



ARRANGEMENT OF SECTIONS

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An Act to amend the Affiliation Proceedings Act.

Date of Assent: 10/08/99.

Date of Commencement: 20/08/99.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Affiliation Proceedings (Amendment) Act, 1999.

Short title

2. The Affiliation Proceedings Act (hereinafter referred to as "the Act") is amended by substituting for the word "mother" the word "parent" wherever it appears in the Act.

General amendment of Cap. 28:02

3. Section 2 of the Act is amended —

Amendment of section 2 of the Act

(a) by inserting in its correct alphabetical order, the following new definitions —

"child" means a person below the age of 18 years";

"parent" includes a mother of a child, a man who has acknowledged paternity by conduct or otherwise, a widow or widower and a married person who is divorced or living apart from the other spouse";

(b) by substituting for the definition of "court" which appear therein the following new definition —

"court" means a magistrate's court of any rank and includes a customary court which has been authorised, by any instrument, to hear paternity or maintenance proceedings.";

Amendment
of section 3
of the Act

- (c) in the definition of the word "order", by substituting for the words "an affiliation" the words "a maintenance"; and
- (d) by deleting the definition of "single woman" therefrom.

4. Section 3 of the Act is amended by substituting for section 3, the following new section —

"Commencement 3. (1) A woman with child, a parent of a child or a person having the care or custody of a child may apply upon complaint to a court for a summons to be served, where the complainant is —

- (a) a woman with child, on the man alleged to be the father of the child;
- (b) a parent, on the other parent of the child; or
- (c) a person having the care or custody of the child, on either or both parents."

(2) A summons served under subsection (1) shall state whether the complainant seeks a paternity order or a maintenance order.

Amendment
of section 4
of the Act

5. Section 4 of the Act is amended —

(a) in subsection (1),

(i) by substituting for the words "A complaint under section 3 may be made" the words "A complainant seeking a paternity order may make an application";

(ii) in paragraph (a) and (c), by substituting for the words "12 months" the words "5 years";

(iii) by inserting immediately after paragraph (c) the following new paragraph —

"(d) at any subsequent time in respect of a child with physical or mental disability preventing him from being independent."; and

(b) by inserting immediately after subsection (2), the following new subsection —

"(3) A complainant seeking a maintenance order may make an application at —

(a) any subsequent time after obtaining a paternity order under subsection (1), where the defendant is the male parent; or

(b) any time before the child turns 18 years, where the defendant is the female parent".

Amendment
of section 5
of the Act

6. Section 5 of the Act is amended by substituting for Section 5 thereof, the following new section —

"Venue

5. Notwithstanding the provisions of any other Act, a complaint under section 3 shall be made to a court having jurisdiction in the administrative district in which the complainant resides, or in the administrative district in which it is most convenient for the complainant to bring the suit."

7. Section 6 of the Act is amended —

Amendment
of section 6 of
the Act

- (a) by substituting for subsection (1), the following new subsection —

“(1) Where the court is satisfied as to the sufficiency of the evidence adduced, it may, where the defendant—

- (a) is the alleged father of the child, make against him a paternity order or a maintenance order; or
- (b) is the mother of the child, make against her a maintenance order.

- (b) by substituting for subsection (2) the following new subsection —

“(2) An order shall require the parent to pay not less than P100 a month for the maintenance and education of the child:

Provided that the court may order the parent to pay such lesser or greater amount as it considers appropriate taking into account the financial circumstances and ability to pay of the parent.”;

- (c) by substituting for subsection (3), the following new subsection —

“(3) Where a complaint has been made to a magistrate’s court and the parent of the child has no income from which deductions for maintenance and education can be made, the court shall —

- (a) order that a social worker assess his estate or socio-economic standing forthwith to determine how he can contribute to the maintenance and education of the child, and prepare a report thereon; and
- (b) refer the complaint, together with the said report, to a customary court, which shall apply customary law thereto.”;

- (d) by deleting from subsection (4), the words “weekly or” which appear therein; and

- (e) in subsection (6)—

- (i) by substituting for the word “seven” the word “six”; and
- (ii) by deleting the words “weekly or” which appear therein.

8. Section 7 of the Act is amended —

Amendment of
section 7 of
the Act

- (a) in subsection (3), by substituting for the word “she” the word “he”;

- (b) by substituting for subsection (4) thereof, the following new subsection —

“(4) Where there is evidence that the person entitled to any payments to be made under an order is no longer able to receive such payments, or is not using such payments judiciously or for the purpose for which they were intended, the court shall —

- (a) order that a social worker identify and assess another person to whom payments shall be made; and
- (b) upon the satisfactory report of the social worker, appoint such person (with his consent) in place of the parent or other person formerly appointed.”; and

(c) by inserting immediately after subsection (4) thereof, the following new subsection —

“(4A) (a) The social worker shall monitor the use to which the payments referred to in this section are put and shall keep and maintain a record of those persons who misuse the said payments.

(b) The social worker shall forward or cause to be forwarded to the court every three months, a copy of the record referred to in paragraph (a).”

Amendment
of section 9
of the Act
Amendment
of section 10
of the Act

9. Section 9 of the Act is amended by substituting for the figure “13” which appears therein, and in the side note thereto, the figure “18”.

10. Section 10 of the Act is amended —

(a) in subsection (1) thereof,

(i) by substituting for the figure “13” which appear therein, the figure “18”;

(ii) by inserting immediately after subsection (1) thereof, the following new subsection —

“(1A) Where it appears to the court that the child has a disability which will prevent him from ever being independent, the court shall order that the parent maintain the child until the death of the parent or that of the child, whichever comes first.”;

(b) in subsection (2) thereof, by substituting for the figure “16” which appear therein, the figure “21”; and

(c) in subsection (3) thereof, by inserting immediately after the words “having the” the words “care or”.

Amendment
of section 12
of the Act

11. Section 12 of the Act is amended —

(a) in paragraph (a),

(i) by substituting for the words

“an illegitimate child” the words “a child”;

(ii) by substituting for the words “putative father” the word “parent”;

(b) in paragraph (b) thereof, by deleting the words “or to imprisonment for a term not exceeding six months” which appear therein.

PASSED by the National Assembly this 12th day of July, 1999.

C.T. MOMPEI,
Clerk of the National Assembly.