



**Black Sash comment to the Department of Justice
and Constitutional Development**

24 July 2010

Re: Comment on Amendment of Regulations relating to
Maintenance

Sent via email to the Department Justice and Constitutional
Development: State Law Advisor, Chief Directorate Legislative
Development: Ms Connie van Vuuren (cvanvuuren@justice.gov.za;
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1) Overall comment

The regulations and related forms are complicated and inaccessible to the general public. Generally, when reading a regulation a person must read many different regulations, sections of the relevant Act, including referring to the relevant forms before understanding what a regulation really entail.

Black Sash therefore recommends that new regulations and relevant forms are written in the near future which is easy and accessible to the man in the street without compromising the extensive development of this area of law.

2) Definitions

We recommend the inclusion of the following words under the definitions section;

1. 'direction'
2. 'endorsing'

3) Amendment of regulations 26 of the Regulations

The proposal for amendment to regulations 26 read as follows.

Regulation 26 is hereby amended by the substitution of subregulation (2) of the following subregulation:

“(2) A direction or notice referred to in regulation 3(2), 9(1)(b), 9(2)(a), 11(4)(c), 12 or 20(3)(b) shall be served by the maintenance officer, **[or]** maintenance investigator or the relevant person referred to in regulation 9(2)(a) or 11(4)(c) upon the person referred to in the said direction or notice by –

- (a) handing a copy of the direction or notice to the said person personally and endorsing the original direction or notice to this effect; or
- (b) sending the direction or notice by facsimile to the said person, in which case proof thereof must be kept, and by sending a copy of the direction or notice by registered post to the said person.

This section provides that an applicant applying to set aside a default order of maintenance is able to serve a notice on the respondent without the assistance of a sheriff of the court, maintenance officer or a maintenance investigator.

The Black Sash recommends that the insertion of the words or the relevant person referred to in regulation 9(2)(a) or 11(4)(c)... as part of the amendments to regulation 26 could potentially create a situation for aggravating circumstances for one or both of the parties involved if no police official is present when service takes place. The likelihood of a conflict situation between both the applicant and respondent is high as maintenance at this stage in itself is an area of contestation.

We therefore recommend that service bythe relevant person referred to in regulation 9(2)(a) or 11(4)(c)... should not occur without the presence of police officer.

The provision of regulation 26 therefore should read as follows;

....the relevant person referred to in regulation 9(2)(a) or 11(4)(c) accompanied by a police official....

4) Amendment of Forms of the Annexure

All forms should retain the description 'nearest police station' instead of the replacement proposal 'in the magisterial district'
