

PART XXIV
MAINTENANCE OF CHILDREN

Duty to maintain a child.

212. A parent or any other person who is legally liable to maintain a child or contribute towards the maintenance of the child is under a duty to supply the necessities of food, clothing, health, life, education and reasonable shelter for the child.

Application for maintenance order.

213. (1) The following persons may apply to the Children's Court for maintenance order of a child -

- (a) a child;
- (b) a parent of a child;
- (c) a guardian of the child;
- (d) relatives of the child;
- (e) a chief;
- (f) a social worker; and
- (g) any other person.

(2) The application for maintenance may be made against any person who is liable to maintain a child or contribute towards the maintenance of the child.

Consideration for maintenance orders.

214. The Children's Court shall consider the following when making a maintenance order -

- (a) the source income and wealth of both parents of the child or of the person legally liable to maintain the child;
- (b) any impairment of the earning capacity of the person with a duty to maintain the child;
- (c) the financial responsibility of the person with respect to the maintenance of other children;
- (d) the cost of living in the area where the child resides;
- (e) the rights of the child under this Act; and
- (f) any other matter which the Children's Court considers relevant.

Request for social enquiry report.

215. The Children's Court may request that a social worker prepares a social enquiry report on the issue of maintenance and submit it to the Children's Court for consideration before the Children's Court makes a maintenance order.

Maintenance order.

216. (1) The Children's Court may award maintenance to the child whether the parents are married or not and the maintenance order shall include the following -

- (a) medical expenses for the child;
- (b) a periodic allowance for the maintenance of the child; and
- (c) the payment of a reasonable sum to be determined by the Children's Court for the education of the child.

(2) The Children's Court may order a periodic payment or lump sum payment for the maintenance of a child and the emoluments, property or debts of the person liable may be attached.

(3) The attachment order shall be applicable in all cases of failure to pay maintenance.

(4) A maintenance order may be directed to an employer of a person liable to pay maintenance to deduct the sum of maintenance money every time payment of the salary or other earnings is made.

(5) When considering an application for maintenance, the Children's Court may make a maintenance order which it considers reasonable for any child in the household.

(6) The Children's Court may make an order for arrears of maintenance against any person liable to pay maintenance.

Persons entitled to maintenance order.

217. (1) Any person who has custody of a child who is the subject of a maintenance order is entitled to receive and administer on behalf of the child the maintenance order made by the Children's Court.

(2) If a parent, guardian or whoever has custody of the child ceases to be a fit person, the Children's Court of the area where the child is resident may appoint another person to have custody of the child and administer the maintenance order and that person shall act as if originally appointed by the Children's Court.

Duration of order.

218. (1) A maintenance order issued by the Children's Court shall expire when the child attains the age of eighteen years or dies before that age.

(2) A maintenance order shall lapse before the child attains the age of eighteen years if before that age the child is gainfully employed as referred to under section 234.

Continuation of maintenance orders.

219. (1) Notwithstanding the provisions of section 217, the Children's Court may continue a maintenance order after a child has attained eighteen years if the child is engaged in a course of secondary education or training after that age.

(2) An application made under this section may be brought by a parent of the child, any person who has custody of the child or the child himself.

Variation or discharge of orders.

220. A Children's Court may, if satisfied, vary or discharge a maintenance order on the application of a parent or guardian, or the person who has custody of the child or the young person himself or any other person legally liable to maintain the child.

Enforcement of maintenance orders.

221. (1) Maintenance order shall be enforced thirty days after the order is made.

(2) Whenever any person against whom a maintenance order has been made under this Act has failed to make any particular payment in accordance with that maintenance order, such order shall be enforceable in respect of any amount which that person has so failed to pay together with any interest thereon-

- (a) by execution against property;
- (b) by the attachment of emoluments; or
- (c) by the attachment of any debt.

(3) If any maintenance order made under this Act has remained unsatisfied for a period of ten days from the day on which the relevant amount became payable, the person in whose favour any such order was made may apply to the Children's Court where the order was made-

- (a) for the authorisation of the issue of a warrant of execution referred to in paragraph (a) of subsection (2); or
- (b) for an order for the attachment of emoluments referred to in paragraph (b) of subsection (1); or
- (c) for an order for the attachment of any debt referred to paragraph (c) of subsection (1).

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

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

(5) The Children's 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 if the payment of maintenance in accordance with that maintenance order has been suspended by an appeal against the order under section this Act.

(6) Notwithstanding anything to the contrary contained in any law, any pension, annuity, gratuity or other 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 Act in order to satisfy a maintenance order.

Warrants of execution.

222. (1) The Children's Court may, on the application of a person referred to in section 221 (2)(a), authorize the issue of a warrant of execution against the movable property of the person against whom the maintenance was made and, if the movable property is insufficient to satisfy such order, then against the immovable property of the person liable to the amount necessary to cover the amount which the person liable has failed to pay, together with any interest thereon as well as the costs of the execution.

(2) A warrant of execution authorised under this section shall be-

- (a) issued in the prescribed manner by the clerk of the Children's Court; and
- (b) executed in the prescribed manner by the sheriff or other officer of the Children's Court.

(3) The Children's 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 Children's Court is satisfied that he has complied with the maintenance.

(4) The Children's 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 Children's Court so decides, suspend the warrant of execution and make an order-
 - (i) for the attachment of emoluments referred to in section (1); or
 - (ii) for the attachment of any debt referred to in section (1).

(5) At the enquiry the Children's 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 failure to satisfy the maintenance order; and
- (d) the other circumstances which should, in the opinion of the Children's Court, be taken into consideration.

(6) Any person who wishes to make an application under subsection (3) or (4) shall give notice in the prescribed manner of his 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.

(7) The Children's Court may call upon-

- (a) the person who has made the application to adduce such evidence, either in writing or orally, in support of his application as the Children's Court may consider necessary; or
- (b) the person in whose favour the maintenance was made to adduce such evidence, either in writing or orally, in rebuttal of the application as the Children's Court may consider necessary.

Attachment of emoluments.

223. (1) The Children's Court may-

- (a) on the application of a person referred in section (4)(b); or
- (b) when such court suspends the warrant of execution under section (4) (b), make an order for the attachment of any emoluments at present or in future owing or accruing to the person against whom the maintenance was made to the amount necessary to cover the amount which person liable 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 person liable to make on behalf of the person liable such payments as may be specified in the order from the emoluments of the person liable until such amount, interest and costs have been paid in full.

(2) An order under this section may at any time, on good cause shown, be suspended, amended or rescinded by the Children's Court.

(3) 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 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.

(4) The Children's Court may call upon-

- (a) the person who has made the application to adduce such evidence, either in writing or orally, in support of his application as the Children's Court may consider necessary; or
- (b) 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 Children's Court may consider necessary.

Notice relating to attachment of emoluments.

224. (1) In order to give effect to an order for the attachment of emoluments referred to in section 223(1), the clerk of the Children's Court shall, within seven days after the day on which such order was made by the Children's 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 the person leaves the service, give notice thereof in the prescribed manner to the clerk of the Children's 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 Part shall, with the necessary changes, apply in respect of that employer, subject to that employers 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 223(1).

Attachment of debts.

225. (1) The Children's Court may-

- (a) on the application of a person referred to in section 221 (2)(c), or
- (b) when such court suspends the warrant of execution under section 222(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 was made to the amount necessary to cover the amount which the person liable 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 maybe 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 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 Children's 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 application as the Children's 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 Children's Court may consider necessary.

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

Non-custodial parent to have access to child.

226. A non-custodial parent in respect of whom an application is made to the Children's Court for an order of maintenance under this Part shall have access to the child who is the subject of the maintenance order.

Offence.

227. Any person who fails to supply the necessities of food, clothing, health, life, basic education and reasonable shelter for a child when legally liable to do so, commits an offence and -

- (a) on first conviction is liable to pay the maintenance due;
- (b) on the second or every subsequent conviction for continuous refusal to maintain a child is liable to a sentence to be determined by the Children's Court.

Joint maintenance of child.

228. Unless the Children's Court otherwise directs, and subject to any financial contribution ordered to be made by any other person, the following presumptions shall apply with regard to the maintenance of a child -

- (a) where the parents of a child were married to each other at the time of the birth of the child and are both living, the duty to maintain a child shall be their joint responsibility;
- (b) where two or more guardians of the child have been appointed, the duty to maintain the child shall be the joint responsibility of all guardians, whether acting in conjunction with the parents or not;
- (c) where two or more custodians have been appointed in respect of the child it shall be the joint responsibility of all custodians to maintain a child; and
- (d) where the mother and father of a child were not married to each other at the time of the birth of a child and have not subsequently married, regardless of where the child resides, it shall be the joint responsibility of the mother and father of the child to maintain that child.

Maintenance during matrimonial proceedings.

229. The Children's Court shall have power to make a maintenance order, whether or not proceedings for nullity, judicial separation, divorce or any other matrimonial proceedings have been filed by the parent of a child or during such proceedings or after a final decree is made in such proceedings.

Financial provisions.

230. The Children's Court may order the person against whom a maintenance order is made to make financial provisions for the child by periodical payments or such lump sum payment as the Children's Court shall deem fit to the person in whose favour the order is made or to any other person appointed by the Children's Court.

Power to make maintenance monies to be paid to the person other than the applicant.

231. Whenever a maintenance order is made under this section, the Children's Court may, at the time of making the order, or from time to time thereafter, on being satisfied that the person in whose favour the order is made -

- (a) is not a fit or proper person to receive any maintenance monies specified in the order in respect of a child; or

- (b) has left the jurisdiction of the Children's Court for an indefinite period, or is dead, or is incapacitated or has become of unsound mind, or has been imprisoned or has been declared insolvent; or
- (c) has misappropriated, misapplied or mismanaged any maintenance monies paid to him for the benefit of the child,

appoint any other person it considers fit and responsible to receive and administer any maintenance monies required to be paid under a maintenance order, or order the person required to make a payment of the maintenance monies under this section to secure the whole or any part of it by vesting the sums or any other property and subject thereto in trust for the child.

PART XXV
EMPLOYMENT OF CHILDREN

Exploitative child labour.

232. (1) No person shall engage a child in exploitative labour.

(2) For the purposes of this Act, labour is exploitative if it deprives or hinders the child access to health, education or development.

Prohibition of child labour at night and in industrial undertakings.

233. No person shall engage a child in night work or work in industrial undertakings.

Minimum age for child labour.

234. The minimum age for admission of a child to employment shall be fifteen years.

Minimum age for night work.

235. (1) The minimum age for the engagement of a child in night work shall be sixteen years.

(2) For the purposes of this Act, night work constitutes work between the hours of six o'clock in the evening to six o'clock in the morning.

Minimum age for hazardous employment.

236. (1) No child below the age of eighteen years shall be engaged in any form of hazardous employment.

(2) Work is hazardous when it poses a danger to the morals, health, safety and development of a person.

Non - engagement of children and young persons in industrial undertakings.

237. (1) No employer in an industrial undertaking shall engage a child in employment without satisfactory proof of the child's age.

(2) An employer in an industrial undertaking shall keep a register of the children employed by him and of the dates of their births.

(3) An industrial undertaking is an undertaking other than one in commerce or agriculture and includes-

- (a) mines, quarries and other works of the extraction of minerals from the earth; or
- (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adopted for sale; broken up or demolished, or in the generation, transformation or transmission of electricity or motive power of any kind;

(4) Any person or organisation which has a reasonable suspicion that a child is engaged in an industrial undertaking shall report to the Minister of Labour and Employment.

(5) The Minister responsible for labour affairs shall investigate cases of children engaged in industrial undertakings and take appropriate action.

(6) The Minister responsible for labour affairs shall in the investigation of cases referred to under subsection (5), request medical officers, social workers and other professionals to provide any expert information necessary.

Offences.

238. (1) Any person who contravenes the provisions of this Part commits an offence and is liable on conviction a fine of not less than fifteen thousand or to imprisonment for a term of not less than two years or both.

(2) Notwithstanding subsection (1), any person who contravenes the provisions of sections 232 (1), 234 and 236 commits an offence and -

- (a) on first conviction is liable to a fine of not less than one hundred thousand emalangeni or to imprisonment for a term of not less than five years or both;
- (b) on second or subsequent conviction to imprisonment for a minimum term of ten years without the option of a fine.

PART XXVI
PROTECTIVE MEASURES RELATING TO
THE HEALTH OF CHILDREN

Consent to medical treatment or surgical operation.

239. (1) A child may be subjected to medical treatment or surgical operation only if the child's consent for such treatment has been given in terms of either subsection (2) or (3), or alternatively (4) or (5).

(2) A child may consent to medical treatment provided the child is -

- (a) at least 12 years of age; and
- (b) of sufficient maturity and has the mental capacity to understand the benefits, risks, social and other implications of the treatment or operation.

(3) A child may not consent to a surgical operation without the assistance of -

- (a) the parent or guardian of the child; or

(b) the care-giver of the child.

(4) The parent, guardian or care-giver of the child may consent to the medical treatment or surgical operation of the child if the child is -

(a) under the age of 12 years; or

(b) over that age but is of insufficient maturity or does not have the mental capacity to understand the benefits, risks and social implications of the treatment or operation.

(5) The superintendent of a hospital or the person in charge of a hospital in the absence of the superintendent, shall consent to the medical treatment or surgical operation on a child if-

(a) the treatment is necessary to preserve the life of the child or to save the child from serious or lasting physical injury or disability; and

(b) the need of the treatment or operation is so urgent that it cannot be deferred for the purposes of obtaining consent that would otherwise have been required.

(6) A Children's court may consent to the medical treatment or surgical operation on a child if-

(a) the child has been abandoned; or

(b) the parent, guardian or care-giver of the child -

(i) unreasonably refuses to give consent or to assist the child in giving consent;

(ii) is physically or mentally incapable of giving consent or assisting the child in giving consent;

(iii) is deceased; or

(iv) cannot readily be traced.

(7) No parent, guardian or care-giver of a child may refuse to assist a child under subsection (2) (b) or withhold consent under subsection (3) by reason only of religious, cultural or other beliefs, unless the parent, guardian or care-giver can show that there is a medically accepted alternative choice to the medical treatment or surgical operation concerned.

HIV Testing.

240. (1) No child may be tested for HIV except when this is in the best interests of the child and consent has been given under subsection (2).

(2) Consent for an HIV test on a child may be given by -

(a) the child, if the child is 12 years or older;

(b) the parent, guardian or care-giver, if the child is under the age of 12 years or is not of sufficient maturity or does not have the mental capacity to understand the benefits, risks and social implications of such a test;

- (c) a social worker arranging the placement of the child, if the child is under the age of 12 years or is not of sufficient maturity or does not have mental capacity to understand the benefits, risks and social implications of such a test;
- (d) the head of a hospital, if -
 - (i) the child is under the age of 12 years or is not of sufficient maturity or does not have the mental capacity to understand the benefits, risks and social implications of such a test;
 - (ii) the child has no parent or guardian and there is no designated child protection organisation arranging the placement of the child; or
- (e) the Children's Court, if -
 - (i) consent under paragraph (a), (b), c) or (d) is unreasonably withheld; or
 - (ii) the child or the parent or guardian of the child is incapable of giving consent.

HIV testing for adoption and placement purposes.

241. If HIV testing of a child is done for adoption or placement purposes, the Crown shall bear the cost of such test.

Counselling before and after HIV testing.

242. (1) A child may be tested for HIV only after proper counselling of -
- (a) the child, if the child is of sufficient maturity to understand the benefits, risks and social implications of such a test; and
 - (b) the child's parent or guardian has an understanding of the implications of the test.
- (2) Post-test counselling shall be provided to -
- (a) the child, if the child is of sufficient maturity to understand the implications of the result; and
 - (b) the child's parent or guardian, if the parent or guardian has knowledge of the test.

Confidentiality of information on HIV/AIDS status of children.

243. (1) No person may disclose the fact that a child is HIV-positive without consent given under subsection (2) except

- (a) within the scope of that person's powers and duties under this Act or any other legislation;
- (b) when necessary for the purpose of carrying out the provisions of this Act;
- (c) for the purpose of legal proceedings; or
- (d) in terms of an order of court.

(2) Consent to disclose the fact that a child is HIV-positive may be given by -

- (a) the child, if the child is 12 years of age or older;
- (b) the parent or guardian, if the child is under the age of 12 years or is not of sufficient maturity or does not have the mental capacity to understand the benefits, risks or social implications of such a disclosure;
- (c) a social worker arranging the placement of the child, if the child is under the age of 12 years or is not of sufficient maturity or does not have the mental capacity to understand the benefits, risks or social implications of such a disclosure;
- (d) the head of a hospital, if -
 - (i) the child is under the age of 12 years or is not of sufficient maturity or does not have the mental capacity to understand the benefits, risks or social implications of such a disclosure; and
 - (ii) the child has no parent or guardian and there is no social worker arranging for the placement of the child;
- (e) a Children's Court, if -
 - (i) consent under paragraph (a), (b), (c) or (d) is unreasonably withheld and disclosure is in the best interest of the child;
 - (ii) the child or the parent or guardian of the child is incapable of giving consent; or
 - (iii) the mother of a child is under eighteen years and still under the care of her parent or guardian.

Access to reproductive health information and protective devices and technologies.

244. (1) No person may refuse -

- (a) to provide reproductive health information to a child; or
- (b) to sell any reproductive health protective devices or technologies to a child; or
- (c) to provide a child with reproductive health devices or technologies where such are provided or distributed free of charge.

(2) Reproductive health protective devices and technologies may be provided to a child on request by the child and without the consent of the parent or guardian of the child where -

- (a) proper medical advice is given to the child; and
- (b) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific reproductive health protective device and technology should not be provided to the child.

(3) A child who obtains reproductive health protective devices and technologies under this Act is entitled to confidentiality in this respect.

(4) A child who is a victim of a sexual abuse and exploitation shall, as soon as possible, be provided with emergency contraceptives.

**PART XXVII
MISCELLANEOUS**

Regulations.

245. The Minister may, by notice in the Gazette, make regulations generally for giving effect to the provisions of this Act.

Repeals and savings.

246. (1) Child Care Service Order No. 30 of 1977 is repealed.

(2) Adoption of Children Act No. 64 of 1952 is repealed to the extent that it is inconsistent with the provisions of this Act.

(3) Maintenance Orders Act, No. 77 of 1921 is repealed to the extent that it is inconsistent with the provisions of this Act.

(4) The Administration of Estates Act No. 28 of 1902 is repealed to the extent that it is inconsistent with the provisions of this Act.

(5) the Births, Marriages and Deaths Registration Act No. 5 of 1983 is repealed to the extent that it is inconsistent with the provisions of this Act.

(6) Reformatories Act, No. 82 of 1921 is repealed to the extent that it is inconsistent with the provisions of this Act.

(7) Age of Majority Act, No. 11 of 1853 is repealed.

(8) Notwithstanding the repeals under subsection (1), (2), and (3), any proceedings before any court under the repealed laws shall be continued as if those laws have not been repealed until they are concluded.

SCHEDULE

(under sections 2, 90, 91 134, 148, 150, 159 and 239)

Assault where grievous bodily harm has not been inflicted.

Assault, including assault involving the infliction of grievous bodily harm.

Malicious injury to property where the damage does not exceed E1000.00

Any offence under any law relating to the illicit possession of dependence producing drugs where the quantity involved does not exceed 25 grams.

Theft, where the value of the property involved does not exceed E1000.00

Any statutory offence where the maximum penalty determined by that statute is a fine of less than E300.00 or three months imprisonment.

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Conspiracy, incitement or attempt to commit any offence referred to in this schedule.

Public violence.

Culpable homicide.

Arson.

House breaking, whether under common law or a statutory provision, with intent to commit an offence, if the amount involved in the offence does not exceed E20,000

Robbery, other than robbery with aggravating circumstances, if the amount involved in the offence does not exceed E20,000

Theft where the amount involved does not exceed E20,000

Any other offence under any law relating to the illicit possession of dependence producing drugs.

Forgery, uttering or fraud, where the amount concerned does not exceed E20,000