

eSwatini

## Maintenance Act, 1970

Act 35 of 1970

Legislation as at 1 December 1998

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## eSwatini

# Maintenance Act, 1970

## Act 35 of 1970

Assented to on 13 July 1970

Commenced on 17 July 1970

*[This is the version of this document at 1 December 1998.]*

**An Act to provide for the appointment of maintenance officers, the investigation of complaints relating to maintenance, the issue of maintenance orders by the courts, the imposition of penalties for failure to comply with such orders and matters incidental thereto.**

### 1. Short title

This Act may be cited as the Maintenance Act, 1970.

### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Court**” means a Magistrate’s Court of the First Class presided over by a judicial officer nominated by the Chief Justice by notice in the *Gazette* to preside over such courts for the purposes of this Act;

“**employer**” includes the Government of Swaziland;

“**husband**” and “**wife**” include persons married to each other in accordance with Swazi law and custom;

“**maintenance officer**” means a person designated as such by the Minister in terms of [section 4](#);

“**maintenance order**” means an order for the periodical payment of sums of money towards the maintenance of any person made by any court (including the High Court) in Swaziland and except for the purposes of [section 11](#), includes any sentence suspended on condition that the convicted person makes periodical payments of sums of money towards the maintenance of any other person; and

“**Minister**” means the Minister for Home Affairs.

### 3. Maintenance courts

Every Court shall within the area and the extent of its jurisdiction be a maintenance court for the purposes of this Act.

### 4. Maintenance officers

- (1) Subject to the laws governing the public service the Minister shall designate public officers to appear in Courts in proceedings under this Act and to perform the functions and duties assigned to maintenance officers under this Act or any regulations made under it.
- (2) Until the Minister designate a public servant to be a maintenance officer under sub-section (1), a person delegated by the Attorney-General to conduct prosecutions in any Subordinate Court shall be deemed to have been appointed a maintenance officer.
- (3) A maintenance officer shall, in the performance of his functions as such, be subject to the directions of the Attorney-General.

## 5. Maintenance officer to investigate complaints

- (1) Whenever a complaint on oath is made to a maintenance officer to the effect that—
  - (a) any person legally liable to maintain any other person fails to maintain such other person; or
  - (b) sufficient cause exists for the substitution or discharge of a maintenance order;the maintenance officer may, after investigating such complaint institute an inquiry in a Court within the area of jurisdiction of which the person to be maintained, or in whose custody such person is, resides, for the purpose of enquiring into the provision of maintenance in respect of the person concerned, and may for that purpose cause any person, including any person legally liable to maintain any other person, to be summoned to appear before such Court and give evidence or produce any book, document or statement including, in the case of a person so liable, a statement giving full particulars of his earnings signed by his employer.
- (2) A person to be summoned as a witness shall be summoned in the manner in which a person may be subpoenaed to appear before a subordinate court in a criminal trial.
- (3) A person who, having been summoned to attend an inquiry or called upon to produce any book, document or statement as provided for in sub-section (1) fails, without reasonable cause, to attend at the inquiry at the time and place specified or to produce such book, document or statement, or who fails to remain in attendance until the conclusion of the inquiry or until he is excused by the court from attendance, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty emalangenani or to imprisonment for a period not exceeding three months.
- (4) A person who gives false evidence at an inquiry shall be guilty of an offence and subject to the same penalties as if he had been found guilty of the crime of perjury.

## 6. Inquiry by maintenance court

- (1) The Court holding an inquiry shall administer an oath or affirmation to a witness appearing before it and shall record his evidence, or cause it to be recorded.
- (2) No person whose presence is not necessary shall be present at an inquiry, except with the permission of the Court.
- (3) After considering the evidence adduced at the inquiry the Court may—
  - (a) in the case where no maintenance order is in force, make an order against any person proved to be legally liable and financially able to maintain any other person for the payment during such period and at such times and to such person, officer, organization or institution as may be specified in the order, of sums of money so specified, towards the maintenance of such other person;
  - (b) in the case where a maintenance order is in force, make an order contemplated in paragraph (a) in substitution of such maintenance order or discharge such maintenance order;
  - (c) make no order.
- (4) A Court making an order under sub-section (3) may, at the request of the maintenance officer, vary such order by designating as the officer, organization or institution to whom or to which payment is to be made, any other officer, organization or institution, and the maintenance officer shall in the prescribed manner inform the person required to make such payment of any variation in the order.
- (5) An order under this section may be made against any person not present at the inquiry, if it is made in accordance with his written consent, produced at the inquiry by the maintenance officer.
- (6) If the person alleged to be legally liable to maintain another person has been summoned to attend an inquiry in terms of this Act and does not, without reasonable cause, attend at the time and place

specified, the Court may proceed with the inquiry in his absence if it is satisfied that the summons was served on him within a reasonable time before the hearing or adjourned hearing.

- (7) Subject to such rules as may be made under this Act, the Court holding an inquiry may take into consideration any evidence in any proceedings in respect of an existing maintenance order or accept as *prima facie* any finding of fact in such proceedings.
- (8) A copy of an order under this section made against a person in his absence shall be delivered or tendered to him by any maintenance officer or any police officer and the return of such officer showing that such copy was delivered or tendered to such person shall be deemed sufficient proof that such person was aware of the terms of such order.
- (9) Such records of the proceedings at any inquiry shall be kept and shall be accessible to such persons and upon such conditions as may be prescribed.
- (10) No person shall publish in any manner whatsoever the name or address of any person under the age of eighteen years who is or was concerned in any proceedings at an inquiry under this section or the name of his school or any other information likely to reveal his identity:

Provided that if the Minister or the officer presiding at the inquiry is of the opinion that such publication would be just and in the interest of any particular person, he may in writing dispense with the prohibition contained in this sub-section to such an extent as he may specify.

- (11) A person who contravenes the provisions of sub-section (10) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred emalangeni or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

## 7. Effect of maintenance order on existing orders

Whenever a Court makes an order under [section 6](#) in substitution of or discharging a maintenance order, such maintenance order shall cease to be of force and effect and the maintenance officer shall forthwith give notice of the making of the order to the registrar or clerk of the court of the court which made the said maintenance order or which imposed the sentence concerned, as the case may be, who shall record the order in the relative records or registers.

## 8. Appeal against maintenance order

Any person aggrieved by an order made under [section 6\(3\)](#) shall have the same rights of appeal, *mutatis mutandis*, as are allowed in respect of judgments or decisions of subordinate courts.

## 9. Rights and privileges of witnesses

- (1) Any person other than a person against whom a maintenance order is made, attending an inquiry under this Act as a witness shall be entitled to an allowance as if he were attending a criminal proceeding as a witness for the Crown.
- (2) The officer presiding at such an inquiry may direct that any person against whom a maintenance order is made shall be paid such allowance as may be paid to a witness for the accused in criminal proceedings.
- (3) In connexion with the giving of evidence or the production of any book, document or statement at such an inquiry, the law relating to the privilege as applicable to a witness giving evidence or summoned to produce a book, document or statement in criminal proceedings in a subordinate court shall apply.
- (4) No person shall at such inquiry be compelled to give evidence relating to his liability to maintain any other person.

## 10. Hindering or obstructing an inquiry

Any person who wilfully interrupts the proceedings at an inquiry under this Act or who wilfully hinders or obstructs the Court in the performance of its functions at any such inquiry shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

## 11. Penalties for failure to comply with maintenance order

- (1) Subject to the provisions of sub-section (3) a person who fails to comply with any of the terms of a maintenance order issued against him shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni or to imprisonment for a period not exceeding one year or to both, or to such imprisonment without the option of a fine, and the court convicting him may in addition to or in lieu of any penalty, grant an order for the recovery from him of any amount he has failed to pay in terms of such maintenance order, whereupon the order so granted shall have the effect of a civil judgment of that court and shall be executed in the prescribed manner.
- (2) Notwithstanding anything to the contrary in any law contained, any pension, annuity, gratuity, or compassionate allowance or other similar benefit shall be liable to be attached or subjected to execution under an order having the effect of a civil judgment under sub-section (1).
- (3) Proof that any failure which is the subject of a charge under sub-section (1) was due to lack of means, and that such lack of means was not due to unwillingness to work or misconduct on the part of the person charged, shall be a good defence to any such charge.
- (4) A Subordinate Court of the First Class shall have jurisdiction to impose summarily the full penalty for any offence under sub-section (1).
- (5) A copy of a maintenance order, purporting to have been certified by the maintenance officer or by the registrar or clerk of the court or by any other officer having the custody of the records of the court which made the maintenance order shall, if the name mentioned therein of the person against whom the maintenance order has been made corresponds substantially to that of the person charged with an offence under sub-section (1), on its mere production be *prima facie* proof of the fact that such maintenance order has been made against the last-mentioned person.

## 12. Court may authorize payment of maintenance monies by employer on behalf of employee

- (1) A court which has convicted a person of any offence under [section 11](#)(1) may, whether or not any penalty is imposed or any order is granted under that sub-section, make an order authorizing any employer of such person to make on behalf of such person any payments required to be made in terms of the maintenance order concerned from the salary, wages or any other form of remuneration or allowance of such person, whereupon the maintenance officer of the Court which made such maintenance order may, from time to time in the prescribed manner, cause a notice to be served on any such employer requiring him so to make any such payments at such times and in such manner as may be specified in such notice at the office of the Clerk of the Court nearest to the place of employment and not more than once a month.
- (2) A notice under this section shall have precedence over any order of court requiring payments to be made from the salary, wages, remuneration or allowance aforesaid.
- (3) A person who fails to comply with any such notice shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni or to imprisonment for a period not exceeding six months.

### 13. Person against whom maintenance order has been made to give notice of change of address

- (1) A person against whom a maintenance order has been made who changes the place of his residence or employment during the currency of the order shall forthwith give notice thereof in writing to the person, officer, organization or institution to whom or to which payment is to be made in terms of the order, and shall state fully and clearly where the new place of his residence or employment is situate.
- (2) A person who fails to comply with the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeneni or to imprisonment for a period not exceeding six months.

### 14. Rules and regulations

- (1) The Chief Justice may by notice in the *Gazette* make rules prescribing the procedure and rules of evidence to be followed at or in connexion with an inquiry under this Act.
- (2) The Minister may by notice in the *Gazette* make regulations as to any other matter which may in terms of this Act be prescribed.

### 15. Savings

- (1) Nothing in this Act shall derogate from the right of a person to institute proceedings against another person in a civil court for maintenance, or to enforce an order for maintenance granted other than under this Act by means of the execution of a judgment for such maintenance in his favour or by the institution of proceedings for contempt of court against such person or by any other civil process allowable by law.
- (2) In any proceedings under this Act or any civil proceedings by a married woman for the payment of maintenance by her husband she shall be deemed to have been unlawfully deserted by him when she is living apart from him because of repeated assaults or other acts of cruelty or because he is an habitual drunkard or because of his refusal or wilful neglect to supply her and his children by her with food and other necessities of life.
- (3) No order for the payment of any sum for maintenance for a wife who is proved to have committed adultery shall be made against her husband unless such adultery has been condoned or connived at by him, or unless he has also committed adultery and the Court by reason of the circumstances surrounding her adultery condones the wife's adultery.

### 16. Reciprocity with other countries

Whenever the Minister is advised that in any other country there is in force a law—

- (a) recognizing the orders of a Court under this Act; and
- (b) providing for their enforcement against the defendant in the jurisdiction of that other country;

the Minister may, by notice published in the *Gazette*, make corresponding and reciprocal regulations providing for the recognition and enforcement, in Swaziland, of orders made in that other country under a law similar to this Act.