

No. of 2016

VIRGIN ISLANDS

CHILD MAINTENANCE AND ACCESS ACT, 2016

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SCHEDULE

No. of 2016

**Child Maintenance
and Access Act**

**Virgin
Islands**

I ASSENT

Governor

, 2016

VIRGIN ISLANDS

No. of 2016

A Bill for

An Act to provide for the maintenance of and access to children and for connected matters.

[Gazetted , 2016]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I
PRELIMINARY**

Short title and
commencement.

1. This Act may be cited as the Child Maintenance and Access Act, 2016 and shall come into force on a date the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

“access” means the opportunity to participate in the upbringing of a child and to regularly visit with that child;

“access order” means an order made pursuant to section 14;

“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 person who

(a) is under the age of eighteen years; and

(b) has never married;

“court” except in section 31, means the Magistrate’s Court;

“Department” means the Social Development Department;

“maintenance” means the financial and other support services necessary to provide for
the needs and upbringing of a child and includes all sums payable for the benefit of the child pursuant to an order of the court;

“maintenance order” means an order made pursuant to section 7;

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

“parent” means the mother or father of a child and includes any person liable by law to maintain a child or entitled to custody of the child;

“prescribed” means prescribed by Regulations;

“respondent” means the person against whom the applicant has applied for an order under this Act;

“social worker” means a person holding that office in the public service.

3. (1) In the administration of this Act, the best interests of the child shall be the paramount consideration of the court.

Best interest of the child paramount.

(2) In determining the best interest of the child, the court shall, in addition to other relevant factors, take into account the following:

- (a) the child’s views, in light of his or her age and understanding;
- (b) the child’s physical, emotional and educational needs;
- (c) the likely effects of any changes in the child’s circumstances;
- (d) the child’s age, sex, background and any other circumstances relevant in the matter.

4. (1) The court, in considering any question with respect to a child under this Act, may ask the Chief Social Development Officer to prepare a social inquiry report before consideration of an application for an order for maintenance or access.

Social inquiry reports.

(2) The Chief Social Development Officer shall comply with any requests for a report under this section.

(3) The court shall, in making the order, consider the social inquiry report prepared pursuant to subsection (1).

(4) The Chief Social Development Officer shall cause to be made home visits by a social worker to interview the parents or guardian of the child concerned and to carry out investigations concerning the child before submitting a social inquiry report.

(5) A social inquiry report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the court.

PART II OBLIGATION TO MAINTAIN A CHILD

Obligation
of parents
to maintain
child.

5. (1) Every parent shall, to the extent the parent is capable of doing so, provide reasonable maintenance for his or her child whether or not the parent has actual custody of the child.

(2) The obligation under subsection (1) does not extend to 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.

Obligation of
persons who
assume
responsibility
for a child.

6. (1) Where a person who is not the parent of a child assumes responsibility for the child, that person shall maintain the child, but this obligation is secondary to that of the parents of the child.

(2) For the purposes of subsection (1), a person assumes responsibility for a child where that person

- (a) becomes the step parent of the child and the child resides in the same household as that person; or
- (b) has custody of, or is the guardian of that child, whether by order of the court or otherwise and whether permanently or temporarily.

(3) This section shall not apply to a person who is registered as a foster parent in the Department's foster programme.

PART III

MAINTENANCE ORDERS AND ACCESS ORDERS

7. (1) Where a person liable to maintain a child fails to do so, the court may, upon application by a parent, or any other person on behalf of a child, make an order requiring the respondent named in the application to pay maintenance for that child and in making such an order, determine the maintenance to be provided. Maintenance order.

(2) The following persons may apply to the court for a maintenance order:

- (a)** the child;
- (b)** a parent of the child;
- (c)** a person who assumes responsibility for the child;
- (d)** a social worker.

(3) In making an order under this section, the court shall in addition to consideration of the other relevant factors

- (a)** recognise that each parent has an obligation to provide maintenance for the child; and
- (b)** apportion that obligation between the parents according to their relative abilities to contribute to the maintenance of the child.

8. (1) An application for a maintenance order shall be made in Form 1 in the Schedule. Application for maintenance order. Schedule

(2) An application under subsection (1) shall be accompanied by

- (a)** a statement of the expenses of that child with supporting documents;
- (b)** such other documents as the court may require including, where applicable,
 - (i)** the custody order, if such an order was previously made by any court in respect of the child for whose benefit the application is being made; and
 - (ii)** any other existing order with respect to the child.

Matters to which the court is to have regard when making a maintenance order.

9. (1) In determining the amount and duration of payments to be made in respect of the needs of a child, the court shall consider all the circumstances of the case including the following matters:

- (a) the financial needs of a child;
- (b) the income or earning capacity, property and other financial resources of the child, if any;
- (c) any disability, illness or medical condition of the child;
- (d) the educational needs and expenses of a child including the manner in which the child is being or is expected to be educated or trained;
- (e) the standard of living of the child, the applicant and the respondent;
- (f) the age, income, earning capacity, property and other financial resources which the respondent or the applicant have or are likely to have in the foreseeable future;
- (g) the financial needs, obligations and responsibilities which the respondent or the applicant has or is likely to have in the foreseeable future;
- (h) whether there are other children to be maintained by the respondent or the applicant;
- (i) any obligation of the respondent or the applicant to provide support for another person;
- (j) whether the respondent had assumed responsibility for the maintenance of the child and if so,
 - (i) the extent to which the respondent has assumed that responsibility;
 - (ii) the basis on which the respondent has assumed that responsibility;
 - (iii) the length of the period during which the respondent has met that responsibility; and
 - (iv) the liability of any other person to maintain the child.

(k) any other matters that the court considers just and equitable.

(2) The court may engage any person who, or any agency which, in the opinion of the court, is capable of providing the knowledge or expertise necessary to assist the court in determining the matter.

10. (1) Where the court is satisfied that,

Powers of
court.

- (a) the child for whose benefit the application is being made is entitled under this Act to be maintained by the respondent; and
- (b) the respondent is responsible for maintaining or contributing to the maintenance of the child and has failed to fulfil that obligation,

the court shall make an order pursuant to section 7.

(2) The court may make any interim or final order requiring

- (a) an amount to be paid periodically whether for an indefinite or limited period, or until the happening of a specified event;
- (b) a lump sum to be paid or held in trust;
- (c) some or all of the money payable under the order to be paid to the applicant or to some other person or to an agency for the child's benefit;
- (d) payment to be made in respect of any period before the date of the order;
- (e) payment of reasonable expenses incidental in respect of the child's prenatal care and birth;
- (f) if the child has died before the making of the order, such sum of money as the court considers reasonable for, or towards the expenses incidental to the funeral of the child;
- (g) funds for the maintenance of the child be paid into an account held in the child's name or to a specific person;
- (h) the respondent who has an interest in a pension plan or other benefit plan, to designate the child as beneficiary under the plan and not change that designation;

- (i) payment under a maintenance order to be secured by lien or charge on real or personal property or otherwise; and
- (j) any other order that the court thinks fit in the circumstances of the case.

(3) A maintenance order binds the estate of the respondent unless the order provides otherwise.

(4) An order for periodical payment shall be reviewed by the court upon the death of the person who is liable to make the payment.

(5) The court may, on application, make an interim or final order restraining the depletion of a person's property that would impair or defeat an order.

(6) When hearing an application for a maintenance order or for the variation of a maintenance order, the court may order the employer of the applicant or the respondent to make a written return to the court showing the person's basic wage and the person's emoluments during the preceding twelve months.

Manner of
providing
maintenance.

11. 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;
- (b) health care;
- (c) education;
- (e) accommodation; and
- (h) insurance benefits.

Duration of
maintenance
order.

12. (1) A maintenance order shall not, except for the purpose of recovering money previously due under the order, be of any validity after the child has attained the age of eighteen years or dies before attaining the age of eighteen years.

(2) Notwithstanding subsection (1), the 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
- (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.

13. (1) Where the issue of paternity of a child arises during the hearing of any application made under this Act, the issue of paternity shall be determined before a maintenance order is made.

Paternity.

(2) 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.

No. 6 of 2014

14. (1) A person who alleges that he or she is entitled to have access to a child may, at any time make an application for an access order in Form 2 in the Schedule.

Access order. Schedule

(2) Upon application made under subsection (1), the court may make an access order granting the applicant the right of access to the child for whose benefit the application is made on such terms and conditions as the court thinks fit.

(3) 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.

(4) In determining the best interests of the child, for the purposes of subsection (3), the court shall consider all relevant circumstances, including

- (a) the child's physical, emotional and social needs, and the child's need for stability and safety, taking into account the child's age and stage of development;
- (b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or a guardian;

- (c) 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;
- (d) the history of care for the child, having regard to the child's physical, emotional, social and educational needs.

(5) Where the court is required to make an access order pertaining to a child who is thirteen years of age or older and it appears necessary to the Court that it 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.

(6) When making an order under subsection (2), the court shall

- (a) give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person seeking access to facilitate that contact; and
- (b) include in the order a condition requiring any person who has physical custody of a child and who intends to change the place of residence of that child to notify any person who is granted access to that child of the change of address.

(7) Any notification required pursuant to subsection (6) (b) shall be given at least thirty days before the change.

(8) A person who contravenes an access order commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding two years, or to both.

Duration of
access
order.

15. An access order shall 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.

Variation,
suspension,
etc. of an
order.

16. (1) The court may, upon the application of any of the parties to the proceedings in which an order is made under this Act, vary the order as the court thinks fit, suspend the order, revive a suspended order or discharge the order.

(2) An application under subsection (1) shall be made in Form 3 in the Schedule.

Schedule

17. (1) The court may, on the notification of the parties to any proceedings commenced under this Act, refer the matter to mediation. Mediation.

(2) Notice under subsection (1) shall be made in Form 4 in the Schedule and upon receipt of such notice the court shall make an order referring the matter to mediation. Schedule

(3) Where an order is made pursuant to subsection (2) and the parties referred to mediation reach an agreement, the mediator shall reduce the agreement into writing in Form 5 in the Schedule and the parties shall sign the agreement. Schedule

(4) Where an agreement has been concluded pursuant to subsection (3), the applicant shall file the agreement with the court and within fourteen days of the date of filing the agreement, the court shall fix a date for further hearing of the matter and make an order in terms of the agreement.

PART IV COLLECTION AND ENFORCEMENT

18. (1) A bank account known as the Maintenance Collection Account, shall be opened by the Magistrate and two collecting officers for the sole purpose of collecting and paying funds paid pursuant to a maintenance order. Maintenance collection account.

(2) 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.

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 Interest from maintenance collection account.

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

(2) If the interest earned by monies in the Maintenance Collection Account are not utilised in accordance with subsection (1) by December 31st of any year that interest shall be paid into the consolidated fund.

Collecting
officers.

20. (1) The Minister shall designate collecting officers for the purposes of this Act.

(2) Before a designation is made under subsection (1), the clerk of the court shall be the collecting officer for the purposes of this Act.

(3) A collecting officer shall receive all payments directed to be made to the collecting officer under this Act and pay to the person named in the order, the sum directed to be paid under the order or such part thereof as is received by the collecting officer, without making any deductions therefrom.

(4) The collecting officer shall monitor payments directed to be paid and payments received, and shall give notice in writing to the person who is entitled under the order to receive that payment when any payment is seven days in arrears.

(5) A collecting officer may, upon receiving instructions from a person entitled to receive payments under an order, commence proceedings in his or her own name as a collecting officer for the recovery of payment under the maintenance order, against a person in default of that order.

(6) Where a collecting officer commences proceedings under subsection (5) all costs properly incurred in the proceedings shall be paid by the person who instructed the collecting officer unless the court orders otherwise.

(7) Any person who had been ordered to make a payment to a collecting officer under this Act and fails, without reasonable excuse to do so, commits an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars.

Payments
under Act.

21. (1) Where a maintenance order has been made under this Act, the court shall provide in the order that all payments under the order shall be made to the collecting officer unless the applicant requests that payments be made directly to him or her.

(2) Where a maintenance order provides that payments under the order shall be made to a person who assumes responsibility for a child, the court shall also provide in the order that the person who assumes responsibility for a child shall notify the Chief Social Development Officer, in writing, of any change in his or her responsibility for the child.

22. (1) Where a person is in default of a maintenance order, without reasonable excuse, the court may upon application made in Form 6 in the Schedule by the person granted the maintenance order, or a collecting officer, do one or more of the following:

Enforcement of
maintenance
orders.
Schedule

- (a) order that distress be levied upon the goods or chattels of the respondent for the satisfaction of the maintenance order;
- (b) attach any pension or income payable to the respondent that is capable of being attached in accordance with section 24;
- (c) suspend any licence or permit enjoyed by the respondent until he or she satisfies the requirements of the order and serve a copy of the order on the grantor of the licence or permit;
- (d) impose a term of imprisonment, after having considered all other sanctions that are reasonable in the circumstances and after being satisfied that the person has willfully refused to make payments under the order.

(2) The court shall, before enforcing an order in accordance with subsection (1), give the respondent an opportunity to be heard.

(3) The court shall not make an order under subsection (1) (c) if the livelihood of the respondent is dependent upon the licence or permit which is the subject of the application.

(4) For the purposes of subsection (1)(d), where the person liable to make the payment is not before the court, the court may, if it thinks necessary, issue a warrant to have the person brought before the court to show cause why he or she should not be committed for being in contravention of the order.

(5) A person who is arrested pursuant to subsection (4), who cannot show cause to the satisfaction of the court why he or she contravened the court's order, commits an offence and is liable on summary conviction to imprisonment for a period not exceeding six weeks in the first instance and for a period not exceeding six months for each subsequent offence.

23. (1) Where a person contravenes an access order, the court shall upon application of the person granted access to the child, issue a warrant to have the respondent arrested and brought before the court to show cause why he or she should not be committed for being in contravention of the order.

Enforcement
of access
orders.

(2) A person who is arrested pursuant to subsection (1), who cannot show cause to the satisfaction of the court why he or she contravened the court's order, commits an offence and is liable on summary conviction to imprisonment for a period not exceeding six weeks in the first instance and for a period not exceeding six months for each subsequent offence.

Attachment
orders.

24. (1) Where the court makes an attachment order pursuant to section 22 (1) (b), the court shall direct the person paying the pension or income to periodically deduct a sum for maintenance and to pay that sum to the collecting officer.

(2) An attachment order made under this Act 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.

(3) A person ordered to make payments pursuant to an attachment order shall notify the court of any change of circumstance that affects the payment of any pension or income that is the subject of an attachment order, within fourteen clear days of that change.

(4) No employer shall dismiss, suspend, penalise or victimise an employee on the basis of an attachment order being made against that employee under this Act.

(5) A person who contravenes subsection (4) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars and in default of payment of the fine, to a term of imprisonment not exceeding six months.

Committal
for non-
payment.

25. (1) The court shall not commit a person to prison for default in payment under a maintenance order unless the court is satisfied that the default is due to the willful refusal or culpable neglect of that person.

(2) Where a person is committed to prison for default of a maintenance order, no arrears shall accrue under the order during the time that the person is in prison, unless the court otherwise directs.

(3) The committal shall not operate to discharge the liability of the person to pay the sum in respect of which he or she is committed, but in any hearing relating to the enforcement, revival, variation or discharge of the order, the court may, if it considers it appropriate in the circumstances, relieve the respondent from the payment of part, or all of any arrears due under the order or make another order that the court considers appropriate in the circumstances.

26. (1) A court may, on application, issue a summons requiring a person to appear at a specified time, to show cause why an order should not be made against that person prohibiting him or her from leaving the Virgin Islands where the court is satisfied upon oath that there is reasonable ground for believing that the person is about to leave the Virgin Islands without making adequate provision during his or her absence for the maintenance of a child that lives in the Virgin Islands.

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

(2) The court may order a person not to leave the Virgin Islands where on the appearance of the person, the court is satisfied that the person is about to leave the Virgin Islands without having made adequate provision for the maintenance of a child during his or her absence.

(3) The court may order a person not to remove a child from the Virgin Islands where on the appearance of the person, the court is satisfied that the person is about to leave the Virgin Islands with a child

- (a) in order to frustrate an order regarding access to the child;
- (b) without the permission of both of the parents of the child where the parents of that child share custody of the child; or
- (c) without the permission of a parent who has custody of the child where that parent has sole custody of the child.

(4) For the purposes of subsection (1) a court may, either in the first instance or subsequent to the issue of a summons, issue a warrant to a police officer to apprehend the person and cause him or her to be brought before the court within twenty-four hours of the apprehension.

(5) Before making an order to prohibit a person from removing a child from the Virgin Islands, the court shall consider whether the child is being removed from the Virgin Islands for educational or medical purposes or for another good and sufficient reason.

(6) A person who

- (a) leaves or attempts to leave the Virgin Islands or;
- (b) removes or attempts to remove the child from the Virgin Islands,

while an order made under this section is in force, commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months, or to both.

Power to arrest without warrant and detention.

27. (1) A police officer may, where he or she is provided with sworn information, arrest without a warrant and as soon as practicable bring before a Magistrate, a person who

- (a) is in default of a maintenance order and who is attempting to leave the Virgin Islands; or
- (b) is attempting to remove a child from the Virgin Islands in contravention of a court order.

(2) An Immigration Officer who is on duty at any port may, where that officer is provided with sworn information, detain a person referred to in subsection (1)(a) or (b) and shall as soon as practicable, being not more than twenty-four hours after detention, place the person so detained in the custody of a police officer.

(3) A person detained in accordance with this section shall be brought before a Magistrate as soon as practicable.

**PART V
MISCELLANEOUS**

False information.

28. (1) A person who, for any purpose related to the administration of this Act or any regulations made under this Act, knowingly or recklessly submits any information which is false in a material particular commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars or to imprisonment for a term not exceeding three years or to both.

(2) Where on hearing an application made under this Act, the court determines that any information submitted in support of the application, that is material for the determination of the application, or in pursuance of any order made under this Act is false, the court may

- (a) dismiss the application; or
- (b) order the person to resubmit the information with supporting documentation.

Misapplying funds.

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

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

imprisonment for a term not exceeding six weeks or both;
and

(b) shall repay the misapplied funds.

30. Any expenses incurred to the enforcement of any Order under this Act shall be recoverable from the respondent. Recovery of expenses.

31. Nothing in this Act prevents the High Court from High Court.

(a) making a maintenance order or any other incidental order where any matter is being considered by that Court that relates to the maintenance or welfare of a child; or

(b) making an interim or final order restraining the depletion of a person's property that would impair or defeat the operation of a maintenance order.

32. A person may appeal to the Court of Appeal against an Order made under this Act. Appeal.

33. No action shall lie or prosecution be brought, instituted or maintained in any court against a social worker, mediator or any other person for anything done or omitted in good faith in the discharge of any function or exercise of any power under this Act. Immunity from liability.

34. The Minister may, with the approval of Cabinet, amend the Schedule by Order published in the *Gazette*. Amendment of Schedule.

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

(2) Without limiting the generality of subsection (1), regulations may provide for

(a) the procedure to be followed with respect to a social inquiry report;

(b) the manner in which payments are to be made from the Maintenance Collection Account;

(c) the powers, duties and functions of a collecting officer;

(d) the commencement of proceedings against persons in default of maintenance orders;

- (e) the manner in which matters are to be
 - (i) referred to mediation pursuant to this Act; and
 - (ii) conducted when referred to mediation pursuant to this Act;
- (f) the enforcement of orders; and
- (g) any matter required to be prescribed.

Transitional
and savings.

36. On a date to be specified by the Minister, by Order, all funds held at the Magistrates Court prior to the commencement of this Act shall be deposited into the Maintenance Collection Account.

SCHEDULE

[Section 8]

FORM 1

CHILD MAINTENANCE AND ACCESS ACT, 2016

Application for Maintenance

VIRGIN ISLANDS

In the [Magistrate's] Court,

BETWEEN

.....

Applicant

and

.....

Respondent

Iof.....hereby apply for an

(Name of Applicant)

(Address)

Order thatof.....pay the sum

(Name of Respondent)

(Address)

of.....for the maintenance of who

is.....years old and who resides atwith the Applicant or

..... at

.....

(Name of Applicant)

.....

(Signature of Applicant)

.....

(Date)

FORM 2
CHILD MAINTENANCE AND ACCESS ACT, 2016

Application for Access

VIRGIN ISLANDS

In the [Magistrate's] Court,

BETWEEN

..... *Applicant*

and

..... *Respondent*

Iof.....hereby apply for an

(Name of Applicant)

(Address)

Order that I..... be granted access to

(Name of Applicant)

(Name of Child)

who is.....years old and who resides at..... with

.....who is the.....of the child.

(Relationship to Child)

.....

(Name of Applicant)

.....

(Signature of Applicant)

.....

(Date)

FORM 3
CHILD MAINTENANCE AND ACCESS ACT, 2016

Application for Variation, Suspension etc.

VIRGIN ISLANDS

In the [Magistrate's] Court,

BETWEEN

.....

Applicant

and

.....

Respondent

Iof.....hereby apply for an

(Name of Applicant)

(Address)

Order that the Order made on the.....day of.....20 that

.....

.....

(Terms of the Order)

be.....•

(Varied/Suspended etc.)

The Applicant is the.....of the abovementioned child and the Respondent
is the.....of the child.

.....

(Name of Applicant)

.....

(Signature of Applicant)

.....

(Date)

FORM 4
CHILD MAINTENANCE AND ACCESS ACT

Mediation Notice

VIRGIN ISLANDS

In the [Magistrate's] Court,

BETWEEN

..... *Applicant*

and

..... *Respondent*

I of and
(Name of Applicant) *(Address)*

I of give notice that
(Name of Respondent) *(Address)*

they wish to have the matter before this Court referred to mediation and hereby jointly apply for an Order that the same be referred to mediation for resolution of the following issues:

.....
.....
.....

.....
(Name of Applicant)

.....
(Name of Respondent)

.....
(Signature of Applicant)

.....
(Signature of Respondent)

.....
(Date)

.....
(Date)

FORM 5
CHILD MAINTENANCE AND ACCESS ACT

Mediation Agreement

VIRGIN ISLANDS

In the [Magistrate's] Court,

BETWEEN

..... *Applicant*

and

..... *Respondent*

I of and
(Name of Applicant) *(Address)*

I of hereby state that
(Name of Respondent) *(Address)*

they have reached an agreement in the following terms:

.....
.....
.....

and hereby jointly apply for an order in the above mentioned terms.

.....
(Name of Applicant)

.....
(Name of Respondent)

.....
(Signature of Applicant)

.....
(Signature of Respondent)

.....
(Date)

.....
(Date)

FORM 6
CHILD MAINTENANCE AND ACCESS ACT

Application for Enforcement Order

VIRGIN ISLANDS

In the [Magistrate's] Court,

BETWEEN

..... *Applicant*

and

..... *Respondent*

I of hereby apply for the
(*Name of Applicant and title if a collecting officer*) (*Address*)

enforcement of the Order that was made on the day of 20.....

The Respondent failed to satisfy the terms of the maintenance order. The basis upon which the application is being made is as follows:

.....
.....
.....

If the application is being made by a collecting officer, include the following paragraph:

A copy of my instructions to commence these proceedings is attached.

.....
(*Signature of Applicant*)

.....
(*Date*)

Passed by the House of Assembly this day of , 2016.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks further the efforts of the Government to strengthen the legal framework with respect to the maintenance of children which is currently provided for in a few sections of the Magistrate's Code of Procedure Act. It would establish a comprehensive regime to ensure that parents provide adequate maintenance for their children as well as to ensure that both parents have access to their child in order to participate in the child's upbringing.

This bill is divided into five parts.

Part I (clauses 1 to 4) would provide for preliminary matters. Specifically, clause 3 would provide that the best interest of the child must be the paramount consideration of the court in the administration of the Act and by clause 4 the court would be empowered to request a social inquiry report from the Chief Social Development Officer before an application for maintenance or access is considered.

Part II (clauses 5 and 6) would address the obligation to maintain a child.

Clause 5 would require every parent, who is capable of doing so, to maintain his or her child, except where that child has attained the age of sixteen and has voluntarily withdrawn from parental control.

Clause 6 would provide for persons who assume responsibility for a child to maintain that child.

Part III (clauses 7 to 17) would provide for manner in which applications for maintenance orders and access orders are made.

Clause 7 would provide 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.

Clause 8 would provide for the manner in which the application is to be made and the documents that are necessary to support the application for maintenance.

Clause 9 would outline 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 provide 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.

Clause 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.

Clause 11 would provide 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.

Clause 12 would provide 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.

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

Clause 14 would provide 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 would also provide 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.

Clause 15 would provide for the duration of an access order.

Clause 16 would provide for the variation, suspension and revival of an order.

Clause 17 would provide for the court to refer a matter to mediation upon the request of the parties.

Part IV (clauses 18 to 27) would provide for collection and enforcement.

Clause 18 would 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.

Clause 19 would provide 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.

Clause 20 would provide 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.

Clause 21 would provide for maintenance payments to be made directly to the applicant as opposed to a collecting officer.

Clause 22 would provide 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 of imprisonment after all other sanctions have been considered and the respondent willfully refused to make payments under the order.
Clause 23 would provide for enforcement of access orders.

Clause 24 would provide for the making of attachment orders. It would also protect persons subject to an attachment order from being dismissed or victimised by their employer.

Clause 25 would provide for committal to prison for non-payment of maintenance.

Clause 26 would provide 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 a child in order to frustrate an access order or without the permission of a parent of the child.

Clause 27 would provide for the arrest of a person, without a warrant, where that person is in default of a maintenance order.

Part V (clauses 28 to 36) would provide for miscellaneous matters.

Clause 28 would make it an offence to knowingly or recklessly submit any information which is false in an application.

Clause 29 would make it an offence to misapply funds received for the maintenance of a child.

Clause 30 would provide for the recovery of expenses incurred in the enforcement of any Order under this Bill.

Clause 31 would preserve the jurisdiction of the High Court in maintenance and access matters.

Clause 32 would provide for appeals.

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

Clause 34 would provide for the Schedule to be amended by Order.

Clause 35 would provide for the Minister to make Regulations with the approval of Cabinet.

Clause 36 would provide for transitional matters. Specifically, it would provide for the transfer of funds already collected for maintenance and currently being held in the Consolidated Fund or another account, prior to the commencement of this Act, to be transferred to the Maintenance Collection Account.

Minister for Health and Social Development.