

Namibia

Maintenance Act, 2003

Regulations relating to Maintenance, 2003

Government Notice 233 of 2003

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Regulations relating to Maintenance, 2003

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Republic of Namibia
Annotated Statutes

Maintenance Act, 2003

Regulations relating to Maintenance, 2003

Government Notice 233 of 2003

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[The Government Notice which issues these regulations repeals the regulations contained in RSA GN R.97 of 22 January 1965, RSA GN R.99 of 22 January 1965, RSA GN R.2331 of 24 December 1970 and RSA GN R.2332 of 24 December 1970. These previous regulations were issued under the Maintenance Act \[23 of 1963\]\(#\), and deemed to have been made under the Maintenance Act \[9 of 2003\]\(#\) by section 50\(4\) of that Act.](#)

[\[The regulations use both the spelling “subregulation” \(one word\) and “sub-regulation” \(hyphenated\). These words are reproduced here as they appear in the *Government Gazette*.\]](#)

Chapter 1
DEFINITIONS

1. Definitions

In these regulations any word or expression to which a meaning has been given in the Act bears that meaning and, unless the context otherwise indicates-

“**the Act**” means the Maintenance Act, 2003 (Act [No. 9 of 2003](#)).

Chapter 2

COMPLAINTS AND INVESTIGATIONS

2. Complaints

A person who lodges a complaint as contemplated in section 9(1) of the Act must-

- (a) in the case of a new complaint, lodge the complaint on a form corresponding substantially to Form A of the Annexure; or
- (b) in a case where there is an existing maintenance order, lodge the complaint on a form corresponding substantially to Form B of the Annexure.

3. Investigation by maintenance officer

- (1) The directive which a maintenance officer may issue under section 10(1) of the Act must be in a form corresponding substantially to Form C1A of the Annexure.
- (2) A maintenance officer must keep a record of all directives issued under section 10 of the Act.
- (3) Any person who fails to comply with a direction contemplated in subregulation (1) commits an offence and liable on conviction to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding six months.

4. Summons

- (1) The summons, contemplated in section 11 or 12 of the Act must-
 - (a) in the case of the complainant and the defendant, be in a form corresponding substantially to Part A of Form C1 of the Annexure; and
 - (b) in the case of other witnesses, be in a form corresponding substantially to Part A of Form C11 of the Annexure.
- (2) The defendant must complete Part B of Form C1 of the Annexure.
- (3) The service of a summons referred to in sub-regulation (1) must be done in accordance with regulation 28(1).
- (4) A return of service must, in the case of a summons referred to in-
 - (a) subregulation (1)(a), be in a form corresponding substantially to Part C of Form C1 of the Annexure; and
 - (b) subregulation 1(b), be in a form corresponding substantially to Part B of Form C11 of the Annexure.
- (5) A summons to the defendant must be accompanied by a document in a form corresponding substantially to Form G of the Annexure.

5. Subsistence and travelling allowances

Any person who, under section 12(6) of the Act, is entitled to receive an allowance for attending an enquiry as a witness must be paid the allowances which are payable under section 191 of the Criminal Procedure Act, [No. 51 of 1977](#), to a person attending criminal proceedings as a witness for the State.

6. Statements by witnesses

- (1) The written statement contemplated in section 14(1) of the Act, must-
 - (a) be signed by the person who made it; and
 - (b) contain a declaration by such a person to the effect that it is true to the best of his or her knowledge and belief and that he or she made the statement knowing that he or she commits an offence if he or she intentionally includes anything therein which he or she knows to be false or did not know or believe to be true.
- (2) If the person who makes a statement in terms of subregulation (1) cannot read the statement, that statement must-
 - (a) be read to him or her by the person taking down the statement before the statement is signed by the person making the statement; and
 - (b) be endorsed by the person who so read the statement to the effect that it was read.

7. Notification to admit statements by witnesses

A notification, contemplated in section 14(3) of the Act, requiring any party to consent to the admission of a statement as evidence, must be in a form corresponding substantially to Form D of the Annexure.

Chapter 3

MAINTENANCE AND OTHER ORDERS

8. Maintenance and ancillary orders

An order of the maintenance court contemplated in section 17 of the Act, must be in a form corresponding substantially to Form E of the Annexure.

9. Notices

- (1) The directive, contemplated in section 32(1) of the Act, to any person who is indebted to the defendant, must be in a form corresponding substantially to Part A of Form F of the Annexure.
- (2) The service of a notice referred to in subregulation (1) must be done in accordance with regulation 28(1) or (5), as the case may be.
- (3) The return of service on a notice referred to subregulation (1) must be in a form corresponding substantially to Part B of Form F of the Annexure.
- (4) Where the person indebted to the defendant is discharged from the liability, he or she must give notice to the maintenance in a form corresponding substantially to Part C of Form F of the Annexure.

10. Orders by consent

- (1) The consent of a defendant contemplated in section 18 of the Act must be in a form corresponding substantially to Part A of Form G of the Annexure.
- (2) An order made in accordance with the consent referred to in subregulation (1) must be in a form corresponding substantially to Part B of Form G of the Annexure.
- (3) The return of service of a maintenance officer, messenger of the court or maintenance investigator showing that a copy of an order by consent referred to in subregulation (2) was delivered or tendered to the defendant must be in a form corresponding substantially to Part C of Form G of the Annexure.

11. Default maintenance order

- (1) A default maintenance order, contemplated in section 19(1) of the Act, must be in a form corresponding substantially to Part A of Form H of the Annexure.
- (2) A notice to the defendant against whom a default order, has been made, must be in a form corresponding substantially to Part B of Form H of the Annexure.
- (3) The return of service of a maintenance officer, messenger of the court or maintenance investigator showing that a copy of a default maintenance referred to in subregulation (1) was delivered or tendered to the defendant must be in a form corresponding substantially to Part C of Form H of the Annexure.
- (4) An application for the substitution or setting aside of a default order, contemplated in section 19(4) of the Act, must be in a form corresponding substantially to Part A of Form I of the Annexure.
- (5) The notice to be given by the defendant to the complainant as, contemplated in section 19(7) of the Act, must be in a form corresponding substantially to Part B of Form I of the Annexure.
- (6) Any notice under subregulation (5) must be served on the complainant in any manner which is convenient to the defendant but the defendant must keep proof of service of the notice.

12. Variation or setting aside of orders

- (1) The notice of variation or the setting aside of an order as contemplated in section 22 of the Act must, in the manner which is reasonable and appropriate in the circumstances, inform-
 - (a) the defendant;
 - (b) the complainant; and
 - (c) the person referred to in section 31(1) or 32(1) of the Act,of the variation or the setting aside of the order and that notice which must be in a form corresponding substantially to Form J of the Annexure.
- (2) The maintenance officer must keep record of all notices issued under this regulation.

13. Substitution or discharge of maintenance orders

On receipt of a notice of the substitution or discharge of a maintenance order, as contemplated in section 23 of the Act, the clerk of the court must-

- (a) file the notice with the original documents applicable to the case;
- (b) in the case of an order substituting a maintenance order, record the particulars of the new order on the order which is being substituted; and
- (c) in the case of an order discharging the maintenance order, endorse the original order to that effect.

14. Transfer of maintenance orders

- (1) Where a complainant in whose favour a maintenance order or any other order under the Act was made or given changes his or her place of residence he or she must, within 30 days of such change of place of residence notify the maintenance officer of the maintenance court which has jurisdiction in the area where the complainant now resides.
- (2) A notice contemplated in subregulation must be in a form substantially corresponding to Part A of Form R of the Annexure.

- (3) On receipt of a request made under subregulation (1), the clerk of the court where the maintenance order is registered must-
 - (a) retain certified copies of all orders or judgments, including previous amended orders, and documents with regard to the record of payment which are applicable to the particular case; and
 - (b) send by hand or registered post all the original documents on the file to the clerk of the maintenance court which requested the transfer.
- (4) On receipt of the maintenance order referred to in subregulation (1), the clerk of the maintenance court where the complainant now resides must register the order by numbering it with the following consecutive number for maintenance cases for the year during which it was received.
- (5) The clerk of the court referred to in subregulation (4) must give notice to the defendant and any person who is required under the Act to deliver money or property of such transfer on a form corresponding substantially to Part B of Form R of the Annexure.

15. Notice of change of address by defendant

Where the defendant has changed his or her place of residence or employment as contemplated in section 17(5) of the Act he or she must give notice in a form corresponding substantially to Form S of the Annexure.

16. Registration of maintenance orders

The clerk of the maintenance court must maintain the register of maintenance orders referred to in section 27 of the Act by-

- (a) retaining certified copies of all orders or judgements, including previous amended orders, and documents with regard to the record of payment which are applicable to the particular case; and
- (b) on receipt of a maintenance order as contemplated in section 27 of the Act, registering that order by numbering it with the following consecutive number for maintenance cases for the year during the year which it was received.

17. Appeal against orders

- (1) An appeal in terms of section 47 of the Act must be noted within 21 days of the granting of the order appealed against and any cross-appeal must be noted within seven days of the noting of the appeal.
- (2) An appeal or cross-appeal must be noted by delivery, within the period prescribed in subregulation (1), to the clerk of the maintenance court concerned and to the other party, of a notice stating-
 - (a) whether the whole or part only of the order is appealed against and, if part only, which part; and
 - (b) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.
- (3) The judicial officer who presided at the enquiry must-
 - (a) within 14 days of the noting of an appeal; or
 - (b) if the proceedings at the enquiry were recorded by mechanical means, within 14 days after the transcription of the mechanical record of the proceedings has been placed before him or her by the clerk of the maintenance court,transmit to the clerk of the maintenance court a statement in writing setting out-
 - (i) the facts he or she found to be proved;

- (ii) his or her reasons for any finding of fact specified in the notice of appeal ; and
- (iii) his or her reasons for any ruling on a question of law or for the admission or rejection of any evidence specified in the notice of appeal.
- (4) Where an appeal has been noted under this regulation, the clerk of the relevant maintenance court must, notwithstanding regulation 26, if the proceedings at an enquiry were recorded by mechanical means, forthwith cause the mechanical record of the proceedings to be transcribed.
- (5) The person who has noted an appeal bears the cost of the transcription contemplated in subregulation (4), but, if the magistrate of the relevant maintenance court is satisfied that such person is unable to pay the costs, the costs must be paid by the State.
- (6) After an appeal has been noted in terms of sub-regulation (1), the appeal must be prosecuted as if it were an appeal against the decision of a magistrates' court in a civil case and the rules regulating the conduct of the proceedings of the High Court in so far as they relate to civil appeals from the magistrates' courts do, with the necessary changes, apply to such an appeal.

[The first use of the word “magistrates” should be
“magistrate’s”, as the reference is to a single magistrate’s court.]

- (7) The clerk of the maintenance court must, within seven days of the receipt by that clerk of court of a notice that an appeal has been set down for hearing, transmit to the Registrar of the High Court, the record of the proceedings at the enquiry, certified by the presiding judicial officer as a true record of the proceedings and a transcription of that part of the proceedings mechanically recorded, certified as provided for in regulation 26.
- (8) If the complainant notes an appeal or cross-appeal, as the case may be, and he or she cannot afford a legal practitioner, the complainant must notify the clerk of the maintenance court accordingly.
- (9) The clerk of the court must-
 - (a) on receipt of the notice referred to in subregulation (8), immediately inform the Prosecutor-General of the appeal or cross-appeal and that the complainant cannot afford a legal practitioner;
 - (b) on receipt of the statement of the presiding judicial officer referred to in subregulation (3), furnish the Prosecutor-General with copies of all relevant documentation; and
 - (c) within seven days of the receipt by him or her of a notice that the appeal has been set down for hearing submit the original record as prescribed in subregulation (7) and a copy of the record to the Prosecutor-General

Chapter 4 CIVIL EXECUTION

18. Application for enforcement of maintenance or other orders

The application for-

- (a) the authorisation of the issue of a warrant of execution;
- (b) an order for the attachment of emoluments; or
- (c) an order for the attachment of any debt,

contemplated in section 28 of the Act, must be in a form corresponding substantially to Form K of the Annexure.

19. Warrant of execution

- (1) A warrant of execution, contemplated in section 29 of the Act, must be-
 - (a) in a form corresponding substantially to Form L of the Annexure; and
 - (b) prepared in triplicate.
- (2) The complainant must complete Part A of Form L of the annexure and thereafter lodge that form with the clerk of the maintenance court concerned.
- (3) On receipt of the partly completed form referred to in subregulation (2) the clerk of the maintenance court must issue the warrant of execution by completing Part B of Form L of the Annexure if he or she is satisfied that-
 - (a) authorisation for the issuing of a warrant of execution was granted; and
 - (b) the warrant of execution has been properly prepared.
- (4) The clerk of the maintenance court must, after the warrant of execution has been issued-
 - (a) return the original warrant of execution and one copy thereof to the complainant; and
 - (b) file the second copy of the warrant of execution on the relevant maintenance file.
- (5) Any alteration on the warrant of execution must be initialled by the clerk of the maintenance court.
- (6) The messenger of the court executing the warrant of execution must complete Part C and, if applicable, Part D of Form L of the Annexure and return the form to the clerk of the maintenance court.
- (7) The messenger of the court must pay the proceeds of the execution directly to the complainant who is the execution creditor in the case.

20. Persons authorised to execute a warrant of execution

The messenger of the court for the district in which the property subject to execution is found is authorised to execute a warrant of execution against that property.

21. Application for the setting aside of a warrant of execution

- (1) An application for the setting aside of a warrant of execution by a person against whom such a warrant has been issued, as contemplated in section 29(5) of the Act, must be in a form corresponding substantially to Part A of Form M of the Annexure.
- (2) An application for the substitution or suspension of a warrant of execution, contemplated in section 29(8) of the Act, must be in a form corresponding substantially to Part B of Form M of the Annexure.
- (3) A notice of application for the substitution or suspension of a warrant of execution contemplated in section 29(9)(b) of the Act must be in a form corresponding substantially to Part C of Form M of the Annexure.
- (4) A defendant who makes an application under this regulation must serve the notice referred to in subregulation (3) on the complainant in any manner convenient to him or her, and he or she must keep a record of proof of service.

22. Attachment of emoluments

- (1) An application for the suspension, amendment or rescission of an order for the attachment of emoluments, contemplated in section 30(2) of the Act, must be in a form corresponding substantially to Part A of Form N of the Annexure.

- (2) A notice of an application for the suspension, amendment or rescission of an order for the attachment of emoluments, contemplated in section 30(3) of the Act, must be in a form corresponding substantially to Part B of Form N of the Annexure.
- (3) A person who makes an application under this regulation must serve the notice referred to in subregulation (2) on the complainant in any manner convenient to him or her, and he or she must keep a record of proof of service.
- (4) A notice to an employer or the person contemplated in section 31(1) of the Act, must be in a form corresponding substantially to Part A of Form O of the Annexure.
- (5) The service of a notice referred to in subregulation (4) must be done in accordance with regulation 28(1) or (5), as the case may be.
- (6) The return of service of a notice referred to in subregulation (4), must be in a form corresponding substantially to Part B of Form O of the Annexure
- (7) A notice by the employer or the person contemplated in section 31(2) of the Act that the defendant has left his or her service or that the person has been discharged from liability, must be in a form corresponding substantially to Part C of Form O of the Annexure.
- (8) The notice referred to in subregulation (7) must be submitted to the maintenance officer of the court where the order was made in any manner convenient to the employer or person, and that employer or person must keep a record of the notice.

23. Attachment of debts

- (1) An application for the suspension, amendment or rescission of an order for the attachment of debts, contemplated in section 32(2) of the Act, must be in a form corresponding substantially to Part A of Form P of the Annexure.
- (2) A notice of an application for the suspension, amendment or rescission of an order for the attachment of debts, contemplated in section 32(3) of the Act, must be in a form corresponding substantially to Part B of Form P of the Annexure.
- (3) A person who makes an application under this regulation must serve the notice referred to in subregulation (2) on the complainant in any manner convenient to him or her, and he or she must keep a record of proof of service.

Chapter 5

OFFENCES AND ORDERS RELATING TO PROSECUTIONS

24. Complaints of failure to comply with orders

Where the public prosecutor makes the application contemplated in section 33(1) of the Act, that application must be accompanied by a complaint by the complainant which complaint must be in a form corresponding substantially to Form Q of the Annexure.

25. Recovery of arrear maintenance

- (1) The clerk of the court which has convicted a person must submit a certified copy of an order made by the court in terms of section 33(1) of the Act to the clerk of the civil court for registration of such order, as contemplated in section 27(1) of the Act.
- (2) The clerk of the civil court must-
 - (a) register the order referred to in sub-regulation (1) by numbering it with the following consecutive case number for the year during which it is registered; and

- (b) inform the maintenance officer of the maintenance court where the order was made and the complainant of the registration and the number of the case.

Chapter 6

GENERAL AND SUPPLEMENTARY PROVISIONS

26. Record of proceedings

- (1) The proceedings at an enquiry must be recorded by keeping minutes of-
 - (a) the proceedings generally;
 - (b) any evidence given at the enquiry and of any objection to any evidence given or tendered at the enquiry and of any ruling by the court;
 - (c) any variation of a maintenance order; and
 - (d) any maintenance order, including any provisional maintenance order as defined in the Reciprocal Enforcement of Maintenance Orders Act, 1995 (Act [No. 3 of 1995](#)), made at any enquiry, and of any refusal to make such a maintenance order.
- (2) The maintenance court must mark each document admitted as evidence and note such mark on the record.
- (3) The statement by judicial officer presiding at an enquiry referred to in regulation 17(3) becomes part of the record.
- (4) The judicial officer presiding at an enquiry must record the proceedings of the enquiry or appoint or designate any person, either generally or specially for the purpose of a particular enquiry, to record the proceedings by mechanical means.
- (5) A mechanical record of the proceedings must not be transcribed unless a judicial officer designated to preside in the court concerned has so directed or an appeal has been noted in terms of regulation 17.
- (6) The person making a transcription of a mechanical record of the proceedings at an enquiry must certify it as a true transcription of such record and any such transcription becomes part of the record of the proceedings.

27. Photographs of persons subject to maintenance orders

- (1) On receipt of photographs or a copy of the identity document of a defendant against whom the maintenance court has made a maintenance order, the maintenance officer must-
 - (a) endorse on the back of each photograph or copy of identity document the personal particulars of the defendant;
 - (b) file one photograph or copy of the identity document in the relevant maintenance file; and
 - (c) attach the second photograph or copy of identity document to the relevant register of payments.
- (2) The maintenance officer may make a photograph or copy of the identity document of the defendant available to any person executing a court order or serving a document on the defendant in terms of the Act.

28. Service of documents

- (1) A document, which under the Act or these regulations is required to be served by the maintenance investigator or the messenger of court must, together with any copy, be handed over to the

maintenance investigator or messenger of the court who must, subject this regulation, forthwith serve it on the person referred to in that document by delivering a copy of the document in one of the following ways-

- (a) to that person personally;
 - (b) at that person's residence or place of business to a person apparently not less than 16 years of age and apparently residing or employed there;
 - (c) at that person's place of employment to a person apparently not less than 16 years of age and apparently in authority over that person or, in the absence of such a person in authority, to a person apparently not less than 16 years of age and apparently in charge at that person's place of employment; and
 - (d) in the case of a juristic person, at its registered office or main place of business within the area of jurisdiction of the court concerned, to a director or a responsible employee of the juristic person.
- (2) For the purpose of subregulation (1)(b), "residence" means, where the building is occupied by more than one person or family, that portion of the building occupied by the person on whom service is to be effected.
- (3) A messenger of the court or maintenance investigator must, if requested by the person on whom a document is or is to be served, show him or her the original of the document.
- (4) Where the person on whom a document is to be or may be served keeps his or her residence, place of business or place of employment closed and thereby prevents the messenger of the court or maintenance investigator from serving the document, it is sufficient service to affix a copy of the document to the outer or principal door or security gate of such residence, place of business or place of employment, or to place a copy of such document in the mail box at such residence, place of business or employment.
- (5) A notice referred to in regulation 9(2) or 22(5) may be served by the maintenance investigator or messenger of court on the person referred to in that notice by-
- (a) handing a copy of that notice to that person personally and endorsing the original notice to that effect; or
 - (b) sending the notice by facsimile to that person, in which case proof thereof must be kept, and by sending a copy of the notice by registered post to that person.

29. Access to records and fees

- (1) For the purposes of section 46(1) of the Act the record of proceedings is only accessible to-
- (a) the defendant or his or her legal practitioner;
 - (b) the complainant or his or her legal practitioner;
 - (c) a judicial officer, maintenance officer, maintenance investigator or clerk of court; or
 - (c) any person who has been permitted to have access by the maintenance court.
- (2) The fees payable in terms of section 46(2) of the Act must be the same as those prescribed in Rule 34 of the Magistrates Court Rules of Court promulgated by Government Notice No. R1108 of 21 June 1968.

[This regulation should refer to "Magistrates' Courts Rules of Court".]

30. Misuse of maintenance money

- (1) Any person who is aware of the fact that a recipient of maintenance money on behalf and for the benefit of another person is misusing such money by failing to use it for the benefit of the beneficiary, may lodge a complaint at the court at which the maintenance order was issued.
- (2) A person who lodges a complaint as contemplated in subregulation (1) must lodge the complaint on a form corresponding substantially to Form T of the Annexure.

Annexure

Forms

Index	
Form A	Complaint in terms of section 9(1) of the act (new complaint)
Form B	Complaint in terms of section 9(1) of the Act (changes to existing maintenance order)[The word “MAINTENANCE” is misspelt in the <i>Government Gazette</i> , as reproduced above. It is spelt correctly on Form B.]
Form C1	Summons in terms of section 11(1) or 12(1) of the Act (complainant or defendant)
Form C1A	Directive in terms of section 10(1)(a) of the Act
Form C11	Summons in terms of section 11 or 12 of the Act (witnesses)
Form D	Notice in terms of section 14(3) of the Act (notice to admit statement as evidence)
Form E	Order in terms of section 17 of the Act
Form F	Notice in terms of section 32 of the Act
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Form H	Default maintenance order in terms of section 19 read with section 17 of the Act
Form I	Application for variation/setting aside of a default maintenance order in terms of section 19 of the Act
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Form K	Application for enforcement of maintenance order or other order in terms of section 28 of the Act

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Form M	Application for setting aside of a warrant of execution in terms of section 29(5) of the Act
Form N	Application for suspension, amendment or rescission of an order for the attachment of emoluments in terms of section 30(2) of the Act
Form O	Notice to and by employer in terms of section 31 of the Act
Form P	Application for suspension, amendment or rescission of an order for the attachment of debts in terms of section 32(2) of the Act
Form Q	Complaint for the purposes of section 33 of the Act
Form R	Notice in terms of section 24 of the Act
Form S	Notice in terms of section 17(5) of the Act
Form T	Complaint of misuse of maintenance for the purposes of section 40 of the Act

[Editorial note: The forms have not been reproduced.]