

**RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT 80 OF 1963**

[ASSENTED TO 28 JUNE 1963]

[DATE OF COMMENCEMENT: 22 JANUARY 1965]

*(English text signed by the State President)*

**As amended by**

General Law Amendment Act 70 of 1968

Reciprocal Enforcement of Maintenance Orders Amendment Act 40 of 1970

Transfer of Powers and Duties of the State President Act 97 of 1986

General Law Amendment Act 49 of 1996

Maintenance Act 99 of 1998

**ACT**

**To consolidate and amend the laws relating to the reciprocal enforcement of maintenance orders made in the Republic, and proclaimed countries, and to provide for incidental matters.**

[Long title substituted by s. 7 of Act 40 of 1970 and amended by s. 1 of Act 49 of 1996.]

**1. Definitions**

In this Act, unless the context otherwise indicates –

**‘certified copy’**, in relation to an order of court, means a copy certified by the proper officer of the court to be a true copy;

**‘maintenance court’** means any maintenance court as defined in section 1 of the Maintenance Act, 1998;

[Definition of ‘maintenance court’ substituted by s. 45 (1) of Act 99 of 1998.]

**'maintenance order'** means any order, other than an order of affiliation, for the payment, including the periodical payment, by any person of sums of money towards the maintenance of any other person whom he or she is liable to maintain in accordance with the law of the country in which the order is made;

[Definition of 'maintenance order' substituted by s. 45 (1) of Act 99 of 1998.]

**'Minister'** means the Minister of Justice;

**'prescribed'** means prescribed by rules made under this Act;

**'proclaimed country'** means a country or territory in respect of which this Act applies in terms of section two;

**'provisional maintenance order'** means a maintenance order having no effect unless and until confirmed by a competent court in the country where the person against whom it has been made is resident;

**'Republic' ....**

[Definition of 'Republic' added by s. 1 of Act 40 of 1970 and deleted by s. 1 of Act 49 of 1996].

**'territory' ...**

[Definition of 'territory' added by s. 1 of Act 40 of 1970 and deleted by s. 1 of Act 49 of 1996.]

## **2. Application of Act**

(1) This Act shall apply in respect of any country or territory designated by the Minister by notice in the *Gazette*.

[Sub-s. (1) substituted by s. 56 of Act 70 of 1968 and amended by ss. 46 and 47 of Act 97 of 1986.]

(2) The Minister may by like notice withdraw any such notice.

[Sub-s. (2) amended by ss. 46 and 47 of Act 97 of 1986.]

## **3. Registration of maintenance orders made in proclaimed countries**

Whenever a certified copy of a maintenance order made before or after the commencement of this Act, against any person by any court in a proclaimed country is transmitted to the Minister through diplomatic channels by any authority of such country recognised for the purpose by the Minister, the Minister or any person acting under his

authority shall transmit a copy of the order to a maintenance court, and the order shall, on receipt thereof, be registered by that court in the prescribed manner.

[S. 3 substituted by s. 2 of Act 40 of 1970.]

#### **4. Confirmation of provisional maintenance orders made in proclaimed countries**

- (1) Upon receipt of a certified copy of a provisional maintenance order made by a court in a proclaimed country, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, the Minister or any person acting under his authority shall transmit the documents concerned to the maintenance officer of a maintenance court, whereupon such maintenance officer shall institute an enquiry in such maintenance court with a view to confirmation of such order 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 maintenance 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) Any person to be summoned as a witness shall be summoned in the manner in which a person may be subpoenaed to appear before a magistrate's court in a criminal trial.
- (3) The maintenance court shall hold the enquiry in such manner as may be prescribed and may –
  - (1) make an order confirming the provisional maintenance order without modification or with such modification as to it may seem just;
  - (2) remit the case for further evidence to the court which made the provisional order;
  - (3) make no order;
  - (4) at any time, on good cause shown, make an order varying or discharging an order made by it under this section.
- (4) (a) Any person aggrieved by an order made under this section may, within such period and in such manner as may be prescribed, appeal against such order to the provincial or local division of the Supreme Court of South Africa having jurisdiction.  
(b) On appeal such division may make such order in the matter as it may deem fit.
- (5) The provisions of sections 11, 33 and 35 of the Maintenance Act, 1998, shall *mutatis mutandis* apply in respect of any enquiry held under this section.

[Sub-s. (5) substituted by s. 45 (1) of Act 99 of 1998.]

#### **5. Certain maintenance moneys payable to clerk of the court**

- (1) Any sum of money payable in terms of a maintenance order registered under section or confirmed under section 4 shall be deemed to be payable to the clerk of the

maintenance court designated from time to time by the maintenance court where such order has been so registered or confirmed.

- (2) The person required to make payment in terms of such maintenance order shall be informed in the prescribed manner which clerk of the maintenance court has been designated under subsection (1).

[S. 5 substituted by s. 3 of Act 40 of 1970.]

#### **6. Certain maintenance orders deemed for certain purposes to have been made under Maintenance Act, 1998**

Any maintenance order registered under section 3 or confirmed under section 4 shall for the purposes of sections 16 (2) to (4), 31, 38 and 40 of the Maintenance Act, 1998, be deemed to be a maintenance order made under that Act by the maintenance court where the order has been so registered or confirmed: Provided that in a prosecution for a contravention of the said section 31 in respect of an order registered under section 3, the provisions of section 41 of the said Act shall not apply.

[S. 6 substituted by s. 45 (1) of Act 99 of 1998.]

#### **7. Transmission to proclaimed country of maintenance orders made in Republic**

Whenever it appears to any court in the Republic that any person against whom it has, before or after the commencement of this Act, made a maintenance order, is resident in a proclaimed country, that court shall transmit to the Minister a certified copy of the order for transmission through diplomatic channels to an authority of such country recognised for the purpose by the Minister.

[S. 7 substituted by s. 4 of Act 40 of 1970]

#### **8. Provisional maintenance orders against person resident in proclaimed countries**

- (1) Notwithstanding anything to the contrary in any law contained, an enquiry may be held under the Maintenance Act, 1998, in the absence of any person resident in a proclaimed country who may be legally liable to maintain any person in the Republic, provided the evidence of all witnesses at the enquiry is read over to and signed by them.

[Sub-s. (1) substituted by s. 45 (1) of Act 99 of 1998.]

- (2) The court holding the enquiry may make a provisional maintenance order, forward to the Minister for transmission through diplomatic channels to an authority of the proclaimed country recognised for the purpose by the Minister, a certified copy of the order together with the depositions of witnesses, a statement of the grounds on which the order might have been opposed and such information as may be available for the identification and location of the person against whom the order has been made.

[Sub-s. (2) substituted by s. 5 of Act 40 of 1970]

- (3) If the court before which the provisional maintenance order has come for confirmation remits the case for further evidence, the maintenance court shall proceed with the enquiry as if no provisional order had been made and may take into consideration the contents of depositions of witnesses in the court before which such order has come for confirmation.
- (4) Upon confirmation of a provisional maintenance order in terms of this section, it shall be deemed to be an order made under paragraph (a) or (b) of section 16 (1) of the Maintenance Act, 1998, as the case may be, by the court which made the provisional order.

[Sub-s. (4) substituted by s. 45 (1) of Act 99 of 1998.]

## 9. Rules

The Minister may by notice in the *Gazette* make rules –

- (a) Prescribing the procedure and rules of evidence to be followed at or in connection with an enquiry under section *four*;
- (b) as to any matter which may in terms of this Act be prescribed.

## 10. Repeal of laws

- (1) Subject to the provisions of sub-section (2), the laws specified in the Schedule are hereby repealed to the extent indicated in the third column thereof.
- (2) Any order registered or confirmed or anything done under any provision of any law repealed by sub-section (1), shall be deemed to have been registered or confirmed or done under the corresponding provision of the Act.
- (3) Any country or territory in respect of which the provisions of the Maintenance Orders Act, 1923 (Act 15 of 1923), applied immediately prior to the commencement of this Act, shall be deemed to be a proclaimed country.

**10A...**

[S. 10A inserted by s. 6 of Act 40 of 1970 and repealed by s. 1 of Act 49 of 1996.]

**11. Short title and commencement**

This Act shall be called the Reciprocal Enforcement of Maintenance Orders Act, 1963, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

**Schedule**

<b>No. And year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act 15 of 1923	Maintenance Orders Act, 1923	The whole
Act 68 of 1957	General Law Amendment Act, 1957	Sections <i>twenty-six</i> and <i>twenty-seven</i>