

(5 January 2018 – to date)

[This is the **current** version and applies as from **5 January 2018**, i.e. the date of commencement of the remainder of the sections of the Maintenance Amendment Act 9 of 2015 – **to date**]

## **MAINTENANCE ACT 99 OF 1998**

*(Gazette No. 19513, Notice No. 1534, dated 27 November 1998.*

*Commencement date: 26 November 1999 except sections 5, 7(1)(d) and 7(2). [Proc. No. R116, Gazette No. 20627, dated 15 November 1999].*

*Commencement date of sections 5, 7(1)(d), 7(2)(a), (c), (d), (e) and (f) and 7(2)(b) (only in so far as it relates to the service of process of any maintenance court): 1 November 2006 [Proc. No. R46, Gazette No. 29343, dated 26 October 2006])*

### **As amended by:**

*Judicial Matters Amendment Act 42 of 2001 – Government Notice 1313 in Government Gazette 22912, dated 7 December 2001. Commencement date: 7 December 2001.*

*Judicial Matters Second Amendment Act 55 of 2003 – Government Notice 428 in Government Gazette 26206, dated 31 March 2004. Commencement date of sections 16-18: 31 March 2005 [Proc. No. R13, Gazette No. 27406, dated 22 March 2005].*

*Judicial Matters Amendment Act 22 of 2005 – Government Notice 21 in Government Gazette 28391, dated 11 January 2006. Commencement date of section 9: 1 November 2006.*

*Jurisdiction of Regional Courts Amendment Act 31 of 2008 – Government Notice 1201 in Government Gazette 31579, dated 5 November 2008. Commencement date: 9 August 2010 [Proc. No. R41, Gazette No. 33448, dated 2 August 2010].*

*Maintenance Amendment Act 9 of 2015 – Government Notice 821 in Government Gazette 39183 dated 9 September 2015. Commencement date: 9 September 2015 – with the exception of sections 2, 11 and 13(b)*

*Maintenance Amendment Act 9 of 2015 – Government Notice 821 in Government Gazette 39183 dated 9 September 2015. Commencement date of sections 2, 11 and 13(b): 5 January 2018*

### **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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*(English text signed by the President.)*  
*(Assented to 19 November 1998.)*

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## ACT

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

### PREAMBLE

**WHEREAS** the Constitution of the Republic of South Africa, 1996, as the supreme law of the Republic, was adopted so as to establish a society based on democratic values, social and economic justice, equality and fundamental human rights and to improve the quality of life of all citizens and to free the potential of all persons by every means possible, including, amongst others, by the establishment of a fair and equitable maintenance system;

**AND 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 possibly falls short of the Republic's international obligations in terms of the said Convention;

**AND WHEREAS** the South African Law Commission is investigating, in addition to the recovery of maintenance for children, the reform of the entire South African maintenance system;

**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;

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:-

## **ARRANGEMENT OF SECTIONS**

### **TABLE OF CONTENTS**

#### **CHAPTER 1**

#### **INTERPRETATION AND APPLICATION OF ACT**

1. Definitions
2. Application of Act

#### **CHAPTER 2**

#### **MAINTENANCE COURTS AND COURT OFFICERS**

3. Maintenance courts
4. Maintenance officers
5. Maintenance investigators

#### **CHAPTER 3**

#### **MAINTENANCE ENQUIRIES**

##### ***Complaints and Investigations***

6. Complaints relating to maintenance
7. Investigation of complaints
8. Examination of persons by maintenance officer

##### ***The enquiry***

9. Maintenance officer may cause witnesses to be subpoenaed
10. Enquiry by maintenance court
11. Rights and privileges of witnesses

##### ***Documentary evidence***

12. Proof of statements in writing by consent
13. Evidence and findings of fact recorded in respect of existing maintenance order
14. Proof of entries in accounting records and documentation of banks

#### **CHAPTER 4**

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

15. Duty of parents to support their children

### ***Orders***

16. Maintenance and ancillary orders
17. Orders by consent
18. Orders by default
19. Variation or setting aside of certain orders
20. Orders as to costs of service and directions
21. Orders relating to scientific tests regarding paternity

### ***Administrative provisions***

22. Notice of substitution or discharge of maintenance orders
23. Transfer of maintenance orders

### ***Effect of orders, and appeals***

24. Effect of orders of maintenance court
25. Appeals against orders

## **CHAPTER 5 CIVIL EXECUTION**

26. Enforcement of maintenance or other orders
27. Warrants of execution
28. Attachment of emoluments
29. Notice relating to attachment of emoluments
30. Attachment of debts

## **CHAPTER 6 OFFENCES AND PENALTIES**

31. Offences relating to maintenance orders
32. Offences relating to examination of persons by maintenance officer
33. Offences relating to witnesses
34. Offences relating to false information
35. Offences relating to maintenance enquiries
36. Offences relating to publication of information in respect of children
37. Offences relating to disclosure
38. Offences relating to certain notices
39. Offences relating to notice of change of address
- 39A. Offences relating to maintenance investigators

## CHAPTER 7 ORDERS RELATING TO PROSECUTIONS

- 40. Recovery of arrear maintenance
- 41. Conversion of criminal proceedings into maintenance enquiry

## CHAPTER 8 GENERAL AND SUPPLEMENTARY PROVISIONS

- 42. Record of proceedings at maintenance enquiries
- 43. Photographs of persons subject to maintenance orders
- 44. Regulations
- 45. Repeal or amendment of laws, and savings
- 46. Transitional arrangements in respect of execution of maintenance or other orders
- 47. Short title and commencement

### SCHEDULE: LAWS REPEALED OR AMENDED

## CHAPTER 1 INTERPRETATION AND APPLICATION OF ACT

### 1. Definitions

- (1) In this Act, unless the context indicates otherwise-

**“court in the Republic”** includes a High Court;

**“emoluments”** includes any salary, wages, allowances or any other form of remuneration, whether expressed in money or not;

**“financial institution”** means any institution which carries on business as a bank or mutual bank;

**“maintenance court”** means a maintenance court as contemplated in section 3;

**“maintenance investigator”** means any person who is appointed as a maintenance investigator of a maintenance court under section 5(1);

**“maintenance officer”** means any person who is deemed to have been appointed as a maintenance officer in terms of section 4(1)(a) or who is appointed under section 4(2), as the case may be;

**“maintenance order”** means any order for the payment, including 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 31, any sentence suspended on condition that the convicted person make payments of sums of money towards the maintenance of any other person;

**“Minister”** means the Minister of Justice;

**“prescribed”** means prescribed by regulation made in terms of section 44;

**“regulation”** means a regulation made in terms of section 44;

**“this Act”** includes a regulation.

## **2. Application of Act**

- (1) The provisions of this Act shall apply in respect of the legal duty of any person to maintain any other person, irrespective of the nature of the relationship between those persons giving rise to that duty.
- (2) This Act shall not be interpreted so as to derogate from the law relating to the liability of persons to maintain other persons.

## **CHAPTER 2 MAINTENANCE COURTS AND COURT OFFICERS**

### **3. Maintenance courts**

Every magistrate's court for a district, established in terms of section 2(1)(e) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), is within its area of jurisdiction a maintenance court for the purposes of this Act.

*(Section 3 substituted by section 10(2) of Act 31 of 2008)*

### **4. Maintenance officers**

- (1)
  - (a) 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.
  - (b) The National Director of Public Prosecutions shall, in consultation with the Minister, issue policy directions with a view to-

- (i) establishing uniform norms and standards to be observed by public prosecutors in the performance of their functions as maintenance officers under this Act; and
  - (ii) building a more dedicated and experienced pool of trained and specialised maintenance officers.
- (c) The Minister shall cause a copy of any policy directions issued in terms of paragraph (b) to be tabled in Parliament as soon as possible after the issue thereof.
- (2) 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 as maintenance officers of a maintenance court-
- (a) to appear in the maintenance court in proceedings under this Act; and
  - (b) to exercise or perform any power, duty or function conferred upon or assigned to maintenance officers by or under this Act.

## **5. Maintenance investigators**

- (1) The Minister, or any officer of the Department of Justice and Constitutional Development authorised thereto in writing by the Minister, may-
- (a) subject to the laws governing the public service, appoint or designate one or more officers in the Department; or
  - (b) appoint in the prescribed manner and on the prescribed conditions one or more persons,

as maintenance investigators of a maintenance court to exercise or perform any power, duty or function conferred upon or assigned to maintenance investigators by or under this Act.

*(Section 5(1) substituted by section 9 of Act 22 of 2005)*

- (2) The Minister shall take all reasonable steps within the available resources of the Department of Justice to achieve the progressive realisation of the appointment of at least one maintenance investigator for each maintenance court.

*(Commencement date of section 5: 1 November 2006)*

## **CHAPTER 3 MAINTENANCE ENQUIRIES**

### ***Complaints and Investigations***

## **6. Complaints relating to maintenance**

(1) Whenever a complaint to the effect—

- (a) that any person legally liable to maintain any other person fails to maintain the latter person;
- (b) that good cause exists for the substitution or discharge of a maintenance order; or
- (c) that good cause exists for the substitution or discharge of a verbal or written agreement in respect of maintenance obligations in which respect there is no existing maintenance order,

has been made and is lodged with a maintenance officer in the prescribed manner, the maintenance officer shall investigate that complaint in the prescribed manner and as provided in this Act.

(2) After investigating the complaint, the maintenance officer may institute an enquiry in the maintenance court within the area of jurisdiction in which the person to be maintained, or the person in whose care the person to be maintained is, resides, carries on business or is employed with a view to enquiring into the provision of maintenance for the person so to be maintained.

*(Section 6 substituted by section 1 of Act 9 of 2015)*

## **7. Investigation of complaints**

(1) In order to investigate any complaint relating to maintenance, a maintenance officer may-

- (a) obtain statements under oath or affirmation from persons who may be able to give relevant information concerning the subject of such complaint;
- (b) gather information concerning-
  - (i) the identification or whereabouts of any person who is legally liable to maintain the person mentioned in such complaint or who is allegedly so liable;
  - (ii) the financial position of any person affected by such liability; or
  - (iii) any other matter which may be relevant concerning the subject of such complaint;
- (c) request a maintenance officer of any other maintenance court to obtain, within the area of jurisdiction of the said maintenance officer, such information as may be relevant concerning the subject of such complaint; or



- (d) require a maintenance investigator of the maintenance court concerned to perform such other functions as may be necessary or expedient to achieve the objects of this Act.

*(Commencement date of section 7(1)(d): 1 November 2006)*

- (2) A maintenance investigator shall, subject to the directions and control of a maintenance officer-

- (a) locate the whereabouts of persons-

- (i) required to appear before a magistrate under section 8(1);
- (ii) who are to be subpoenaed or who have been subpoenaed to appear at a maintenance enquiry;
- (iii) who are to be subpoenaed or who have been subpoenaed to appear at a criminal trial for the failure to comply with a maintenance order; or
- (iv) accused of the failure to comply with a maintenance order;

*(Commencement date of section 7(2)(a): 1 November 2006)*

- (b) serve or execute the process of any maintenance court;

*(Commencement date of section 7(2)(b): 1 November 2006, only in so far as it relates to the service of process of any maintenance court)*

- (c) serve subpoenas or summonses in respect of criminal proceedings instituted for the failure to comply with a maintenance order as if the maintenance investigator had been duly appointed as a person who is authorised to serve subpoenas or summonses in criminal proceedings;

*(Commencement date of section 7(2)(c): 1 November 2006)*

- (d) take statements under oath or affirmation from persons who may be able to give relevant information concerning the subject of any complaint relating to maintenance;

*(Commencement date of section 7(2)(d): 1 November 2006)*

- (e) gather information concerning-

- (i) the identification or whereabouts of any person who is legally liable to maintain the person mentioned in such complaint or who is allegedly so liable;
- (ii) the financial position of any person affected by such liability; or
- (iii) any other matter which may be relevant concerning the subject of such complaint; or

*(Commencement date of section 7(2)(e): 1 November 2006)*

- (f) gather such information as may be relevant concerning a request referred to in subsection (1)(c).  
*(Commencement date of section 7(2)(f): 1 November 2006)*

(3)

- (a) If a complaint is lodged with a maintenance officer in terms of section 6 and the maintenance officer, after all reasonable efforts to locate the whereabouts of the person who may be affected by an order which may be made by a maintenance court pursuant to the complaint so lodged, have failed, the maintenance officer may apply to the maintenance court, in the prescribed manner, to issue a direction as contemplated in this subsection.
- (b) If a maintenance court is satisfied that all reasonable efforts to locate the whereabouts of a person have failed, as contemplated in paragraph (a), the court may issue a direction in the prescribed form, directing one or more electronic communications service providers to furnish the court, in the prescribed manner, with the contact information of the person in question if that person is in fact a customer of the service provider.
- (c) If the maintenance court issues a direction in terms of paragraph (b) the maintenance court shall direct that the direction be served on the electronic communications service provider in the prescribed manner.
- (d) The information referred to in paragraph (b) shall be provided to the maintenance court within the time period set out by the court in the direction.
- (e) An electronic communications service provider on which a direction is served may, in the prescribed manner, apply to the maintenance court for—
  - (i) an extension of the period referred to in paragraph (d) on the grounds that the information cannot be provided timeously; or
  - (ii) the cancellation of the direction on the grounds that—
    - (aa) it does not provide an electronic communications service in respect of the person referred to in the direction; or
    - (bb) the requested information is not available in the records of the electronic communications service provider.
- (f) After receipt of an application referred to in paragraph (e), the maintenance court shall consider the application, give a decision in respect thereof and inform the electronic communications service provider, in the prescribed manner, of the outcome of the application.

- (g) The list of electronic communications service providers referred to in section 4(7) of the Protection from Harassment Act, 2011 (Act No. 17 of 2011), may be used by maintenance courts for purposes of this subsection.
- (h) The tariffs payable to electronic communications service providers for providing information as determined by the Minister in terms of section 4(8) of the Protection from Harassment Act, 2011, apply in the case of information required in terms of this subsection.
- (i) If the maintenance officer is of the opinion that the person lodging the complaint referred to in paragraph (a) is unable to pay the costs involved in the furnishing of information referred to in paragraph (b), the maintenance officer may at any time after the maintenance court issues a direction under the said paragraph (b), request the maintenance court to hold an enquiry into—
  - (i) the means of the complainant; and
  - (ii) any other circumstances which, in the opinion of the maintenance court, should be taken into consideration.
- (j) At the conclusion of the enquiry referred to in paragraph (i) the maintenance court may make such order as the court may deem fit relating to the payment of the costs involved in the furnishing of information referred to in paragraph (b), including an order directing the State, subject to section 20, to pay such costs within available resources, in the prescribed manner.
- (k) The maintenance court may, if it has ordered the State to pay the costs referred to in paragraph (j), upon the application of the maintenance officer, order the person affected by the order to refund the costs so paid by the State in terms of paragraph (j), in the prescribed manner.
- (l) For purposes of this subsection, “electronic communications service provider” means an entity or a person who is licensed or exempted from being licensed in terms of Chapter 3 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), to provide an electronic communications service.

*(Section 7(3) added by section 2 of Act 9 of 2015, with effect from 5 January 2018)*

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

- (1) A magistrate may, prior to or during a maintenance enquiry and 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 relevant information concerning-
  - (a) the identification or the place of residence or employment of any person who is legally liable to maintain any other person or who is allegedly so liable; or

- (b) the financial position of any person affected by such liability.

(2)

- (a) The provisions of sections 162, 163, 164(1), 165, 179 to 181, 187, 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.
  - (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 he or she is required so to appear, the maintenance officer shall discharge him or her from the obligation so to appear.
- (3) The examination of any person under this section may be conducted in private at a place designated by the magistrate.

### ***The enquiry***

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

(1)

- (a) 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 or any person in whose favour a maintenance order has already been made, to be subpoenaed—
  - (i) to appear before the maintenance court and give evidence; or
  - (ii) to produce any book, document or statement.
- (b) A book, document or statement referred to in paragraph (a)(ii) includes—
  - (i) any book, document or statement relating to the financial position of any person who is affected by the legal liability of a person to maintain any other person or in whose favour a maintenance order has been made; and
  - (ii) in the case where such person is in the service of an employer, a statement which gives full particulars of his or her earnings and which is signed by the employer.

*(Section 9(1) substituted by section 3 of Act 9 of 2015)*

(2)

- (a) Any person to be subpoenaed as a witness shall, subject to paragraph (b), be subpoenaed in the manner in which a person may be subpoenaed to appear before a magistrate's court in a criminal trial.

- (b) The form of the subpoena shall be as prescribed.
- (c) 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.

## **10. Enquiry by maintenance court**

- (1) The maintenance court holding an enquiry may at any time during the enquiry cause any person to be subpoenaed as a witness or examine any person who is present at the enquiry, although he or she was not subpoenaed as a witness, and may recall and re-examine any person already examined.
- (1A) Where circumstances permit and where a Family Advocate is available, a maintenance court may, in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), at any time during the enquiry, cause an investigation to be carried out by a Family Advocate, contemplated in the Mediation in Certain Divorce Matters Act, 1987, in whose area of jurisdiction that maintenance court is, with regard to the welfare of any minor or dependent child affected by such enquiry, whereupon the provisions of that Act apply with the changes required by the context.  
*(Section 10(1A) inserted by section 16 of Act 55 of 2003)*
- (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.
- (3) Any party to proceedings 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.
- (6)
  - (a) A maintenance court shall conclude maintenance enquiries as speedily as possible and shall ensure that postponements are limited in number and in duration.
  - (b) A maintenance court may, where a maintenance order has not been made and a postponement of the enquiry is necessary and if the court is satisfied that—
    - (i) there are sufficient grounds prior to such postponement indicating that one of the parties is legally liable to maintain a person or persons; and

- (ii) undue hardship may be suffered by the person or persons to be maintained as a result of the postponement,

subject to paragraph (c), make an interim maintenance order which the maintenance court may make under section 16(1)(a).

- (c) When the maintenance court subsequently makes any order under section 16, the maintenance court may—

- (i) make an order confirming the interim maintenance order referred to in paragraph (b); or
- (ii) set aside such interim maintenance order or substitute it with any other order which the maintenance court may consider just in the circumstances.

*(Section 10(6) added by section 4 of Act 9 of 2015)*

## **11. Rights and privileges of witnesses**

- (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 he or she were attending criminal proceedings as a witness for the State.
- (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 prescribed allowances for subsistence and for travel to and from the court; and
  - (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's court, shall apply.

### ***Documentary evidence***

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

- (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.
- (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 he or she may at least seven days before the commencement of the enquiry object to the statement being submitted as evidence under this section.
  - (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
    - (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.
- (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 him or her 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.
- (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 in the maintenance court by the person who made the statement.

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

- (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.
- (2) For the purposes of subsection (1)-
  - (a) the record of any evidence or finding of fact in any proceedings in respect of the existing maintenance order; or

- (b) 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 was issued,

shall on its production at the enquiry be admissible as evidence.

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

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.

### **CHAPTER 4 MAINTENANCE AND OTHER ORDERS**

#### **15. Duty of parents to support their children**

- (1) Without derogating from the law relating to the liability of persons to support children who are unable to support themselves, a maintenance order for the maintenance of a child is directed at the enforcement of the common law duty of the child's parents 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.
- (2) The duty extends to such support as a child reasonably requires for his or her proper living and upbringing, and includes 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-
    - (i) that the duty of supporting a child is an obligation which the parents have incurred jointly;
    - (ii) that the parents' respective shares of such obligation are apportioned between them according to their respective means; and
    - (iii) that the duty exists, irrespective of whether a child is born in or out of wedlock or is born of a first or subsequent marriage.
  - (b) Any amount so determined shall be such amount as the maintenance court may consider fair in all the circumstances of the case.
- (4) As from the commencement of this Act, no provision of any law to the effect that any obligation incurred by a parent in respect of a child of a first marriage shall have priority over any obligation incurred by that parent in respect of any other child shall be of any force and effect.



## ***Orders***

### **16. Maintenance and ancillary orders**

- (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) make a maintenance 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, which manner may include that an arrangement be made with any financial institution for payment by way of any stop-order or similar facility at that financial institution, as may be specified in the order, of sums of money so specified, towards the maintenance of such other person, which order may include such order as the court may think fit 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;
    - (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 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; or
  - (b) in the case where a maintenance order is in force-
    - (i) make a maintenance order contemplated in paragraph (a)(i) in substitution of such maintenance order; or
    - (ii) discharge such maintenance order; or
  - (c) make no order.
- (2)
- (a) Any court—
    - (i) that has at any time, whether before or after the commencement of this Act made a maintenance order under subsection (1)(a)(i) or (b)(i);

- (ii) that makes such a maintenance order; or
- (iii) that convicts any person of an offence referred to in section 31(1),

shall, subject to paragraph (b)(i), make an order directing any person, including any administrator of a pension fund, who is obliged under any contract to pay any sums of money on a periodical basis to the person against whom the maintenance order in question has been or is made, to make on behalf of the latter person such periodical payments from moneys at present or in future owing or accruing to the latter person as may be required to be made in accordance with that maintenance order if that court is satisfied—

- (aa) where applicable, in the case of subparagraph (i), after hearing such evidence, either in writing or orally, as that court may consider necessary;
- (bb) where applicable, in the case of subparagraph (ii), after referring to the evidence adduced at the enquiry or the application for an order by default, as the case may be; or
- (cc) where applicable, in the case of subparagraph (iii), after referring to the evidence adduced at the trial; and
- (dd) where applicable, after hearing such evidence, either in writing or orally, of any person who is obliged under any contract to pay any sums of money on a periodical basis to the person against whom the maintenance order in question has been or is made,

that it is not impracticable in the circumstances of the case: Provided that nothing precludes the court from making an order in terms of this subsection if it is of the opinion that any further postponement of the enquiry in order to obtain the evidence of the person referred to in subparagraph (dd) will give rise to an unreasonable delay in the finalisation of the enquiry, to the detriment of the person or persons to be maintained.

*(Section 16(2)(a) substituted by section 17 of Act 55 of 2003)*

*(Section 16(2)(a) substituted by section 5 of Act 9 of 2015)*

- (b) A court-
  - (i) contemplated in paragraph (a)(i) shall only make an order referred to in paragraph (a) on application; and
  - (ii) that convicts any person of an offence referred to in section 31(1) shall make such order whether or not any penalty is imposed in respect of that offence or any order is made under section 40(1).

(3)

- (a) In order to give effect to an order referred to in subsection (2), the maintenance officer shall, within seven days after the day on which such order was made or whenever it is afterwards required, in the prescribed manner cause a notice, together with a copy of such order, to be served on any person who is obliged under any contract to pay any sums of money on a periodical basis to the person against whom the maintenance order has been made directing the former person to make the payments specified in the notice at the times and in the manner so specified.
  - (b) Whenever the person on whom the notice has been served, is for any reason discharged from the obligation of paying any such sums of money, he or she shall, within seven days after the day on which he or she is so discharged, give notice thereof in the prescribed manner to the maintenance officer of the court where the maintenance order in question was made.
  - (c) The person on whom the notice has been served shall give priority to the payments specified in that notice over any order of court requiring payments to be made from any other moneys due to the person against whom the maintenance order has been made.
- (4) If any person against whom a maintenance order has been made under subsection (1)(a)(i) or (b)(i) changes his or her place of residence or employment during the currency of the maintenance order, he or she shall, within seven days after the day of such change, give notice thereof in writing to the maintenance officer of the court where the maintenance order was made, and, if payment in terms of that order is to be made to any person, officer, organisation or institution, then also to the person, officer, organisation or institution to whom payment is to be made and shall state fully and clearly where his or her new place of residence or employment is situated.

## **17. Orders by consent**

- (1) Any order referred to in section 16(1)(a) or (b) may be made at the enquiry in the absence of one or both of the parties involved in the enquiry, if it is made in accordance with his or her or their consent in writing handed in by the maintenance officer at the enquiry.
- (2) A copy of an order made at the enquiry in the absence of one or both of the parties as provided for in subsection (1), shall be delivered or tendered to him or her or them, as the case may be, 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 or persons shall be deemed to be sufficient proof of the fact that he or she was or they were aware of the terms of the order in question.

*(Section 17 substituted by section 6 of Act 9 of 2015)*

## **18. Orders by default**

- (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 or has been made under section 16(1)(a) or (b) or that any person in whose favour such an order has been made—
  - (i) has knowledge of a subpoena issued under section 9; or
  - (ii) has appeared before the court and was warned by the court to appear at a later date, time and place before the court; and
- (b) that he or she has failed to appear before the maintenance court on the date and at the time and place—
  - (i) specified in such subpoena; or
  - (ii) in accordance with a warning referred to in paragraph (a)(ii),

the maintenance court may, on 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 his or her complaint as the maintenance court may consider necessary.

*(Section 18(1) substituted by section 7(a) of Act 9 of 2015)*

- (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 16(1)(a) or (b);
  - (b) make such other order as the maintenance court may consider appropriate in the circumstances of the case; or
  - (c) make no order.
- (3) A copy of an order made in respect of any person not present at the enquiry shall be delivered or tendered, as soon as may be practicable in the circumstances, to him or her 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 he or she was aware of the terms of the order in question.

*(Section 18(3) substituted by section 7(b) of Act 9 of 2015)*

- (4)
  - (a) The person in respect of 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.

*(Section 18(4)(a) substituted by section 7(c) of Act 9 of 2015)*

- (b) The application shall be made in the prescribed manner within 20 days after the day on which 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) Any person who wishes to make an application under paragraph (a) shall give notice of his or her intention to make the application to the person who lodged the complaint, which notice shall be served at least 14 days before the day on which the application is to be heard.
  - (d) The maintenance court may call upon-
    - (i) the person who has made the application to adduce such evidence, either in writing or orally, in support of his or her application as the maintenance court may consider necessary; or
    - (ii) the person who has lodged the complaint to adduce such evidence, either in writing or orally, in rebuttal of the application as the maintenance court may consider necessary.
- (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
  - (c) set aside such order by default, if it appears to the maintenance court that good cause exists for such setting aside, and convert the proceedings into a maintenance enquiry.
- (6)
- (a) Any person in whose favour an order by default has been made may consent in writing to the variation or setting aside of the order.
  - (b) The consent in writing shall be handed in at the hearing of the application for the variation or setting aside of the order by default.

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

A maintenance court that has made an order under section 16(1)(a)(i) or (b)(i) may, at the request of the maintenance officer-

- (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

- (b) if the maintenance court has made an order referred to in section 16(2), set aside that order,

and the maintenance officer shall, in the prescribed manner, inform the person required to pay, the person in whose favour the maintenance order has been made or the person on whom a notice referred to in section 16(3)(a) has been served, as the case may be, of any variation or setting aside of the order in question.

## **20. Orders as to costs of service and directions**

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

- (a) the service of process; and
- (b) obtaining the information contemplated in section 7(3).

*(Section 20 substituted by section 8 of Act 9 of 2015)*

## **21. Orders relating to scientific tests regarding paternity**

- (1) If the maintenance officer is of the opinion-

- (a) that the paternity of any child is in dispute;
- (b) that the mother of such child as well as the person who is allegedly the father of such child are 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
- (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,

the maintenance officer may at any time during the enquiry in question, but before the maintenance court makes any order under section 16, 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.
- (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
  - (b) make no order.
- (4) When the maintenance court subsequently makes any order under section 16, the maintenance court may-
- (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.

### ***Administrative provisions***

## **22. Notice of substitution or discharge of maintenance orders**

Whenever a maintenance court—

- (a) makes an order under section 16(1)(b) in substitution of a maintenance order; or
- (b) discharges a maintenance order under section 16(1)(b),

the maintenance order shall cease to be of force and effect only insofar as the court expressly, or by necessary implication, replaced that order or part thereof, 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 was issued or where the sentence concerned was imposed, as the case may be, who shall deal with the relevant records or registers in the prescribed manner.

*(Section 22 substituted by section 9 of Act 9 of 2015)*

## **23. Transfer of maintenance orders**

Prepared by:

- (1) Subject to the directions prescribed in connection with the transfer of maintenance orders, the maintenance officer shall, in writing, direct the clerk of the court where a maintenance order was 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 that person is, resides, carries on business or is employed.

*(Section 23(1) substituted by section 10 of Act 9 of 2015)*

- (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 16 by the maintenance court where the order has been so registered.

### ***Effect of orders, and appeals***

#### **24. Effect of orders of maintenance court**

- (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 16(1)(a)(ii), 20 or 21(4) shall have the effect of a civil judgment of the maintenance court concerned and shall be executed as provided in Chapter 5.

#### **25. Appeals against orders**

- (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 contained in any law, 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 17(1), any provisional order referred to in section 21(3)(a) or any order by default referred to in section 18(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 16 by virtue of the provisions of any other law.

## **CHAPTER 5**

### **CIVIL EXECUTION**

#### **26. Enforcement of maintenance or other orders**

- (1) Whenever any person-
  - (a) against whom any maintenance order has been made has failed to make any particular payment in accordance with that maintenance order; or  
*(Section 26(1)(a) substituted by section 18(a) of Act 55 of 2003)*
  - (b) against whom any order for the payment of a specified sum of money has been made under section 16(1)(a)(ii), 20 or 21(4) has failed to make such a payment,

such order shall be enforceable in respect of any amount which that person has so failed to pay, together with any interest thereon-

- (i) by execution against property as contemplated in section 27;
  - (ii) by the attachment of emoluments as contemplated in section 28; or
  - (iii) by the attachment of any debt as contemplated in section 30.
- (2)
  - (a) If any maintenance order or any order made under section 16(1)(a)(ii), 20 or 21(4) has remained unsatisfied for a period of ten days from the day on which the relevant amount became payable

or any such order was made, as the case may be, the person in whose favour any such order was made may apply to the maintenance court where that person is resident-

- (i) for the authorisation of the issue of a warrant of execution referred to in section 27(1);
- (ii) for an order for the attachment of emoluments referred to in section 28(1); or
- (iii) for an order for the attachment of any debt referred to in section 30(1).

*(Section 26(2)(a) substituted by section 18 of Act 42 of 2001)*

*(Section 26(2)(a) substituted by section 18(b) of Act 55 of 2003)*

(b) The application shall be made in the prescribed manner and shall be accompanied by-

- (i) a copy of the maintenance or other order in question; and
- (ii) a statement under oath or affirmation setting forth the amount which the person against whom such order was made has failed to pay.

(2A) On the granting of an application contemplated in subsection (2) by a maintenance court, the maintenance officer or clerk of the court at the request of the maintenance officer, shall, notwithstanding anything to the contrary contained in any law, in the prescribed manner, furnish the particulars of the person against whom a maintenance order has been made and a certified copy of the order of the court contemplated in subsection (2)(a)(i), (ii) or (iii), to any business which has as its object the granting of credit or is involved in the credit rating of persons.

*(Section 26(2A) inserted by section 11 of Act 9 of 2015, with effect from 5 January 2018)*

(3) A maintenance court shall not authorise the issue of a warrant of execution or make any order for the attachment of emoluments or any debt in order to satisfy a maintenance order-

- (a) if the payment of maintenance in accordance with that maintenance order has been suspended by an appeal against the order under section 25; or
- (b) if that maintenance court has made an order referred to in section 16(2).

(4) Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under any warrant of execution or any order issued or made under this Chapter in order to satisfy a maintenance order.

## **27. Warrants of execution**

- (1) The maintenance court may, on the application of a person referred to in section 26(2)(a), authorise the issue of a warrant of execution against the movable property of the person against whom the maintenance or other order in question was made and, if the movable property is insufficient to satisfy such order, then against the immovable property of the latter person to the amount necessary to cover the amount which the latter person has failed to pay, together with any interest thereon, as well as the costs of the execution.
- (2)
  - (a) A warrant of execution authorised under this section shall be-
    - (i) prepared in the prescribed manner by the person in whose favour the maintenance or other order in question was made;
    - (ii) issued in the prescribed manner by the clerk of the maintenance court; and
    - (iii) executed in the prescribed manner by the sheriff or maintenance investigator.
  - (b) The person in whose favour the maintenance or other order in question was made shall be assisted by the maintenance investigator or, in the absence of a maintenance investigator, by the maintenance officer in taking the prescribed steps to facilitate the execution of the warrant.
- (3) A maintenance court may, on application in the prescribed manner by a person against whom a warrant of execution has been issued under this section, set aside the warrant of execution if the maintenance court is satisfied that he or she has complied with the maintenance or other order in question.
- (4) A maintenance court may, on application in the prescribed manner by a person against whom a warrant of execution has been issued under this section-
  - (a) in summary manner enquire into the circumstances mentioned in subsection (5); and
  - (b) if the maintenance court so decides, suspend the warrant of execution and make an order-
    - (i) for the attachment of emoluments referred to in section 28(1); or
    - (ii) for the attachment of any debt referred to in section 30(1).
- (5) At the enquiry the maintenance court shall take into consideration-
  - (a) the existing and prospective means of the person against whom the warrant of execution has been issued;

- (b) the financial needs and obligations of, or in respect of, the person maintained by the person against whom the warrant of execution has been issued;
- (c) the conduct of the person against whom the warrant of execution has been issued in so far as it may be relevant concerning his or her failure to satisfy the maintenance or other order in question; and
- (d) the other circumstances which should, in the opinion of the court, be taken into consideration.

(6)

- (a) Any person who wishes to make an application under subsection (3) or (4) shall give notice in the prescribed manner of his or her intention to make the application to the person in whose favour the maintenance or other order in question was made, which notice shall be served at least 14 days before the day on which the application is to be heard.
- (b) The maintenance court may call upon-
  - (i) the person who has made the application to adduce such evidence, either in writing or orally, in support of his or her application as the maintenance court may consider necessary; or
  - (ii) the person in whose favour the maintenance or other order in question was made to adduce such evidence, either in writing or orally, in rebuttal of the application as the maintenance court may consider necessary.

## **28. Attachment of emoluments**

(1) A maintenance court may—

- (a) on the application of a person referred to in section 26(2)(a);
- (b) when such court suspends the warrant of execution under section 27(4)(b);
- (c) when such court suspends the order for the attachment of debt under section 30(1); and
- (d) where applicable, after hearing the evidence, either in writing or orally, of the employer of the person in question,

make an order for the attachment of any emoluments at present or in future owing or accruing to the person against whom the maintenance or other order in question was made to the amount necessary to cover the amount which the latter person has failed to pay, together with any interest thereon, as well as the costs of the attachment or execution, which order shall authorise any employer of the latter person

to make on behalf of the latter person such payments as may be specified in the order from the emoluments of the latter person until such amount, interest and costs have been paid in full: Provided that nothing precludes the court from making an order in terms of this subsection if it is of the opinion that any further postponement of the enquiry in order to obtain the evidence of the person referred to in paragraph (d) will give rise to an unreasonable delay in the finalisation of the enquiry, to the detriment of the person or persons to be maintained.

*(Section 28(1) substituted by section 12 of Act 9 of 2015)*

(2)

- (a) An order under this section may at any time, on good cause shown, be suspended, amended or rescinded by the maintenance court.
- (b) Any person who wishes to make an application for the suspension, amendment or rescission of an order under this section shall give notice in the prescribed manner of his or her intention to make the application to the person in whose favour that order was made, which notice shall be served at least 14 days before the day on which the application is to be heard.
- (c) The maintenance court may call upon-
  - (i) the person who has made the application to adduce such evidence, either in writing or orally, in support of his or her application as the maintenance court may consider necessary; or
  - (ii) the person in whose favour an order under this section was made to adduce such evidence, either in writing or orally, in rebuttal of the application as the maintenance court may consider necessary.

## **29. Notice relating to attachment of emoluments**

- (1) In order to give effect to an order for the attachment of emoluments referred to in section 28(1), the maintenance officer shall, within seven days after the day on which such order was made by the maintenance court or whenever it is afterwards required, in the prescribed manner cause a notice, together with a copy of such order, to be served on the employer concerned directing that employer to make the payments specified in the notice at the times and in the manner so specified.
- (2) Whenever any person to whom the notice relates leaves the service of the employer, that employer shall, within seven days after the day on which he or she so leaves the service, give notice thereof in the prescribed manner to the maintenance officer of the court where the order in question was made.
- (3) Any employer on whom a notice has been served for the purposes of satisfying a maintenance order shall give priority to the payments specified in that notice over any order of court requiring payments to be made from the emoluments due to the person against whom that maintenance order was made.

- (4) If any employer on whom a notice has been served for the purposes of satisfying a maintenance order has failed to make any particular payment in accordance with that notice, that maintenance order may be enforced against that employer in respect of any amount which that employer has so failed to pay, and the provisions of this Chapter shall, with the necessary changes, apply in respect of that employer, subject to that employer's right or the right of the person against whom that maintenance order was made to dispute the validity of the order for the attachment of emoluments referred to in section 28(1).

### **30. Attachment of debts**

- (1) A maintenance court may-

- (a) on the application of a person referred to in section 26(2)(a); or
- (b) when such court suspends the warrant of execution under section 27(4)(b),

make an order for the attachment of any debt at present or in future owing or accruing to the person against whom the maintenance or other order in question was made to the amount necessary to cover the amount which the latter person has failed to pay, together with any interest thereon, as well as the costs of the attachment or execution, which order shall direct the person who has incurred the obligation to pay the debt to make such payment as may be specified in that order within the time and in the manner so specified.

- (2)

- (a) An order under this section may at any time, on good cause shown, be suspended, amended or rescinded by the maintenance court.
- (b) Any person who wishes to make an application for the suspension, amendment or rescission of an order under this section shall give notice of his or her intention to make the application to the person in whose favour that order was made, which notice shall be served at least 14 days before the day on which the application is to be heard.
- (c) The maintenance court may call upon-
  - (i) the person who has made the application to adduce such evidence, either in writing or orally, in support of his or her application as the maintenance court may consider necessary; or
  - (ii) the person in whose favour an order under this section was made to adduce such evidence, either in writing or orally, in rebuttal of the application as the maintenance court may consider necessary.

- (3) An order made under subsection (1) may be enforced as if it were a civil judgment of the court.

## **CHAPTER 6**

### **OFFENCES AND PENALTIES**

#### **31. Offences relating to maintenance orders**

- (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 three years or to such imprisonment without the option of a fine.

*(Section 31(1) substituted by section 13(a) of Act 9 of 2015)*

- (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, he or she shall not merely on the grounds of such defence be entitled to an acquittal if it is proved that the failure was due to his or her unwillingness to work or misconduct.
- (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 was made, shall on its production be *prima facie* proof of the fact that the maintenance order was made against the person so prosecuted.
- (4) If a person has been convicted of an offence under this section, the maintenance officer shall, notwithstanding anything to the contrary contained in any law, in the prescribed manner, furnish that person's personal particulars to any business which has its object the granting of credit or is involved in the credit rating of persons.

*(Section 31(4) substituted by section 13(b) of Act 9 of 2015, with effect from 5 January 2018)*

#### **32. Offences relating to examination of persons by maintenance officer**

- (1) The provisions of sections 164(2), 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 required to appear before a magistrate under section 8, and the magistrate may, subject to subsection (2), exercise in respect of that 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) 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.

### **33. Offences relating to witnesses**

- (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) 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 that 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, wilfully 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.

### **34. Offences relating to false information**

- (1) 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 guilty of an offence and liable on conviction to the penalties which may in law be imposed for perjury.
- (2) Any person who is requested by a maintenance investigator or a maintenance officer to furnish information in the performance of the maintenance investigator's or maintenance officer's functions under this Act, and who wilfully furnishes information which he or she knows to be false or does not know or believe to be true, shall be guilty of an offence and liable on conviction to the penalties which may in law be imposed for perjury.

### **35. Offences relating to maintenance enquiries**

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 one year or to both a fine and such imprisonment.

*(Section 35 substituted by section 14 of Act 9 of 2015)*

### **36. Offences relating to publication of information in respect of children**

- (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 his or her 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.
- (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 under the age of 18 years would be just and in his or her interest, the Minister or such officer may in writing dispense with the prohibition contained in subsection (1) to the extent so specified.

### **37. Offences relating to disclosure**

Any person who, except for the purposes of performing his or her 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.

### **38. Offences relating to certain notices**

Any person who—

- (a) without sufficient cause, refuses or fails to make any payment in accordance with a notice under section 16(3)(a), 29(1) or 30(1); or
- (b) refuses or fails to give notice to a maintenance officer as required by section 16(3)(b) or 29(2),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

*(Section 38 substituted by section 15 of Act 9 of 2015)*

### **39. Offences relating to notice of change of address**

Any person who refuses or fails to give notice of any change of his or her place of residence or employment as required by section 16(4) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

*(Section 39 substituted by section 16 of Act 9 of 2015)*

### **39A. Offences relating to maintenance investigators**

Prepared by:

- (1) Any person who wilfully hinders or obstructs a maintenance investigator in the exercise of his or her powers or the performance of his or her duties shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.
- (2) Any person, other than a clerk of the court who is requested to assist a maintenance investigator in the performance of his or her functions, who has not been appointed as a maintenance investigator in terms of this Act and who—
  - (a) performs any function entrusted to a maintenance investigator under any law; or
  - (b) pretends to be or makes use of any name, title or addition or description creating the impression that he or she is a maintenance investigator or is recognised by law as such,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

*(Section 39A inserted by section 17 of Act 9 of 2015)*

## **CHAPTER 7**

### **ORDERS RELATING TO PROSECUTIONS**

#### **40. Recovery of arrear maintenance**

- (1) A court with civil jurisdiction convicting any person of an offence under section 31(1) 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 that offence, grant an order for the recovery from the convicted person of any amount he or she has 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.
- (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
  - (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-
  - (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 concerning his or her failure to pay in accordance with the maintenance order; and
  - (d) the other circumstances which should, in the opinion of the court, be taken into consideration.
- (4) Notwithstanding anything to the contrary contained in any law, 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.

#### **41. Conversion of criminal proceedings into maintenance enquiry**

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

- (a) an offence referred to in section 31(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 on good cause shown that it is desirable that a maintenance enquiry be held, the court may, of its own accord or at the request of the public prosecutor, convert the proceedings into such enquiry.

*(Section 41 substituted by section 18 of Act 9 of 2015)*

### **CHAPTER 8 GENERAL AND SUPPLEMENTARY PROVISIONS**

#### **42. Record of proceedings at maintenance enquiries**

- (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.

#### **43. Photographs of persons subject to maintenance orders**

- (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 dealt with by the maintenance officer in the prescribed manner.

#### **44. Regulations**

- (1) The Minister may make regulations-
  - (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;
  - (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 the execution of maintenance or other orders of maintenance courts;
  - (e) as to any matter required or permitted to be prescribed by regulation under this Act;
  - (f) in general, as to any matter which the Minister may consider necessary or expedient to prescribe in order that the objects of this Act may be achieved.
- (2) The Minister shall cause a copy of regulations made under this section to be tabled in Parliament as soon as possible after the publication thereof.
- (3) Regulations made under this section may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding imprisonment for a period of three years.
- (4) Any regulation made under this section which may result in financial expenditure for the State shall be made in consultation with the Minister of Finance.

#### **45. Repeal or amendment of laws, and savings**

- (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.
- (3) Notwithstanding the repeal of the Maintenance Act, 1963 (Act No. 23 of 1963), by subsection (1)-
  - (a) section 5(6) of the said Act shall continue to apply in respect of maintenance enquiries as if such repeal had not been effected; and

- (b) the rules which were made under the said Act and were in force immediately before the commencement of this Act and which are not inconsistent with this Act shall continue in force until they are repealed, withdrawn or amended by regulations made under section 44.

#### 46. Transitional arrangements in respect of execution of maintenance or other orders

Until such time as regulations relating to the execution of maintenance or other orders of maintenance courts made under section 44(1)(d) or (e) come into operation, the provisions-

- (a) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), relating to the execution of any judgment or order of a magistrate's court; or
- (b) of the rules made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), in respect thereof,

shall, in so far as those provisions are not inconsistent with this Act or are not otherwise clearly inappropriate, apply in respect of the execution of maintenance or other orders of maintenance courts as if those provisions had been made under the said section 44(1)(d) or (e), and any execution of any maintenance or other order of a maintenance court commenced under those provisions immediately before the coming into operation of the said regulations shall continue and be disposed of under those provisions.

#### 47. Short title and commencement

- (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 45)

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)] 1998</b>, no benefit provided for in the rules of a registered fund (including an annuity</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p>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	Maintenance Act, 1963	The repeal of the whole.
Act No. 80 of 1963	Reciprocal Enforcement of Maintenance Orders Act, 1963	<p>1. The amendment of section 1-</p> <p>(a) by the substitution for the definition of "maintenance court" of the following definition:</p> <p style="padding-left: 40px;">"maintenance court' <u>means any maintenance court as defined in section 1 of the Maintenance Act, 1998;</u>" and</p> <p>(b) by the substitution for the definition of "maintenance order" of the following definition:</p> <p style="padding-left: 40px;">"maintenance order' means any order, other than an order of affiliation, for the <b>[periodical]</b> payment, <u>including the periodical payment</u>, by any person of sums of money towards the maintenance of any other person whom he <u>or she</u> is liable to</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p>maintain in accordance with the law of the country in which the order is made;”.</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> <u>11, 33 and 35</u> of the Maintenance Act, <b>[1963]</b> <u>1998</u>, shall <i>mutatis mutandis</i> apply in respect of any enquiry held under this section.”.</p> <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 <b>[three]</b> <u>3</u> or confirmed under section <b>[four]</b> <u>4</u> shall for the purposes of sections <b>[eleven, twelve and fourteen]</b> <u>16(2) to (4), 31, 38 and 40</u> of the Maintenance Act, <b>[1963]</b> <u>1998</u>, be deemed to be a maintenance order made under that Act by the maintenance court where <b>[such]</b> <u>the</u> order has been so registered or confirmed: Provided that in a prosecution for a contravention of the said section <b>[eleven]</b> <u>31</u> in respect of an order registered under section <b>[three]</b> <u>3</u>, the provisions of section <b>[thirteen]</b> <u>41</u> 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>

No. and year of law	Short title	Extent of repeal or amendment
		<p>“(1) Notwithstanding anything to the contrary in any <b>[other]</b> law contained, an enquiry may be held under <b>[section five of]</b> the Maintenance Act, <b>[1963] 1998</b>, 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) <b>[of subsection (4)]</b> of section <b>[five] 16(1)</b> of the Maintenance Act, <b>[1963] 1998</b>, as the case may be, by the court which made <b>[such] the</b> provisional order.”.</p>
Act No. 19 of 1967	Maintenance Amendment Act, 1967	The repeal of the whole.
Act No. 39 of 1970	Maintenance Amendment Act, 1970	The repeal of the whole.
Act No. 79 of 1974	Members of the Coloured Persons Representative Council Pensions Act, 1974	<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 <b>[11(2)] 26 or 40</b> of the Maintenance Act, <b>[1963 (Act No. 23 of 1963)] 1998</b>, 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	<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 <b>[11(2)] 26 or 40</b> of the Maintenance Act, <b>[1963 (Act No. 23 of 1963)] 1998</b>, be liable to be attached or subject to any form of execution under a judgment or order of a court of law.”.</p>
Act No. 51 of 1977	Criminal Procedure Act, 1977	<p>The amendment of section 195 by the substitution for paragraph (c) of subsection (1) of the following paragraph:</p> <p>“(c) any contravention of any provision of section <b>[11(1)] 31(1)</b> of the Maintenance Act, <b>[1963 (Act 23 of 1963)] 1998</b>, or of such provision as applied by any other law;”.</p>
Act No. 29 of 1979	General Pensions Act, 1979	<p>The amendment of section 2 by the substitution for subsection (1) of the following subsection:</p> <p>“(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 <b>[11(2)] 26 or 40</b> of the Maintenance Act, <b>[1963 (Act No. 23 of 1963)] 1998</b>, 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. 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-</p> <p>(a) by the substitution for the definition of “maintenance court” of the following definition:</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p>“‘maintenance court’ <u>means any maintenance court as defined in section 1 of the Maintenance Act, 1998;</u>” and</p> <p>(b) by the substitution for the definition of “maintenance order” of the following definition:</p> <p>“‘maintenance order’ means any order for the <b>[periodical]</b> payment, <u>including the periodical payment</u>, by any person of sums of money towards the maintenance of any other person whom the first-mentioned person is liable to maintain in accordance with the law of the country in which the order is made;”.</p> <p>2. The amendment of section 5 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Notwithstanding anything to the contrary in any law contained, an enquiry may be held under <b>[section 5 of]</b> the Maintenance Act, <b>[1963 (Act No. 23 of 1963)]</b> <u>1998</u>, 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:</p> <p>“(6) The provisions of sections <b>[8, 9 and 10]</b> <u>11, 33 and 35</u> of the Maintenance Act, <b>[1963]</b> <u>1998</u>, shall apply <i>mutatis mutandis</i> in respect of any enquiry held under this section.”.</p> <p>4. The substitution for section 7 of the following section:</p>

No. and year of law	Short title	Extent of repeal or amendment
		<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]</b> <u>16(2) to (4), 31, 38 and 40</u> of the Maintenance Act, <b>[1963]</b> <u>1998</u>, be deemed to be a maintenance order made under section <b>[5(4)]</b> <u>16(1)</u> of the said Act by the maintenance court where <b>[such]</b> <u>the</u> order has been so registered or confirmed: Provided that in a prosecution for a contravention of the said section <b>[11]</b> <u>31</u> in respect of an order registered under section 4 of this Act, the provisions of section <b>[13]</b> <u>41</u> of the said Act shall not apply.”.</p> <p>5. 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)]</b> <u>16(2)</u> of the Maintenance Act, <b>[1963]</b> <u>1998</u>, 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 designed 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</p>

No. and year of law	Short title	Extent of repeal or amendment
		<p>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]</b> <u>sections 16(3)(b) and (c) and 38</u> of the Maintenance Act, <b>[1963]</b> <u>1998</u>, be deemed to be an order made <b>[or]</b> <u>under subsection (2) of section 16 of that Act and</u> a notice issued under <b>[section 12(1) of that Act]</b> <u>subsection (3)(a) of the said section 16, respectively.</u>”.</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]</b> <u>1998</u>, shall, in so far as they can be applied, apply <i>mutatis mutandis</i> to enquiries under section 6(4).”.</p>
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>

No. and year of law	Short title	Extent of repeal or amendment
		<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)] 16(1)(a)(i)</b> or <b>[5(4)](b)(i)</b> of the Maintenance Act <b>[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)] 26 or 40</b> of the Maintenance Act, <b>[1963 (Act No. 23 of 1963)] 1998</b>, and section 7(8) of the Divorce Act, 1979 (Act No. 70</p>

No. and year of law	Short title	Extent of repeal or amendment
		of 1979), be liable to be attached or subjected to any form of execution under a judgment or order of a court of law.”.
Act No. 104 of 1996	Judicial Matters Amendment Act, 1996	The repeal of section 9.