of Cabinet.

Section 36. Transitional and savings

Section 36 provides for transitional matters; specifically the transfer of funds already collected for maintenance and held at the Magistrate's Court currently under the Act, to be transferred to the Maintenance Collection Account.

Maintenance Orders (Facilities For Enforcement) Act, 2016

PART I PRELIMINARY

Section 2. Interpretation

Section 2 provides definitions of the principal words used throughout the Act.

Issues for consideration

The Act defines the following words as:

- **“maintenance order”** or “order” (whether provisional or final) means an order, for the payment of a sum of money including the periodical payment of money towards the maintenance of a payee;
- **“provisional maintenance order”** means an order which has no effect until confirmed by a court in the Virgin Islands or, as the case may be, a court in a reciprocating country;
- **“reciprocating country”** means a country or a territory declared to be a reciprocating country under section 20;

PART II REGISTRATION OR CONFIRMATION OF ORDERS MADE IN A RECIPROCATING COUNTRY

Section 3. Registration of maintenance orders made abroad.

This section provides for the registration of maintenance orders made abroad where a certified copy of the order is received by the Attorney General. It would also set out the duties of the proper officer in registering an order from abroad.

Issues for consideration

This section provides for registration in the Virgin Islands of Maintenance Order made elsewhere.

From 2010 to 2013, the Social Development Department received requests from 14 countries—a total of 29 cases—for intervention in collecting child support payments for parents (mostly fathers) who have migrated to the Virgin Islands. The Department also receives requests from local residents seeking assistance to secure maintenance from fathers who have emigrated from the Territory. There have been other rare cases where both parents have emigrated and left a child in the custody of local caregivers who then seek to secure maintenance from the parents.

Registration of maintenance orders helps to ensure that parents do not have to deal directly with each other when it comes to support payments.

Section 4. Confirmation of Provisional Orders made Abroad

Section 4 provides for confirmation of provisional orders made abroad. It should be noted that prior to confirming an order the person against whom the order is made has an opportunity to show cause why the order should not be confirmed.

Issues for consideration

When a provisional maintenance order has been made by a court in a reciprocating country, the respondent will be given an opportunity to oppose the making of an order before it is confirmed by the court in the Virgin Islands (Section 4 (5)).

The order is confirmed by operation of law if the non-registering party fails to appear at the hearing or after a duly noticed hearing at which the court determines that the contesting party did not establish a valid defense (Section 4 (8)).

Section 4 (9) states that the court may refuse to confirm the order if the court is satisfied that the order ought not to be confirmed.

Section 5. Court for registration of Orders made abroad

Section 5 affords that an order is to be registered by a court of superior or similar jurisdiction to the court which issued the provisional order.

Issues for consideration

Section 5 states that “the court by which an order is to be registered or confirmed, as the case may be, shall

- (a) be the High Court, if the order was made by a court of superior jurisdiction; or
- (b) in any other case, the Magistrate’s Court.

Section 6. Foreign Language

Section 6 provides for orders which are in a foreign language to be translated into English with such translation being subject to the approval of the Court.

Section 7. Enforcement of Orders registered or confirmed

Section 7 provides that from the date of registration or confirmation of an order that order shall have the same force and effect and be enforceable as if it had been made by the relevant Court in the Virgin Islands.

Issues for consideration

A foreign maintenance order will be enforced in Virgin Islands once it is registered or confirmed. Enforcement will be effective from the date of registration or confirmation.

Section 8. Change of address and change of employer to be notified

Section 8 requires the payer named in a maintenance order to notify the Court of any change of address or employer and failure to do so would result in an offence being committed.

Issues for consideration

Section 8 requires that the person named in a Maintenance Order notify the court of any change of his or her address or change of his or her employer. Failure to comply the person commits an offence and is liable on summary conviction to a fine not exceeding two thousand five hundred dollars.

Section 9. Conversion of foreign currency

Section 9 provides for the sums payable under a Maintenance Order to be converted into local currency where those sums are stated in a foreign currency.

Section 10. Variation or revocation of orders registered or confirmed in Virgin Islands

Section 10 permits the Court which confirmed or registered an order made abroad to vary or revoke that order. It would also provide that an order varying such maintenance order shall be provisional unless the payer and payee are both resident in the Virgin Islands, or the application is made by the payee, or the variation is sought on the ground that there has been a change in the financial circumstances of the payer since the date on which the order was confirmed and the court which made the order has no power to confirm a provisional variation order.

Section 11. Transmission of documents where payer ceases to reside in Virgin Islands

Section 11 provides that where a payer ceases to reside in the Virgin Islands the documents pertaining to the maintenance order are to be transmitted to the appropriate authority in the reciprocating country in which the order was made or the reciprocating country in which the payer resides.

Issues for consideration

Section 11 states that if the proper officer has reason to believe that the payer under an order registered or confirmed under this Part has ceased to reside in Virgin Islands, he or she shall send to the Attorney General, for transmission to the appropriate authority in the reciprocating country in which the order was made, or, as the case may be, the appropriate authority in the reciprocating country in which the payer is resident, the following:

- a. a copy of the registered or confirmed order;
- b. a certificate of arrears signed by him or her;
- c. a statement containing information as to the whereabouts of the payer;
- d. any other document which may be relevant to the order.

PART III REGISTRATION OR CONFIRMATION IN A RECIPROCATING COUNTRY OF ORDERS MADE IN THE VIRGIN ISLANDS

Section 12. Transmission of Maintenance Orders made in Virgin Islands

Section 12 allows a Court in the Virgin Islands to make a maintenance order against a person where that person is residing in a reciprocating country. The order so made is provisional only and has no effect unless and until confirmed in the reciprocating country.

Issues for consideration

Section 12 provides that if a maintenance order against a person was made in the Virgin Islands and was proved to the court that such person is resident in a reciprocating country, a certified copy of the order will be sent from the Attorney General for transmission to the appropriate authority in that country for registration and enforcement.

Section 13. Provisional Order by Court in the Virgin Islands against person residing abroad

Section 13 allows a Court in the Virgin Islands to make a Maintenance Order against a person where that person is residing in a reciprocating country. The order so made is provisional only and has no effect unless and until confirmed in the reciprocating country.

Issues for consideration

This section makes it possible for a parent living in the Virgin Islands to seek child support from a parent living in another country, providing that the country is a reciprocating country.

Under this section, a parent suing for maintenance can make a request to the proper officer; and it is proved to the court that such person is resident in a reciprocating state, the court shall, upon the request of the payee (the person entitled to payments), send a certified copy of the order to the Attorney General for transmission through the appropriate authority in the reciprocating country.

Section 14. Variation or revocation of Orders made in the Virgin Islands

Section 14 empowers the Court to vary and revoke an original maintenance order which has been sent to a reciprocating country for registration or confirmation and where such order has been varied or revoked by a court in a reciprocating country.

Section 15. Variation or revocation of Order made in the Virgin Islands by a Court Abroad

Section 15 provides for the court in the Virgin Islands to confirm that provisional order.

Section 16. Revocation of provisional order made by court in Virgin Islands before confirmation.

Section 16 provides for the revocation or variation of an order where additional evidence is taken prior to the confirmation of a maintenance order made in the Virgin Islands.

Issues for consideration

This section applies to a maintenance order which has been sent to a reciprocating country and has not been confirmed.

Section 17. Effective date of Variation or Revocation.

Section 17 provides for the effective date of variation or revocation where an order is varied or revoked. In addition, it would provide that the renovation of an order is without prejudice to the recovery of any arrears due under the maintenance order up to the date of revocation.

PART IV MISCELLANEOUS

Section 18. Admissibility of Documentary Evidence.

Section 18 provide for the admissibility of documentary evidence.

Section 19. Appeals

Section 19 provides that an applicant a right of appeal where a Court refuses to confirm a provisional order made by a court in a reciprocating country.

Section 20. Designation of reciprocating countries

Section 20 provides for the Minister to designate reciprocating countries for the purposes of the Act.

20. Where the Minister is satisfied that reciprocal provisions have been or will be made by any country for the enforcement in that country of maintenance orders made in the Virgin Islands, the Minister may, by Order, declare that country to be a reciprocating country for the purposes of this Act.

Section 21. Access to information.

Section 21 gives the proper officers the power to access information for the purpose of enforcing the provisions of the Act, however any information obtained shall not be disclosed except where necessary for the enforcement of the order.

Section 22. Court may order access to information.

Section 22 empowers the Court to order that access to be given to information where the proper officer has been refused information requested under clause 21 and such information is needed for the enforcement of the maintenance order.

Section 23. Amendment of Schedule.

Section 23 provides for the Minister with the approval of Cabinet, to amend the Schedule, by Order.

Issues for consideration

Provision is made for Minister, with the approval of Cabinet, to amend the Schedule by Order published in the Gazette.

Section 24. Regulations

Section 24 provides for the Minister, with the approval of Cabinet, to make regulations for giving effect to the provisions of the Act and those regulations shall be subject to a negative resolution of the House of Assembly.

24. (1) The Minister may, with the approval of Cabinet, make regulations for giving effect to the provisions of this Act.

Section 25 Repeal and Savings

Section 25 provides for the repeal and savings provisions.

Other Matters

Are there any other matters or issues relating to Child Maintenance and Access and Maintenance Orders (Facilities For Enforcement) Act, 2016 on which you would like to provide your views? If so, please feel free to send us your comments or express your views at the various opportunities arranged for you to do so.