

**DRAFT 1**

**PURSUANT TO PORTFOLIO COMMITTEE DISCUSSIONS ON 25 FEBRUARY 2015,  
17 AND 18 MARCH 2015**

***POSSIBLE INSERTIONS ARE INDICATED BY WAY OF DOUBLE UNDERLINING***

***POSSIBLE DELETIONS ARE INDICATED BY WAY OF STRIKETHROUGH***

**REPUBLIC OF SOUTH AFRICA**

**MAINTENANCE AMENDMENT BILL**

*(As amended by the Portfolio Committee on Justice and Correctional Services)*

*(The English text is the official text of the Bill)*

**(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)**

**[B16—2014]**

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**GENERAL EXPLANATORY NOTE:**

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

           Words underlined with a solid line indicate insertions in existing enactments

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**BILL**

To amend the Maintenance Act, 1998, so as to further regulate the lodging of complaints relating to maintenance and the jurisdiction of maintenance courts; to further regulate the investigation of maintenance complaints; to further regulate the securing of witnesses for purposes of a maintenance enquiry; to further regulate maintenance enquiries in order to make provision for the granting of interim maintenance orders; to further regulate the making of maintenance orders; to further regulate the making of maintenance orders by consent; to further regulate the circumstances in which maintenance orders may be granted by default; to further regulate the granting of cost orders; to regulate the effect a maintenance order made by a maintenance court has on a maintenance order made by another court; to further regulate the transfer of maintenance orders; to regulate the reporting of a maintenance defaulter to any business which has as its object the granting of credit or is involved in the credit rating of persons; to further regulate the attachment of emoluments; to increase the penalties for certain offences; to create certain new offences; to further regulate the conversion of criminal proceedings into maintenance enquiries; and to provide for matters connected therewith.

**PARLIAMENT** of the Republic of South Africa enacts as follows:—

**Substitution of section 6 of Act 99 of 1998**

1. The following section is hereby substituted for section 6 of the Maintenance Act, 1998 (hereafter referred to as the principal Act):

**“Complaints relating to maintenance**

6. (1) Whenever a complaint to the effect—
- (a) that any person legally liable to maintain any other person fails to maintain the latter person; **[or]**
  - (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 which has not been made an order of court in terms of this Act, or any other law in which respect there is no existing maintenance order,<sup>1</sup>

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."

#### **Amendment of section 7 of Act 99 of 1998**

2. Section 7 of the principal Act is hereby amended by the addition of the following subsection:

"(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 not borne fruit failed to locate the whereabouts of the person<sup>2</sup>, the maintenance officer may apply to the maintenance court, in the prescribed manner and using the prescribed form, 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 not borne fruit

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<sup>1</sup>Reworded in order to accommodate the concerns raised by Mr Van Niekerk .

<sup>2</sup> Western Cape Social Development suggested that the wording be reconsidered.

failed to locate the whereabouts of the person<sup>3</sup>, 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 by means of an affidavit in the prescribed form, with the prescribed 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 by means of an affidavit in the prescribed form, apply to the maintenance court for –

(i) an extension of the period referred to in paragraph (d) for a further period 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 form and 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

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<sup>3</sup> The Western Cape Social Development Department suggested that the wording be reconsidered.

of section 4(8) of the Protection from Harassment Act, 2011, apply in the case of information required in terms of this subsection and are, subject to section 20, payable by the person lodging the complaint referred to in paragraph (a).

(i) 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."

### **Amendment of section 9 of Act 99 of 1998**

3. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(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."

### **Amendment of section 10 of Act 99 of 1998 as amended by section 16 of Act 55 of 2003**

4. Section 10 of the principal Act is hereby amended by the addition of the following subsection:

"(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 postponement of the enquiry is necessary and if the court is satisfied that—

- (i) there is prima facie evidence prior to such postponement 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) or (b)<sup>4</sup>.

(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, taking into account the conduct of the persons involved in the enquiry in so far as it may be relevant."

**Amendment of section 16 of Act 99 of 1998 as amended by section 17 of Act 55 of 2003**

5. Section 16 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(2)<sup>5</sup> (a) [Any] Any A maintenance court or any other court having jurisdiction—

- (i) in the case of a Division of the High Court, a Divorce Court established under section 10 of the repealed Administration Amendment Act, 1929 (Act No. 9 of 1929), a Regional Court or a maintenance court that has at any time, whether before or after the commencement of this Act made a

<sup>4</sup> Reference to section 16(1)(b) deleted to make it clear that interim maintenance orders under this clause is in respect of cases where there is no maintenance order in existence.

<sup>5</sup> The current wording is restored as suggested by Mr Van Niekerk.

maintenance order ~~[under subsection (1)(a)(i) or (b)(i)]~~ under subsection (1)(a)(i) or (b)(i);

(ii) that makes ~~[such]~~ 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 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,<sup>6</sup> 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 sum 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 the 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<sup>7</sup>”.

### Substitution of section 17 of Act 99 of 1998

<sup>6</sup> The wording is adapted in order to cater for cases where there is and there is no need for evidence to be adduced in a particular case.

<sup>7</sup> The proviso is added in order to address the concern raised by Mr Van Niekerk.

6. The following section is hereby substituted for section 17 of the principal Act:

**"Orders by consent**

17. (1) Any order referred to in section 16(1)(a) or (b) may be made **[against any person not present]** 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 **[against any person not present]** 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."

**Amendment of section 18 of Act 99 of 1998**

7. Section 18 of the principal Act is hereby amended —

(a) by the substitution for subsection (1) of the following subsection:

"(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. "; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) A copy of an order made **[against]** 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."; and

(c) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) The person **[against]** 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.".

#### **Substitution of section 20 of Act 99 of 1998**

8. The following section is hereby substituted for section 20 of the principal Act:

#### **"Orders as to costs of service and directions**

20. 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)."

#### **Substitution of section 22 of Act 99 of 1998**

9. The following section is hereby substituted for section 22 of the principal Act:

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

**22.** 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.”.

**Amendment of section 23 of Act 99 of 1998**

**10.** Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the directions prescribed in connection with the transfer of maintenance orders, the maintenance officer **[may] 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.”.

**Amendment of section 26 of Act 99 of 1998 as amended by section 18 of Act 42 of 2001 and section 18 of Act 55 of 2003**

**11.** Section 26 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) On receipt the granting<sup>8</sup> of an application contemplated in subsection (2) by a maintenance court,<sup>9</sup> the maintenance officer or clerk of the court at the request of the maintenance officer<sup>10</sup>, shall, notwithstanding anything to the contrary contained in any law, in the prescribed circumstances and in the prescribed manner, furnish the particulars of the person against whom a maintenance order has been made and a certified copy of the relevant<sup>11</sup> order of the court contemplated in subsection 2(a)(i), (ii) or (iii)<sup>12</sup> to any business which has as its object the granting of credit or is involved in the credit rating of persons.”

#### **Amendment of section 28 of Act 99 of 1998**

12. Section 28 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A maintenance court may —

- (a) on the application of a person referred in section 26(2)(a); [or]
- (b) when such court suspends the warrant of execution under section 27 (4)(b)[.]; or
- (c) when such court suspends the order for the attachment of debt under section 30(1), and
- (d) where applicable<sup>13</sup>, 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

<sup>8</sup> The wording is adapted as suggested by Mr Van Niekerk as a safeguard, in order to make it clear that the name of the defaulters of maintenance payments is submitted to an institution dealing with credit rating of persons after the court has granted the order in terms of section 26(2) against that person.

<sup>9</sup> the words are inserted in order to make it clear that the court has a role to play in the granting of an order section 26(2).

<sup>10</sup> The words are inserted at the recommendations of Mr Van Niekerk to allow clerks of the court to furnish the particulars of the defaulter to credit bureau, as is the case in civil cases.

<sup>11</sup> Deleted to accommodate the concern raised by Mr Van Niekerk.

<sup>12</sup> the words are inserted in order to identify the specific orders because reference to relevant orders has been deleted in line with the suggestions of Mr Van Niekerk.

<sup>13</sup> Adapted in order to cater for cases where there is no need for evidence to be adduced in a matter.

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 the 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 .".<sup>14</sup>

#### **Amendment of section 31 of Act 99 of 1998**

13. Section 31 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

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

(b) by the substitution for subsection (4) of the following subsection:

"(4) If a person has been convicted of an offence under this section, the maintenance officer **[may]** shall, notwithstanding anything to the contrary contained in any law, in the prescribed circumstances and 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."

#### **Substitution of section 35 of Act 99 of 1998**

14. The following section is hereby substituted for section 35 of the principal Act:

##### **"Offences relating to maintenance enquiries**

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<sup>14</sup> The proviso is added in order to address the situation where an employer of a defaulter fails to attend court.

35. Any person who wilfully interrupts the proceedings at a maintenance enquiry or who wilfully hinders or obstructs the maintenance court in the performance of the maintenance court's functions at the enquiry shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding ~~[six months]~~ one year or to both ~~[such]~~ a fine and such imprisonment."

#### **Substitution of section 38 of Act 99 of 1998**

15. The following section is hereby substituted for section 38 of the principal Act:

##### **"Offences relating to certain notices**

38. 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 ~~[six months]~~ two years."

#### **Substitution of section 39 of Act 99 of 1998**

16. The following section is hereby substituted for section 39 of the principal Act:

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

39. 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 ~~[six months]~~ one year."

### Insertion of section 39A in Act 99 of 1998

17. The following sections are hereby inserted in the principal Act after section 39:

#### "Offences relating to maintenance investigators

39A. (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<sup>15</sup>, 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 by or under any law;

(b) holds himself or herself out as a maintenance investigator; or

(c) 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."

### Substitution of section 41 of Act 99 of 1998

18. The following section is hereby substituted for section 41 of the principal Act:

#### "Conversion of criminal proceedings into maintenance enquiry

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<sup>15</sup> The wording is adapted in line with the proposals of Mr Van Niekerk.

41. 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 **[to the court]** on good cause shown that it is desirable that a maintenance enquiry be held, **[or when the public prosecutor so requests, the court shall]** the court may, of its own accord or at the request of the public prosecutor, convert the proceedings into such enquiry."

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

19. This Act is called the Maintenance Amendment Act, 2014, and sections 2, 11 and 13(b) come into operation on a date fixed by the President by proclamation in the *Gazette*.

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