

REPUBLIC OF SOUTH AFRICA

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# MAINTENANCE BILL

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*(As introduced in the National Assembly)*

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(MINISTER OF JUSTICE)

[B 72—98]

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REPUBLIEK VAN SUID-AFRIKA

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# WETSONTWERP OP ONDERHOUD

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*(Soos ingedien in die Nasionale Vergadering)*

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(MINISTER VAN JUSTISIE)

[W 72—98]

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**GENERAL EXPLANATORY NOTE:**

[                    ]    Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_            Words underlined with a solid line indicate insertions in existing enactments.

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# **BILL**

**To restate and amend certain laws relating to maintenance.**

## **PREAMBLE**

**WHEREAS** the Republic of South Africa is committed to give high priority to the rights of children, to their survival and to their protection and development as evidenced by its signing of the World Declaration on the Survival, Protection and Development of Children, agreed to at New York on 30 September 1990, and its accession on 16 June 1995 to the Convention on the Rights of the Child, signed at New York on 20 November 1989;

**AND WHEREAS** Article 27 of the said Convention specifically requires States Parties to recognise the right of every child to a standard of living which is adequate for the child's physical, mental, spiritual, moral and social development and to take all appropriate measures in order to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child;

**AND WHEREAS** the recovery of maintenance in South Africa falls short of the Republic's international obligations in terms of the said Convention;

**AND WHEREAS** the South African Law Commission is investigating the reform of the entire South African maintenance system in the long run;

**AND WHEREAS** it is considered necessary that, pending the implementation of the said Law Commission's recommendations, certain amendments be effected in the interim to the existing laws relating to maintenance and that, as a first step in the reform of the entire South African maintenance system, certain of those laws be restated with a view to emphasising the importance of a sensitive and fair approach to the determination and recovery of maintenance;

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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### CHAPTER 1

#### INTERPRETATION OF ACT

##### Definitions

1. In this Act, unless the context indicates otherwise— 20
  - (i) “financial institution” means any institution which carries on business as a bank or mutual bank; (i)
  - (ii) “maintenance court” means a maintenance court contemplated in section 3; (vi)
  - (iii) “maintenance investigator” means any person who is appointed as a maintenance investigator of a maintenance court under section 5; (vii) 25
  - (iv) “maintenance officer” means any person who is appointed as a maintenance officer of a maintenance court under section 4(1) or who is deemed in terms of section 4(2) to have been so appointed, as the case may be; (iv)
  - (v) “maintenance order” means any order for the periodical payment of sums of money towards the maintenance of any person, issued by any court in the Republic, and includes, except for the purposes of section 27, any sentence suspended on condition that the convicted person make periodical payments of sums of money towards the maintenance of any other person; (v) 30
  - (vi) “Minister” means the Minister of Justice; (iii) 35
  - (vii) “prescribed” means prescribed by rule; (ix)
  - (viii) “rule” means a rule made under section 40; (viii)
  - (ix) “this Act” includes a rule. (ii)

##### Interpretation of references to court in Republic

2. A reference in this Act to any court in the Republic shall, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference also to a High Court. 40

## CHAPTER 2

### MAINTENANCE COURTS AND COURT OFFICERS

#### Maintenance courts

3. Every magistrate's court shall within its area of jurisdiction be a maintenance court for the purposes of this Act. 5

#### Maintenance officers

4. (1) Subject to the laws governing the public service, the Minister, or any officer of the Department of Justice authorised thereto in writing by the Minister, may appoint one or more persons for a maintenance court as maintenance officers of the maintenance court— 10

- (a) to appear in the maintenance court in proceedings under this Act; and
- (b) to perform the functions assigned to maintenance officers by or under this Act.

(2) Any public prosecutor to whom a Director of Public Prosecutions has delegated the general power to institute and conduct prosecutions in criminal proceedings in a particular magistrate's court shall be deemed to have been appointed as a maintenance officer of the corresponding maintenance court. 15

#### Maintenance investigators

5. The Minister, or any officer of the Department of Justice authorised thereto in writing by the Minister, may appoint in the prescribed manner and on the prescribed conditions one or more persons for a maintenance court as maintenance investigators of the maintenance court— 20

- (a) to trace persons who are legally liable to maintain other persons, who are allegedly so liable or who are accused of the failure to comply with a maintenance order;
- (b) to serve or to execute the process of any maintenance court; 25
- (c) to serve subpoenas or summonses or to execute warrants of arrest in respect of criminal proceedings instituted for the failure to comply with a maintenance order, as if they had been duly appointed as persons who are, in the case of subpoenas or summonses, authorised to serve subpoenas or summonses in criminal proceedings or who are, in the case of warrants of arrest, designated as peace officers; and 30
- (d) to perform the functions assigned to maintenance investigators by or under this Act.

## CHAPTER 3

### MAINTENANCE ENQUIRIES 35

#### *Preliminary provisions*

#### Complaints relating to maintenance

6. Whenever a complaint under oath or affirmation is lodged with a maintenance officer to the effect—

- (a) that any person legally liable to maintain any other person fails to maintain the latter person; or 40
  - (b) that good cause exists for the substitution or discharge of a maintenance order, the maintenance officer may, after investigating such complaint, institute an enquiry in the maintenance court within the area of jurisdiction of which the person to be maintained, or the person in whose care the said person is, resides with a view to 45
- enquiring into the recovery of maintenance for the person so to be maintained.

### **Investigation of complaints**

7. In order to investigate any complaint relating to maintenance, a maintenance officer may or a maintenance investigator may, subject to the directions of the maintenance officer—

- (a) take statements under oath or affirmation from persons who may be able to give information of material importance concerning the subject of such complaint; 5
- (b) gather information concerning the identification or earnings of any person who is legally liable to maintain the person mentioned in such complaint or who is allegedly so liable; or 10
- (c) gather such other information as may be relevant concerning the subject of such complaint.

### **Examination of persons by maintenance officer**

8. (1) A magistrate may, at the request of a maintenance officer, require the appearance before the magistrate or before any other magistrate, for examination by the maintenance officer, of any person who is likely to give material or relevant information concerning the identification, the place of residence or employment or the earnings of any person who is legally liable to maintain any other person or who is allegedly so liable. 15

(2) (a) The provisions of sections 162 to 165, 179 to 181, 187 to 189, 191 and 204 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall, with the necessary changes, apply in respect of the examination of any person under this section. 20

(b) If the person who is required to appear before a magistrate furnishes the information in question to the satisfaction of the maintenance officer concerned in advance of the day on which the said person is required so to appear, that person shall be discharged from the obligation so to appear. 25

(3) The examination of any person under this section may be conducted in private at a place designated by the magistrate.

(4) A person who is required to appear before a magistrate and who refuses or fails to furnish the information in question shall not be sentenced to imprisonment as contemplated in section 189 of the Criminal Procedure Act, 1977, unless the magistrate is also of the opinion that the furnishing of such information is necessary for the administration of justice. 30

### **Maintenance officer may cause witnesses to be subpoenaed**

9. (1) A maintenance officer who has instituted an enquiry in a maintenance court may cause any person, including any person legally liable to maintain any other person, to be subpoenaed to appear before the maintenance court and give evidence or produce any book, document or statement, and the maintenance officer may in particular require the person so liable— 35

- (a) in the case where such person is in the service of an employer, to produce a statement which gives full particulars of such person's earnings and which is signed by the employer; or 40
- (b) in the case where such person is not so employed, to produce any other documentary proof of such person's earnings.

(2) (a) Any person to be subpoenaed as a witness shall be subpoenaed in the manner in which a person may be subpoenaed to appear before a magistrate's court in a criminal trial. 45

(b) The provisions of section 181 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), are, subject to section 11(2), not applicable to any person against whom a maintenance order may be made under this Act. 50

### *The enquiry*

#### **Enquiry by maintenance court**

10. (1) The maintenance court holding an enquiry may at any time during the enquiry cause to be subpoenaed any person as a witness or examine any person who is present

at the enquiry, although the said person has not been subpoenaed as a witness, and may recall and re-examine any person already examined.

(2) The maintenance court shall administer an oath to, or accept an affirmation from, any witness appearing before the maintenance court and record the evidence of that witness. 5

(3) Any person against whom a maintenance order may be made under this Act shall have the right to be represented by a legal representative.

(4) No person whose presence is not necessary shall be present at the enquiry, except with the permission of the maintenance court.

(5) Save as is otherwise provided in this Act, the law of evidence, including the law relating to the competency, compellability, examination and cross-examination of witnesses, as applicable in respect of civil proceedings in a magistrate's court, shall apply in respect of the enquiry. 10

### **Rights and privileges of witnesses**

**11.** (1) Any person, other than a person against whom a maintenance order may be made under this Act, attending the enquiry as a witness shall be entitled to an allowance as if the said person were attending criminal proceedings as a witness for the State. 15

(2) The maintenance court may direct that any person against whom a maintenance order may be made under this Act—

(a) shall be paid the necessary expenses to travel to and from the maintenance court and of sojourn at the court; and 20

(b) shall be paid such allowance as may be paid to a witness for the accused in criminal proceedings.

(3) In connection with the giving of evidence or the production of any book, document or statement at the enquiry, the law relating to privilege, as applicable to a witness giving evidence or subpoenaed to produce a book, document or statement in criminal proceedings in a magistrate court, shall apply. 25

(4) No person shall at the enquiry be compelled to give evidence relating to the said person's liability to maintain any other person.

### *Documentary evidence* 30

### **Proof of statements in writing by consent**

**12.** (1) In the enquiry a statement in writing made in the prescribed manner by any person, other than a person against whom a maintenance order may be made under this Act, shall, subject to subsection (2), be admissible as evidence to the same extent as oral evidence to the same effect by the person concerned. 35

(2) (a) A copy of the statement, together with a copy of every document referred to in the statement as an exhibit, shall at least 14 days before the date on which the statement is to be submitted as evidence, be served on the person against whom a maintenance order may be made under this Act, and the said person may at least seven days before the commencement of the enquiry object to the statement being submitted as evidence under this section. 40

(b) If the person—

(i) objects in accordance with paragraph (a) to the statement being submitted as evidence, such statement shall not, subject to subparagraph (ii), be admissible as evidence under this section; or 45

(ii) does not object in accordance with paragraph (a) or come to an arrangement with the maintenance officer before or during the enquiry that the statement may be submitted as evidence, such statement may on its production at the enquiry be admitted as evidence in the enquiry.

(c) When the statement is served on the person, such statement shall be accompanied by the prescribed notification in writing. 50

(3) Any person against whom a maintenance order may be made under this Act may before or during the enquiry come to an arrangement with the maintenance officer that any statement referred to in subsection (1), notwithstanding the fact that it was not served on the said person in terms of subsection (2), be submitted as evidence, whereupon such statement may on its production at the enquiry be admitted as evidence in the enquiry. 55

(4) Any document referred to as an exhibit and identified in a statement in writing submitted as evidence under this section shall be treated as if it had been handed in as an exhibit and identified at the maintenance court by the person who made the statement.

#### **Evidence and findings of fact recorded in respect of existing maintenance order**

**13.** (1) Subject to the provisions of subsection (2), the maintenance court holding an enquiry may take into consideration any evidence in any proceedings in respect of an existing maintenance order or accept as *prima facie* proof any finding of fact in any such proceedings. 5

(2) The record of any evidence or finding of fact in any proceedings in respect of the existing maintenance order or any copy or transcription thereof or extract therefrom certified as a true copy, transcription or extract by a person who purports to be the registrar or clerk of the court or other officer having the custody of the records of the court in the Republic where the order in question has been issued, shall on its production at the enquiry— 10

(a) in the case of such record, by such registrar, clerk or officer; or 15

(b) in the case of such copy, transcription or extract, by the maintenance officer or any person against whom a maintenance order may be made under this Act, be admissible as evidence for the purposes of subsection (1).

#### **Proof of entries in accounting records and documentation of banks**

**14.** The provisions of section 236 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall, with the necessary changes, apply in respect of the enquiry. 20

### **CHAPTER 4**

#### **MAINTENANCE AND OTHER ORDERS**

##### *General principles*

#### **Customary unions** 25

**15.** Whenever for the purposes of this Act the question arises whether any particular person is legally liable to maintain any other person, the former person shall be deemed to be the husband of any woman associated with that person in a customary union as defined in section 35 of the Black Administration Act, 1927 (Act No. 38 of 1927).

#### **Duty of parents to support their children** 30

**16.** (1) Without derogating from the law relating to the liability of persons to support children who are unable to support themselves, a maintenance order is directed at the enforcement of the common law duty of the natural parents of a child to support that child, as the duty in question exists at the time of the issue of the maintenance order and is expected to continue. 35

(2) The duty encompasses the provision of food, clothing, accommodation, medical care and education.

(3) (a) Without derogating from the law relating to the support of children, the maintenance court shall, in determining the amount to be paid as maintenance in respect of a child, take into consideration— 40

(i) that the duty of supporting a child is an obligation which the parents have incurred jointly, but that their respective shares of such obligation are apportioned between them according to their respective means, irrespective of whether the child is born in or out of wedlock; and

(ii) that a child of divorced parents is entitled to be supported by those parents and that the parents are correspondingly obliged to provide that child with everything the child reasonably requires for the child's proper living and 45

upbringing according to the means, standard of living and station in life of the parents.

(b) Any amount so determined shall be such amount as the maintenance court may consider fair in all the circumstances of the case.

### *Orders*

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#### **Maintenance and other orders**

**17.** (1) After consideration of the evidence adduced at the enquiry, the maintenance court may—

- (a) in the case where no maintenance order is in force—
  - (i) subject to subsection (2), make an order against any person proved to be legally liable to maintain any other person for the payment during such period and at such times and to such person, officer, organisation or institution, or into such account at such financial institution, and in such manner as may be specified in the order, of sums of money so specified, towards the maintenance of such other person; 10
  - (ii) make an order against such person, if such other person is a child, for the payment to the mother of the child, of such sum of money, together with any interest thereon, as that mother is in the opinion of the maintenance court entitled to recover from such person in respect of lying-in expenses incurred by the mother in connection with the birth of the child and of expenditure incurred by the mother in connection with the maintenance of the child from the date of the child's birth to the date of the enquiry; 15
  - (iii) in addition to the maintenance order which the maintenance court makes under subparagraph (i) but with due regard thereto, make such order as the maintenance court may think fit against such person relating to the payment of medical expenses in respect of such other person, including an order requiring such other person, if the said other person qualifies therefor, to be registered as a dependant of such person at a medical scheme of which such person is a member; 20
- (b) in the case where a maintenance order is in force—
  - (i) subject to subsection (2), make an order contemplated in paragraph (a)(i) in substitution of such maintenance order; 25
  - (ii) in addition to the maintenance order which the maintenance court makes under subparagraph (i) but with due regard thereto, make an order contemplated in paragraph (a)(iii) or make such order in substitution of an order relating to the payment of medical expenses issued by any court in the Republic, as the case may be; 30
  - (iii) discharge such maintenance order or an order relating to the payment of medical expenses referred to in subparagraph (ii); 35
- (c) make no order. 40

(2) If a maintenance court that makes a maintenance order under subsection (1)(a)(i) or (b)(i) is satisfied—

- (a) that the person against whom the maintenance order is made is in the service of an employer; and 45
- (b) that it is not impracticable or inappropriate in the circumstances of the case, the maintenance court shall make an order authorising any employer of the said person to make on behalf of that person such payments from the salary, wages or any other form of remuneration or allowance of that person as may be required to be made in accordance with the maintenance order. 50

(3) (a) In order to give effect to an order under subsection (2), the maintenance officer may from time to time in the prescribed manner cause a notice to be served on the employer concerned requesting that employer to make the payments specified in the notice at the times and in the manner so specified.

(b) Whenever any person to whom the notice relates leaves the service of the employer, that employer shall forthwith give notice thereof in writing to the maintenance officer.

(c) A notice under this subsection shall have priority over any order of court requiring payments to be made from the salary, wages, remuneration or allowances of the person against whom a maintenance order has been made. 5

(4) For the purposes of subsection (1)(a)(i), the power to specify the manner in which payment is to be made shall be construed so as to include, subject to subsection (2), the power to specify that an arrangement be made with any financial institution for payment by way of any stop-order or similar facility at that financial institution. 10

### **Orders by consent**

**18.** (1) Any order referred to in section 17(1)(a) or (b) may be made against any person not present at the enquiry, if it is made in accordance with the said person's consent in writing handed in by the maintenance officer at the enquiry.

(2) A copy of an order made against any person not present at the enquiry shall be delivered or tendered to the said person by any maintenance officer, police officer, sheriff or maintenance investigator, and the return of any such officer, sheriff or investigator showing that such copy was delivered or tendered to the particular person shall be deemed to be sufficient proof of the fact that the said person was aware of the terms of the order in question. 15 20

### **Variation or setting aside of certain orders**

**19.** A maintenance court that has made an order under section 17(1)(a)(i) or (b)(i) may, at the request of the maintenance officer and without prior notice to any person—

- (a) vary such order by designating as the person, officer, organisation, institution or account to whom, to which or into which payment is to be made, any other person, officer, organisation, institution or account at a financial institution or by determining any other manner in which payment is to be made; or 25
- (b) if the maintenance court has made an order under section 17(2), set aside such order,

and the maintenance officer shall in the prescribed manner inform the person required to pay of any variation or setting aside of the order in question. 30

### **Orders as to costs**

**20.** The maintenance court holding an enquiry may, having regard to the conduct of the persons involved in the enquiry in so far as it may be relevant, make such order as the maintenance court may consider just relating to the costs of the service of process. 35

### *Interlocutory orders*

#### **Orders relating to scientific tests**

**21.** (1) If the maintenance officer is of the opinion—

- (a) that the paternity of any child is placed in issue;
- (b) that the mother of such child, as well as the person who is allegedly the father of such child, is prepared to submit themselves as well as such child, if the mother has parental authority over the said child, to the taking of blood samples in order to carry out scientific tests regarding the paternity of that child; and 40
- (c) that such mother or such person or both such mother and such person are unable to pay the costs involved in the carrying out of such scientific tests, 45

the maintenance officer may at any time during the enquiry in question, but before the maintenance court makes any order under section 17, request the maintenance court to hold an enquiry referred to in subsection (2).

- (2) If the maintenance officer so requests, the maintenance court may in a summary manner enquire into—
- (a) the means of the mother of the child as well as the person who is allegedly the father of the child; and
  - (b) the other circumstances which should in the opinion of the maintenance court be taken into consideration. 5
- (3) At the conclusion of the enquiry referred to in subsection (2), the maintenance court may—
- (a) make such provisional order as the maintenance court may think fit relating to the payment of the costs involved in the carrying out of the scientific tests in question, including a provisional order directing the State to pay the whole or any part of such costs; or 10
  - (b) make no order.
- (4) When the maintenance court subsequently makes any order under section 17, the maintenance court may— 15
- (a) make an order confirming the provisional order referred to in subsection (3)(a); or
  - (b) set aside such provisional order or substitute therefor any order which the maintenance court may consider just relating to the payment of the costs involved in the carrying out of the scientific tests in question. 20

### Orders by default

- 22.** (1) If a maintenance court is satisfied on the grounds of sufficient proof or otherwise—
- (a) that any person against whom an order may be made under section 17(1)(a) or (b) has knowledge of a subpoena issued under this Act; and 25
  - (b) that such person has failed to appear before the maintenance court on the date and at the time specified in such subpoena,
- the maintenance court may, on the application of the maintenance officer for an order by default, call upon the person who has lodged the complaint to adduce such evidence, either in writing or orally, in support of the said person's complaint as the maintenance court may consider necessary. 30
- (2) After consideration of the evidence, the maintenance court may—
- (a) make any order by default which the maintenance court could have made under section 17(1)(a) or (b);
  - (b) make such other order as the maintenance court may consider appropriate in the circumstances of the case; or 35
  - (c) make no order.
- (3) A copy of an order made against any person not present at the enquiry shall be delivered or tendered to the said person by any maintenance officer, police officer, sheriff or maintenance investigator, and the return of any such officer, sheriff or investigator showing that such copy was delivered or tendered to the particular person shall be deemed to be sufficient proof of the fact that the said person was aware of the terms of the order in question. 40
- (4) (a) The person against whom a maintenance court has made an order by default may apply to the maintenance court for the variation or setting aside of the order. 45
- (b) The application shall be made in the prescribed manner within 20 days after the person became aware of the order by default or within such further period as the maintenance court may on good cause shown allow.
- (c) The maintenance court may call upon the person concerned to adduce such evidence, either in writing or orally, in support of that person's application as the maintenance court may consider necessary. 50
- (5) After consideration of the evidence, the maintenance court may—
- (a) make an order confirming the order by default referred to in subsection (2)(a);
  - (b) vary such order by default, if it appears to the maintenance court that good cause exists for such variation; or 55
  - (c) set aside such order by default and convert the proceedings into a maintenance enquiry.

*Administrative provisions*

**Notice of substitution or discharge of maintenance orders**

**23.** Whenever a maintenance court—

(a) makes an order under section 17(1)(b) in substitution of a maintenance order;  
or

(b) discharges a maintenance order under the said section 17(1)(b),

the maintenance order shall cease to be of force and effect, and the maintenance officer shall forthwith give notice of the decision to the registrar or clerk of the court in the Republic where the maintenance order has been issued or where the sentence concerned has been imposed, as the case may be, who shall deal with the relevant records or registers in the prescribed manner.

**Transfer of maintenance orders**

**24.** (1) Subject to the directions prescribed in connection with the transfer of maintenance orders, the maintenance officer may in writing direct the clerk of the court where a maintenance order has been made to transmit the maintenance order, together with the prescribed records, to the clerk of the maintenance court within the area of jurisdiction of which the person in whose favour the maintenance order was made, or the person in whose care the said person is, resides.

(2) On receipt of the maintenance order, the clerk of the maintenance court shall register such maintenance order in the prescribed manner.

(3) Any maintenance order registered in terms of subsection (2) shall for the purposes of this Act be deemed to be a maintenance order made under section 17 by the maintenance court where the order has been so registered.

*Effect of orders, and appeals*

**Effect of orders of maintenance court**

**25.** (1) Save as is otherwise provided in this Act, any order or direction made by a maintenance court under this Act shall have the effect of an order or direction of the said court made in a civil action.

(2) Any order made under section 17(1)(a)(ii), 20 or 21(4) shall have the effect of a civil judgment of the maintenance court concerned and shall be executed in the prescribed manner.

**Appeals against orders**

**26.** (1) Any person aggrieved by any order made by a maintenance court under this Act may, within such period and in such manner as may be prescribed, appeal against such order to the High Court having jurisdiction.

(2) On appeal, the High Court or the Supreme Court of Appeal, as the case may be, may make such order in the matter as it may think fit.

(3) Notwithstanding anything to the contrary in any law contained, an appeal under this section shall not suspend the payment of maintenance in accordance with the maintenance order in question, unless the appeal is noted against a finding that the appellant is legally liable to maintain the person in whose favour the order was made.

(4) For the purposes of subsection (1) “order”—

(a) does not include any order by consent referred to in section 18(1), any provisional order referred to in section 21(3)(a) or any order by default referred to in section 22(2)(a);

(b) includes any discharge of such order as well as any confirmation, setting aside, substitution or variation of such provisional order or such order by default;

(c) includes any refusal to make such order as well as any refusal—

(i) to make such provisional order;

(ii) to make such order by default; or

(iii) to make any provisional maintenance order under section 17 by virtue of the provisions of any other law.

## CHAPTER 5

## OFFENCES AND PENALTIES

*Failure to comply with maintenance orders***Offences relating to maintenance orders**

27. (1) Subject to the provisions of subsection (2), any person who fails to make any particular payment in accordance with a maintenance order shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine. 5

(2) If the defence is raised in any prosecution for an offence under this section that any failure to pay maintenance in accordance with a maintenance order was due to lack of means on the part of the person charged, the said person shall not merely on the grounds of such defence be entitled to an acquittal if it is proved that the failure was due to that person's unwillingness to work or misconduct. 10

(3) If the name of a person stated in a maintenance order as the person against whom the maintenance order has been made corresponds substantially to the name of the particular person prosecuted for an offence under this section, any copy of the maintenance order certified as a true copy by a person who purports to be the registrar or clerk of the court or other officer having the custody of the records of the court in the Republic where the maintenance order has been made, shall on its production be *prima facie* proof of the fact that the maintenance order has been made against the person so prosecuted. 15 20

(4) If a person was convicted of an offence under this section, the maintenance officer may, notwithstanding anything to the contrary in any law contained, furnish the personal particulars of the said person to any business which has as its object the granting of credit or is involved in the credit rating of persons. 25

**Recovery of arrear maintenance**

28. (1) A court with civil jurisdiction may, on the application of the public prosecutor and in addition to or in lieu of any penalty which the court may impose in respect of an offence referred to in section 27(1), grant an order for the recovery from the convicted person of any amount the convicted person failed to pay in accordance with the maintenance order, together with any interest thereon, whereupon the order so granted shall have the effect of a civil judgment of the court and shall, subject to subsection (2), be executed in the prescribed manner. 30

(2) A court granting an order against a convicted person may—

(a) in a summary manner enquire into the circumstances mentioned in subsection (3); and 35

(b) if the court so decides, authorise the issue of a warrant of execution against the movable or immovable property of the convicted person in order to satisfy such order.

(3) At the enquiry, the court shall take into consideration— 40

(a) the existing and prospective means of the convicted person;

(b) the financial needs and obligations of, or in respect of, the person maintained by the convicted person;

(c) the conduct of the convicted person in so far as it may be relevant to the convicted person's failure to pay in accordance with the maintenance order; 45  
and

(d) the other circumstances which should in the opinion of the court be taken into consideration.

(4) Notwithstanding anything to the contrary in any law contained, any pension, annuity, gratuity or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under an order granted under this section. 50

### Orders in respect of remuneration

**29.** (1) If a court that convicts any person of an offence referred to in section 27(1) is satisfied—

(a) that such person is in the service of an employer; and

(b) that it is not impracticable or inappropriate in the circumstances of the case, the court shall, whether or not any penalty is imposed or any order is granted under section 28(1), make an order authorising any employer of such person to make on behalf of such person such payments from the salary, wages or any other form of remuneration or allowance of such person as may be required to be made in accordance with the maintenance order in question.

(2) In order to give effect to the order, the maintenance officer of the court where the maintenance order has been made may from time to time in the prescribed manner cause a notice to be served on the employer concerned requesting that employer to make the payments specified in the notice at the times and in the manner so specified.

(3) Whenever any person to whom the notice relates leaves the service of the employer, that employer shall forthwith give notice thereof in writing to the maintenance officer of the maintenance court where the maintenance order has been made.

(4) A notice under this section shall have priority over any order of court requiring payments to be made from the salary, wages, remuneration or allowances of the person against whom a maintenance order has been made.

### Conversion of criminal proceedings into maintenance enquiry

**30.** If during the course of any proceedings in a magistrate's court in respect of—

(a) an offence referred to in section 27(1); or

(b) the enforcement of any sentence suspended on condition that the convicted person make periodical payments of sums of money towards the maintenance of any other person,

it appears to the court that it is desirable that a maintenance enquiry be held, or when the public prosecutor so requests, the court shall convert the proceedings into such enquiry.

*Other offences* 30

### Offences relating to witnesses

**31.** (1) The provisions of sections 188 and 189 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) shall, with the necessary changes, apply in respect of a person subpoenaed under section 9 or 10(1) of this Act to appear before a maintenance court or who is present at a maintenance enquiry, and the maintenance court holding the enquiry may exercise in respect of the said person all the powers conferred by section 170(2) of the said Act and the said section 189 on the court referred to in those sections.

(2) Any person who, after having been sworn or having affirmed as a witness, gives false evidence before the maintenance court, knowing the evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties which may in law be imposed for perjury.

### Offences relating to statements in writing

**32.** Any person who makes a statement which is admitted as evidence under section 12 and who in such statement wilfully and falsely states anything which, if sworn, would have constituted perjury, shall be deemed to have committed perjury and shall, upon conviction, be liable to the penalties which may in law be imposed for perjury.

### Offences relating to maintenance enquiries

**33.** Any person who wilfully interrupts the proceedings at a maintenance enquiry or

who wilfully hinders or obstructs the maintenance court in the performance of the maintenance court's functions at the enquiry shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

#### **Offences relating to publication of information in respect of children** 5

**34.** (1) Save as is otherwise provided in subsection (3), no person shall publish in any manner whatsoever the name or address of any person under the age of 18 years who is or was involved in any proceedings at a maintenance enquiry or the name of the said person's school or any other information likely to reveal the identity of that person.

(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment. 10

(3) If the Minister or the officer presiding at the maintenance enquiry is of the opinion that the publication of information in respect of a particular person would be just and in the interest of the said person, the Minister or such officer may in writing dispense with the prohibition contained in subsection (1) to the extent specified in the dispensation. 15

#### **Offences relating to general secrecy**

**35.** Any person who, except for the purposes of performing the said person's functions under this Act or when required to do so by any court or under any law, discloses to any other person any information acquired by that person in the performance of that person's functions under this Act shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment. 20

#### **Offences relating to obligations of employers**

**36.** Any person who— 25  
 (a) fails to comply with a notice under section 17(3)(a) or 29(2); or  
 (b) fails to comply with a provision of section 17(3)(b) or 29(3),  
 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

#### **Offences relating to notice of change of address** 30

**37.** (1) If any person against whom a maintenance order has been made changes the place of the said person's residence or employment during the currency of the maintenance order, that person shall forthwith give notice thereof in writing—

(a) if payment in terms of the maintenance order is to be made to any person, officer, organisation or institution, to such person, officer, organisation or institution; or 35

(b) if payment in terms of the maintenance order is to be made into any account at any financial institution, to the maintenance officer of the maintenance court where the order has been made,

and shall state fully and clearly where the new place of that person's residence or employment is situate. 40

(2) Any person who fails to comply with a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

(3) Whenever in any prosecution for an offence under this section the question arises whether or not any person bearing a particular name— 45

(a) was resident at a particular place of residence during a particular period; or

(b) was working at a particular place of employment during a particular period,

a document purporting to be an affidavit made by a person who in such affidavit alleges—

- (a) that such person was resident at the particular place of residence during the particular period or that the particular place of residence was in such person's possession or under such person's control during the particular period or that such person was during the particular period in control of the allocation of, or the arrangements for, accommodation at the particular place of residence and that no person bearing the name in question was resident at such place of residence during such period; or 5
- (b) that the particular place of employment was in such person's possession or under such person's control during the particular period or that such person was during the particular period in control of the appointment or remuneration of employees at the particular place of employment and that no person bearing the name in question was working at such place of employment during such period, 10

as the case may be, shall on its production be *prima facie* proof of the facts stated therein. 15

## CHAPTER 6

### GENERAL AND SUPPLEMENTARY PROVISIONS

#### **Record of proceedings at maintenance enquiries** 20

**38.** (1) The prescribed record of the proceedings at a maintenance enquiry shall be kept and shall be accessible to such persons on such conditions as to payment of fees or otherwise as may be prescribed.

(2) All fees shall be prescribed in consultation with the Minister of Finance.

#### **Photographs of persons subject to maintenance orders** 25

**39.** (1) A maintenance court may, at the request of the maintenance officer, direct that two photographs be taken of the person against whom the maintenance court has made a maintenance order.

(2) The photographs shall be destroyed if the maintenance order is set aside on appeal or discharged for any reason. 30

#### **Rules**

**40.** The Minister may by notice in the *Gazette* make rules—

- (a) as to the powers, duties and functions of a maintenance officer, the clerk of the maintenance court or a maintenance investigator;
- (b) prescribing the procedure to be followed at or in connection with a maintenance enquiry; 35
- (c) prescribing guidelines for, or prescribing the factors to be taken into account by, a maintenance court when making a maintenance order;
- (d) as to any matter required or permitted to be prescribed under this Act by rule.

#### **Repeal or amendment of laws, and savings** 40

**41.** (1) The laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

(2) Notwithstanding the repeal of any law by subsection (1), anything done under any such law and which could be done under a provision of this Act, shall be deemed to have been done under such provision. 45

#### **Short title and commencement**

**42.** (1) This Act shall be called the Maintenance Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.

## SCHEDULE

LAWS REPEALED OR AMENDED  
(Section 41)

No. and year of law	Short title	Extent of repeal or amendment
Act No. 24 of 1956	Pension Funds Act, 1956	<p>The amendment of section 37A by the substitution in subsection (1) for the words preceding the proviso of the following words:</p> <p>“Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act No. 58 of 1962), and the Maintenance Act, <b>[1963 (Act No. 23 of 1963)]</b> 1998, no benefit provided for in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor’s financial position in terms of section 65 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), and in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold or suspend payment thereof.”.</p>
Act No. 23 of 1963 Act No. 80 of 1963	Maintenance Act, 1963 Reciprocal Enforcement of Maintenance Orders Act, 1963	<p>The repeal of the whole.</p> <p><b>1.</b> The amendment of section 1 by the substitution for the definition of “maintenance court” of the following definition:</p> <p>“ ‘maintenance court’ means any maintenance court as defined in section 1 of the Maintenance Act, 1998;”.</p> <p><b>2.</b> The amendment of section 4 by the substitution for subsection (5) of the following subsection:</p> <p>“(5) The provisions of sections <b>[eight, nine and ten]</b> 11, 31 and 33 of the Maintenance Act, <b>[1963]</b> 1998, shall <i>mutatis mutandis</i> apply in respect of any enquiry held under this section.”.</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p><b>3.</b> The substitution for section 6 of the following section:</p> <p><b>“Certain maintenance orders deemed for certain purposes to have been made under Maintenance Act, 1998</b></p> <p><b>6.</b> Any maintenance order registered under section <del>[three]</del> 3 or confirmed under section <del>[four]</del> 4 shall for the purposes of sections <del>[eleven, twelve and fourteen]</del> 27 to 29, 36 and 37 of the Maintenance Act, <del>[1963]</del> 1998, be deemed to be a maintenance order made under that Act by the maintenance court where <del>[such]</del> the order has been so registered or confirmed: Provided that in a prosecution for a contravention of the said section <del>[eleven]</del> 27 in respect of an order registered under section <del>[three]</del> 3, the provisions of section <del>[thirteen]</del> 30 of the said Act shall not apply.”.</p> <p><b>4.</b> The amendment of section 8—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Notwithstanding anything to the contrary in any <del>[other]</del> law contained, an enquiry may be held under <del>[section five of]</del> the Maintenance Act, <del>[1963]</del> 1998, in the absence of any person resident in a proclaimed country who may be legally liable to maintain any person in the Republic, provided the evidence of all witnesses at the enquiry is read over to and signed by them.”; and</p> <p>(b) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Upon confirmation of a provisional maintenance order in terms of this section, it shall be deemed to be an order made under paragraph (a) or (b) <del>[of subsection (4)]</del> of section <del>[five]</del> 17(1) of the Maintenance Act, <del>[1963]</del> 1998, as the case may be, by the court which made <del>[such]</del> the provisional order.”.</p>
Act No. 19 of 1967	Maintenance Act, 1967	Amendment
Act No. 39 of 1970	Maintenance Act, 1970	Amendment
Act No. 79 of 1974	Members of the Coloured Persons Representative Council Pensions Act, 1974	<p>The repeal of the whole.</p> <p>The repeal of the whole.</p> <p>The amendment of section 14 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) No pension or benefit payable under this Act, and no right in respect of any such pension or benefit, shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or, save as is provided in section <del>[11(2)]</del> 28 of the Maintenance Act, <del>[1963 (Act No. 23 of 1963)]</del> 1998, be liable to be attached or subject to any form of execution under a judgment or order of a court of law.”.</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 86 of 1974	Members of the South African Indian Council Pensions Act, 1974	The amendment of section 14 by the substitution for subsection (1) of the following subsection: “(1) No pension or benefit payable under this Act, and no right in respect of any such pension or benefit, shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or, save as is provided in section [11(2)] 28 of the Maintenance Act, [1963 (Act No. 23 of 1963)] 1998, be liable to be attached or subject to any form of execution under a judgment or order of a court of law.”.
Act No. 51 of 1977	Criminal Procedure Act, 1977	The amendment of section 195 by the substitution for paragraph (c) of subsection (1) of the following paragraph: “(c) any contravention of any provision of section [11(1)] 27(1) of the Maintenance Act, [1963 (Act No. 23 of 1963)] 1998, or of such provision as applied by any other law;”.
Act No. 29 of 1979	General Pensions Act, 1979	The amendment of section 2 by the substitution for subsection (1) of the following subsection: “(1) No annuity or benefit or right in respect of an annuity or benefit payable under a pension law shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or, save as is provided in section [11(2)] 28 of the Maintenance Act, [1963 (Act No. 23 of 1963)] 1998, be liable to be attached or subjected to any form of execution under a judgment or order of a court of law.”.
Act No. 34 of 1986	Special Courts for Blacks Abolition Act, 1986	The repeal of so much of the Schedule as relates to the Maintenance Act, 1963.
Act No. 6 of 1989	Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989	<p>1. The amendment of section 1 by the substitution for the definition of “maintenance court” of the following definition: “ ‘maintenance court’ means any maintenance court as defined in section 1 of the Maintenance Act, 1998;”.</p> <p>2. The amendment of section 5 by the substitution for subsection (1) of the following subsection: “(1) Notwithstanding anything to the contrary in any law contained, an enquiry may be held under [section 5 of] the Maintenance Act, [1963 (Act No. 23 of 1963)] 1998, in the absence of any person resident in a designated country who may be legally liable to maintain any person in the Republic, provided the evidence of all witnesses at the enquiry is read over to and signed by them.”.</p> <p>3. The amendment of section 6 by the substitution for subsection (6) of the following subsection: “(6) The provisions of sections [8, 9 and 10] 11, 31 and 33 of the Maintenance Act, [1963] 1998, shall apply <i>mutatis mutandis</i> in respect of any enquiry held under this section.”.</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p><b>4.</b> The substitution for section 7 of the following section:</p> <p><b>“Certain maintenance orders deemed for certain purposes to have been made under Maintenance Act, 1998</b></p> <p>7. Any maintenance order registered under section 4 or confirmed under section 6 shall for the purposes of sections <b>[11, 12 and 14] 27 to 29, 36 and 37</b> of the Maintenance Act, <b>[1963] 1998</b>, be deemed to be a maintenance order made under section <b>[5(4)] 17</b> of the said Act by the maintenance court where <b>[such] the</b> order has been so registered or confirmed: Provided that in a prosecution for a contravention of the said section <b>[11] 27</b> in respect of an order registered under section 4 of this Act, the provisions of section <b>[13] 30</b> of the said Act shall not apply.”.</p> <p><b>5.</b> The substitution for section 8 of the following section:</p> <p><b>“Transmission to designated country of emoluments attachment order made in the Republic</b></p> <p>8. When it appears to any court in the Republic that any person in respect of whom it has, before or after the commencement of this Act, made an order under section <b>[12(1)] 29(1)</b> of the Maintenance Act, <b>[1963] 1998</b>, is resident in the Republic, but is employed or is in receipt of a salary, wage or any other form of remuneration or allowance in a designated country, that court may transmit a certified copy of the record of the proceedings in which the order was made to the Director-General for transmission to the administrative head of the Department of Justice of such designated country.”.</p> <p><b>6.</b> The amendment of section 9 by the substitution for subsection (3) of the following subsection:</p> <p>“(3) Any order registered under subsection (1) and any notice issued under subsection (2), shall, for the purposes of <b>[subsections (2) and (3) of section 12] sections 29(3) and (4) and 36</b> of the Maintenance Act, <b>[1963] 1998</b>, be deemed to be an order made <b>[or] under subsection (1) of section 29 of that Act and a notice issued under [section 12(1) of that Act] subsection (2) of the said section 29, respectively.</b>”.</p> <p><b>7.</b> The amendment of section 11 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Subject to the provisions of this Act and any rules made thereunder, the procedure and rules of evidence, including the competency, compellability, examination or cross-examination of witnesses, to be followed at or in connection with an enquiry under the Maintenance Act, <b>[1963] 1998</b>, shall, in so far as they can be applied, apply <i>mutatis mutandis</i> to enquiries under section 6(4).”.</p>

No. and year of law	Short title	Extent of repeal or amendment
Act No. 2 of 1991	Maintenance Amendment Act, 1991	The repeal of the whole.
Act No. 204 of 1993	General Law Sixth Amendment Act, 1993	The repeal of sections 3 and 4.
Act No. 18 of 1996	Justice Laws Rationalisation Act, 1996	<p>The amendment of section 10—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Notwithstanding the provisions of the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989 (Act No. 6 of 1989), or the coming into operation of the Constitution, any maintenance order registered in terms of section 4 of the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act, 1989, or confirmed in terms of section 6 of that Act or under any corresponding law in force in any of the affected territories, shall continue to be in force, and shall be deemed to be a maintenance order made under section <b>[5(4)] 17(1)(a)(i) or [5(4)](b)(i) of the Maintenance Act [1963 (Act No. 23 of 1963)] 1998</b>, as the case may be, by the maintenance court where such order has been so registered or confirmed.”; and</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Any maintenance order, or other order related thereto, made in any affected territory under any law repealed by this Act, shall continue to be in force, and shall be deemed to have been made under a corresponding provision of the Maintenance Act, <b>[1963] 1998</b>.”</p>
Proclamation No. 21 of 1996	Government Employees Pension Law, 1996	<p>The amendment of section 21 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) No benefit or right in respect of a benefit payable under this Act shall be capable of being assigned or transferred or otherwise ceded or of being pledged or hypothecated or, save as is provided in section <b>[11(2)] 28 of the Maintenance Act, [1963 (Act No. 23 of 1963)] 1998</b>, and section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), be liable to be attached or subjected to any form of execution under a judgment or order of a court of law.”.</p>
Act No. 104 of 1996	Judicial Matters Amendment Act, 1996	The repeal of section 9.

**MEMORANDUM ON THE OBJECTS OF THE MAINTENANCE  
BILL, 1998**

1. The considerations which gave rise to the introduction of the Bill are set out in the Preamble.
2. The following proposals are contained in the Bill for the first time:—
  - \* The appointment and functions of maintenance investigators.
  - \* The extension of existing measures designed with a view to enforcing maintenance orders.
  - \* The common law duty of the natural parents of a child to support that child.
  - \* The law of evidence applicable to maintenance enquiries.
  - \* The power of a maintenance court to make orders by default.
3. Since the Bill cannot be regarded as a bill to which the procedure set out in section 74 or 76 of the Constitution applies, the Bill must in the opinion of the Department and the State Law Adviser be dealt with in accordance with the procedure prescribed by section 75.