

OBJECTS AND REASONS

This Bill would repeal and replace the *Family Law (Amendment) Act, 2013*, Act 2013-9 and amend the *Family Law Act, Cap. 214*, on the recommendation of the Family Law Council, to make provision for the following:

- (a) to enable the courts, when determining maintenance issues, to take into account relevant internationally accepted principles and relevant findings of published research;
- (b) to authorise the courts to order the transfer or settlement of property for the maintenance of a child;
- (c) to provide that claims, other than claims relating to maintenance, in proceedings affecting the property of parties to a marriage or a union other than a marriage do not abate if one of those parties dies while the proceedings are pending;
- (d) to make clear that rules may be made for the enforcement of maintenance payments, whether or not the payments in question are in arrears;
- (e) to empower the courts to delay the grant of a divorce until property matters have been settled;
- (f) to redefine the period during which the parties to a union other than a marriage are required to have continuously co-habited; and
- (g) to expand the enforcement jurisdiction of the courts to include power to order arrest and imprisonment in proper cases.

Arrangement of Sections

1. Short title
2. Amendment of section 2(1) of Cap. 214
3. Amendment of section 12 of Cap. 214
4. Amendment of section 39 of Cap. 214
5. Amendment of section 42 of Cap. 214
6. Amendment of section 54 of Cap. 214
7. Insertion of new section 55A into Cap. 214
8. Amendment of section 57 of Cap. 214
9. Amendment of section 59 of Cap. 214
10. Amendment of section 87 of Cap. 214
11. Amendment of section 91 of Cap. 214
12. Insertion of new section 91A in Cap. 214
13. Amendment of S.I. 1982 No. 18
14. Repeal of Act 2013-9

SCHEDULE
CONSEQUENTIAL AMENDMENTS

BARBADOS

A Bill entitled

An Act to amend the *Family Law Act*, Cap. 214.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Family Law (Amendment) Act, 2014*.

Amendment of section 2(1) of Cap. 214

2. *Section 2(1) of the Family Law Act, Cap. 214, in this Act referred to as the principal Act, is amended in the definition of "matrimonial cause" by deleting paragraph (e) and substituting the following paragraph:*

“(e) proceedings between the parties to a marriage with respect to the property of those parties, or either of them, being proceedings

(i) arising out of the marital relationship;

(ii) in relation to concurrent, pending or completed proceedings for principal relief between those parties; or

(iii) in relation to the dissolution or annulment of that marriage or the legal separation of the parties to that marriage, being a dissolution, annulment or legal separation effected in accordance with the law of another jurisdiction, where the dissolution, annulment or legal separation of that jurisdiction is recognized as valid in Barbados under this Act;”.

Amendment of section 12 of Cap. 214

3. *Section 12 of the principal Act is amended in subsection (7) by inserting immediately after the words "that counselling", appearing in that subsection, the words "or further counselling".*

Amendment of section 39 of Cap. 214

4. *Section 39 of the principal Act is amended by*

(a) *renumbering that section as subsection (1) of section 39;*

- (b) ***deleting the definition of ““union other than marriage” or “union”” from subsection (1) as so renumbered and substituting the following:***

““union other than a marriage” or “union”” means the relationship that subsists between a man and a woman who

- (a) are not married to each other; and
- (b) subject to subsections (2) and (3), have co-habited continuously for a period of 5 years or more, and have so co-habited within the period of 12 months immediately preceding the institution of the proceedings.”; and

- (c) ***adding the following subsections immediately after subsection (1) as so renumbered:***

“(2) Notwithstanding paragraph (b) of the definition of ““union other than marriage” or “union””, where parties to a union other than marriage or union have separated and had, prior to becoming separated, lived separately and apart on one occasion only, but had resumed cohabitation within the period of 6 months after the separation on that one occasion, the time during which the parties had lived separately and apart on that one occasion shall be disregarded for the purpose of reckoning the continuous period of 5 years or more.

(3) Upon an application of any party to proceedings between parties to a union other than marriage or a union, the court may extend the period of 12 months of such a union, mentioned in subsection (1), by such longer period as the court thinks fit where the court is satisfied that a party to the proceedings or a child of the union will suffer hardship if the extension is not granted.”.

Amendment of section 42 of Cap. 214

5. Section 42 of the principal Act is amended by

(a) deleting subsection (1) and substituting the following subsection:

“(1) A *decree nisi* of dissolution of marriage does not become absolute unless the court by order declares that it is satisfied

(a) that either

(i) there are no children of the marriage who have not attained the age of 18 years; or

(ii) the only children of the marriage who have not attained the age of 18 years are the children specified in the order and, subject to subsection (3), proper arrangements, including counselling by a psychologist or any other specialist that the court deems necessary, in all the circumstances have been made for the welfare of those children; and

(b) subject to subsection (3), that any matter raised for determination by the court under section 56 or 57 has been fully disposed of.”; and

(b) adding the following subsection immediately after subsection (2):

“(3) The court may determine in any particular case that there are circumstances by reason of which the *decree nisi* should become absolute notwithstanding that the court is not satisfied that arrangements described in paragraph (a)(ii) of subsection (1) have been made or that matters described in paragraph (b) of that subsection have been fully disposed of; and in such a case the provisions that relate to those arrangements or matters shall not have effect.”.

Amendment of section 54 of Cap. 214

6. *Section 54 of the principal Act is amended by inserting immediately after subsection (3) the following subsection:*

“(4) In taking into account the needs of a child pursuant to section 53 and the preceding provisions of this section, the court, to the extent to which it considers it appropriate in the circumstances of the case,

- (a) shall have regard to any relevant principles adopted in any conventions or other international instruments to which Barbados has adopted; and
- (b) may have regard to any relevant findings of published research conducted by a recognised
 - (i) academic body or academic institution; or
 - (ii) health institution

in relation to the maintenance of children.”.

Insertion of new section 55A into Cap. 214

7. *The principal Act is amended by inserting the following section immediately after section 55:*

“Register of maintenance orders for spouses

55A.(1) The court shall establish a register to record orders for maintenance that it grants to a party to a marriage or union.

- (2) Where the court makes an order for maintenance in respect of a party to a marriage or union, the court shall direct the
- (a) clerk of the court to
 - (i) enter the order into the register;
 - (ii) include in the register the names of the parties to the marriage or the union;
 - (iii) where applicable, register the collection of the maintenance on behalf of the party entitled to receive the maintenance; and
 - (b) party that is ordered by the court to pay the maintenance, to provide his name and address to the clerk of the court for the purpose of satisfying the requirements of paragraph (a).
- (3) Where a party referred to in subsection (2) changes his name or address, that party shall provide the change of name or address to the clerk of the court as soon as possible thereafter and the clerk shall effect that change in the register.
- (4) Where the party fails to comply with paragraph (b) of subsection (2) or subsection (3), that person is guilty of an offence and liable on summary conviction to a fine of \$1000 or to imprisonment for 6 months or to both.
- (5) The content of the register shall be confidential.
- (6) Notwithstanding subsection (2), a party referred to in that subsection may express to the court that party's unwillingness to have the court collect the maintenance on the party's behalf.
- (7) Section 23 of the *Maintenance Act*, Cap. 216 applies in respect of the receipt and enforcement of payments ordered by the court under this section.”.

Amendment of section 57 of Cap. 214

8. Section 57 of the principal Act is amended by

(a) inserting immediately after subsection (1) the following subsections:

“(1A) Where, before proceedings with respect to the property of the parties to a marriage or union are completed, either party to the proceedings dies, the proceedings may be continued by or against the personal representative of the deceased party.

(1B) Where before proceedings with respect to the property of the parties to a marriage or union are completed either party to the proceedings dies and the court is of the opinion that

(a) it would have made an order with respect to property if the deceased party had not died; and

(b) it is still appropriate to make an order with respect to property, the court may make such order as it considers appropriate, with respect to any of the property of the parties to the marriage or the union.

(1C) An order made by the court under subsection (1) or (1B) may be enforced on behalf of or against the estate of the deceased party.

(1D) In exercising its powers under this section, the court shall have regard to the interest of and shall make an appropriate order for the protection of any purchaser in good faith or any other person interested in the property.”;

(b) deleting paragraph (b) of subsection (3) and substituting the following:

“(b) the contribution made directly or indirectly by a party to the marriage or the union, including any contribution made in the

capacity of homemaker or parent, to the welfare of the family which constitutes

- (i) the parties to the marriage or the union; and
- (ii) where applicable, any child of that marriage or union; ”;

(c) *inserting immediately after subsection (3) the following subsection:*

“(4) Where

- (a) proceedings under this section commenced before the date of commencement of subsections (1A), (1B), (1C) and (1D); and
- (b) either party to the proceedings died and the proceedings had not been completed before that party’s death,

subsections (1A), (1B), (1C) and (1D) shall have effect with such modifications or adaptations as may be necessary in relation to those proceedings.”.

Amendment of section 59 of Cap. 214

9. Section 59 of the principal Act is amended by

- (a) *renumbering that section as subsection (1);*
- (b) *inserting immediately after paragraph (h) of subsection (1) as so renumbered, the following paragraph:*

“(ha) order that a specified transfer or settlement of property be made by way of maintenance for a child;”;

(c) *adding the following subsection as subsection (2):*

“(2) The making of an order under paragraph *(ha)* of subsection (1) or of any other order under this Part in relation to the maintenance of a child shall not prevent a court from making a subsequent order in relation to the maintenance of that child.”.

Amendment of section 87 of Cap. 214

10. *Section 87 of the principal Act is amended by deleting paragraph (c) and substituting the following paragraph:*

“(c) the enforcement of the payment of maintenance, whether or not in arrears, by the attachment of earnings or otherwise;”.

Amendment of section 91 of Cap. 214

11. *Section 91 of the principal Act is amended by deleting subsections (4) and (5) and substituting the following subsections:*

“(4) A person who knowingly and without reasonable cause contravenes or fails to comply with an injunction or order under this section is liable

(a) on conviction on indictment, to a fine of \$20 000 or to imprisonment for 5 years or to both; or

(b) on summary conviction, to a fine of \$10 000 or to imprisonment for 12 months or to both.

(5) Where a person is convicted of an offence under subsection (4), the court may, in addition to or instead of imposing a sentence mentioned in that subsection, exercise any of the following powers in relation to the convicted person:

(a) require him to enter a recognizance, with or without sureties, in such reasonable amount as the court thinks fit, that he will

comply with the injunction or order, or order him to be imprisoned until he enters into such a recognizance or until the expiration of 3 months, whichever first occurs;

(b) order him to deliver up to the court such documents as the court thinks fit;

(c) make such orders as the court considers necessary to enforce compliance with the injunction or order.

(6) The powers conferred by subsections (4) and (5) are in addition to the power of the court to punish for contempt of court.”.

Insertion of new section 91A in Cap. 214

12. *The principal Act is amended by inserting the following section immediately after section 91:*

“Power of arrest

91A.(1) Subject to section 91, where the court makes an order or grants an injunction for the personal protection of a party to a marriage or union or for the personal protection of a child of the marriage or union, the court, as it thinks proper, may attach a power of arrest to the order or the injunction.

(2) Notwithstanding subsection (1), no power of arrest shall be attached to an order or an injunction for personal protection unless the person against whom the order is made is given notice that such a power shall be attached to the order or injunction.

(3) Where a power of arrest is attached to an order or an injunction, a member of the Police Force may arrest, without a warrant, a person who he has reasonable cause for suspecting of being in breach of the order or injunction for personal protection.

- (4) Where a member of the Police Force arrests a person, in accordance with subsection (3), the person shall
- (a) be brought before the court within the period of 24 hours beginning at the time of his arrest, or, as soon as it is reasonable and practicable thereafter, and dealt with in accordance with the law;
 - (b) not be released within that period except on the direction of the court.
- (5) Notwithstanding this section, nothing in subsection (4) authorizes the detention of the person referred to in that subsection at any time after the expiry of the period stated in subsection (4).”.

Amendment of S.I. 1982 No. 18

13. *The Family Law Rules, 1982 (S.I. 1982 No. 18) are amended in the manner specified in the Schedule.*

Repeal of Act 2013-9

14. *The Family Law (Amendment) Act, 2013 (Act 2013-9) is repealed.*

SCHEDULE

(Section 13)

CONSEQUENTIAL AMENDMENTS

Amendments to the *Family Law Rules, 1982, (S.I. 1982 No. 18)*

<u>Rule</u>	<u>Amendments</u>
rule 101:	<p>(a) replace the full-stop at the end of sub-rule (5) with a semi-colon and add the following paragraph:</p> <p>"(d) proceedings under the <i>Debtors Act, Cap. 198.</i>";</p> <p>(b) insert the following sub-rules immediately after sub-rule (10):</p> <p>"(11) Where a court that</p> <p>(a) is not a court of summary jurisdiction; and</p> <p>(b) has jurisdiction to make an order referred to in paragraph (a) of sub-rule (1)</p> <p>makes such an order, it may direct that the order shall be enforced by a court of summary jurisdiction specified in the direction.</p> <p>(12) Where a direction is given in accordance with sub-rule (11), the court of summary jurisdiction</p>

Schedule (Concl'd)

CONSEQUENTIAL AMENDMENTS - (Concl'd)

**Amendments to the *Family Law Rules, 1982,*
(S.I. 1982 No. 18) - (Concl'd)**

Rule

Amendments

rule 101 (Concl'd):

so specified in the direction shall have full power to enforce the order under these Rules as if the order had been made by that court of summary jurisdiction.";

after rule 104:

insert the following rule:

"Alternative procedure for seizure in certain cases.

104A. Notwithstanding rule 104 and rule 2.2 of Part 2 of the *Supreme Court Rules, 2008* (S.I. 2008 No. 66) a person or authority entitled under rule 101 to enforce a decree of a court under these Rules may exercise the rights conferred by Parts 46 and 54 of the *Rules of the Supreme Court, 2008* on persons entitled to relief under those Parts; and those Parts shall apply accordingly, with such modifications or adaptations, as may be necessary, in relation to the first-mentioned person or authority."

Read three times and passed the House of Assembly this
day of _____, 2014.

Speaker

Read three times and passed the Senate this _____ day of
_____, 2014.

President