

CHAPTER 5:10

MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT

Ord. 20/1921; Acts 25/1956 (s. 9), 9/1959, 43/1962 (s. 2), 29/1971, 68/1971, 19/1980 (s. 6), 18/1989 (s. 7), 14/1995; R.G.N. 217/1970.

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Interpretation.
3. Enforcement of maintenance orders made in reciprocating countries.
4. Transmission to reciprocating country of maintenance orders made in Zimbabwe.
5. Power to make provisional orders of maintenance against persons resident in reciprocating country.
6. Powers of courts to confirm maintenance orders made in reciprocating country.
7. Regulations.
8. Proof of documents signed by officers of court.
9. Depositions to be evidence.
10. Application of this Act to reciprocating countries.

AN ACT to facilitate the enforcement in Zimbabwe of maintenance orders made in England and Northern Ireland and elsewhere within the Commonwealth and in other States on the basis of reciprocal arrangements.

[Date of commencement: 22nd July, 1921.]

1 Short title

This Act may be cited as the Maintenance Orders (Facilities for Enforcement) Act [*Chapter 5:10*].

2 Interpretation

In this Act—

“appropriate authority”, in relation to a reciprocating country, means an authority of that country recognized by the Minister for the purposes of this Act;

“certified copy”, in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

“dependants” means such persons as a person against whom a maintenance order has been made is, according to the law in force where such order was made, liable to maintain;

“maintenance court” means a maintenance court referred to in section 3 of the Maintenance Act [*Chapter 5:09*] or a juvenile court;

“maintenance order” means an order for the payment of money, whether in a lump sum or in periodical payments or otherwise, towards the maintenance of the wife or other dependants of the person against whom the order is made;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“prescribed” means prescribed by rules of court or by rules made under section *seven*;

“reciprocating country” means—

(a) England and Northern Ireland;

(b) any territory within the Commonwealth, including Scotland, or any other State to which this Act has been applied in terms of section *ten*.

3 Enforcement of maintenance orders made in reciprocating countries

(1) Where a maintenance order has been made against any person by any court in a reciprocating country and a certified copy of the order has been transmitted by the appropriate authority to the Minister, the Minister shall send a copy of the order to the clerk of the maintenance court of the province or district where the person against whom the order was made is residing.

(2) Upon receipt of an order in terms of subsection (1) the clerk of the maintenance court concerned shall register the order and, upon registration, subsections (5) and (7) of section 6 and sections 7, 8, 9, 10, 18, 19, 20, 21, 22 and 27

of the Maintenance Act [*Chapter 5:09*] shall apply, *mutatis mutandis*, in relation to such order as if it were an order made in terms of section 6 of that Act:

Provided that, if in respect of any maintenance order it is proved to the court that the marriage between the parties has been dissolved subsequent to the making of the order, the maintenance court may direct that the order shall not apply in respect of any payment falling due subsequent to the date of dissolution of the marriage.

(3) Where upon an application to vary or discharge an order registered in terms of subsection (2) the court at which it is registered is satisfied that it is necessary to refer the application to the court which originally made the order, the first-mentioned court may so refer the application and adjourn the proceedings for the purpose.

4 Transmission to reciprocating country of maintenance orders made in Zimbabwe

Where a court in Zimbabwe has made a maintenance order against any person and it is proved to the court that the person against whom the order was made is resident in a reciprocating country, the court shall send to the Minister a certified copy of the order so that it may be transmitted to the appropriate authority.

5 Power to make provisional orders of maintenance against persons resident in reciprocating country

(1) Where an application is made to a maintenance court in Zimbabwe for a maintenance order against any person, and it is proved that that person is resident in a reciprocating country, the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in that reciprocating country.

(2) The evidence of any witness who is examined on any application in terms of subsection (1) shall be put into writing, and such deposition shall be read over to and signed by him.

(3) Where an order is made in terms of subsection (1) the court shall send to the Minister, for transmission to the appropriate authority, the depositions so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any provisional order in terms of subsection (1) has come before a court in a reciprocating country for confirmation, and the order has by that court been remitted to such court which made the order for the purpose of taking further evidence, the latter court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(5) If upon the hearing of evidence in terms of subsection (4) it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Minister and dealt with in like manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a court to vary or rescind that order:

Provided that—

- (i) on the making of a varying or rescinding order, the court shall send a certified copy thereof to the Minister for transmission to the appropriate authority; and
- (ii) in the case of any order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

(7) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

6 Powers of courts to confirm maintenance orders made in reciprocating country

(1) Where—

- (a) a maintenance order has been made by a court in a reciprocating country and the order is provisional only and has no effect unless and until confirmed by a court in Zimbabwe; and
- (b) a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Minister; and
- (c) it appears to the Minister that the person against whom the order was made is resident in Zimbabwe; the Minister may send the said documents to the clerk of the maintenance court of the province or district where the person against whom the order is sought is residing, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the court shall issue such a summons and cause it to be served upon such person.

(2) A summons issued in terms of subsection (1) may be served in Zimbabwe in the same manner as if it had been originally issued or subsequently endorsed by a court having jurisdiction in the place where the person happens to be.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear, or on appearing fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modifications or with such modifications as to the court, after hearing the evidence, may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where a provisional order has been confirmed under this section, the clerk of the maintenance court concerned shall register the order and, upon registration, subsections (5) and (7) of section 6 and sections 7, 8, 9, 10, 18, 19, 20, 21, 22 and 27 of the Maintenance Act [*Chapter 5:09*] shall apply, *mutatis mutandis*, in relation to such order as if it were an order made in terms of section 6 of that Act.

(7) Where upon an application to vary or discharge an order confirmed under this section the confirming court is satisfied that it is necessary to remit the case to the court which originally made the order, the confirming court may so remit the case and adjourn the proceedings for the purpose.

7 Regulations

(1) The Minister may by regulation prescribe all matters which by this Act are required or permitted to be prescribed or which in his opinion are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In the exercise of the powers conferred upon him by subsection (1), the Minister may provide for— (a) the forms of any orders, process or certificate made, issued or given in terms of this Act;

(b) the manner in which cases and applications may be remitted or referred by maintenance courts to courts in reciprocating countries;

(c) generally, facilitating communication between maintenance courts and courts in reciprocating countries for the purposes of this Act.

8 Proof of documents signed by officers of court

Any document purporting to be signed by a judge or officer of a court outside Zimbabwe shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

9 Depositions to be evidence

Depositions taken in a court in a reciprocating country for the purposes of this Act may be received in evidence in proceedings before any court in Zimbabwe under this Act. **10 Application of this Act to reciprocating countries**

Whenever the President is satisfied that reciprocal provisions have been made by the legislative or other competent authority of any territory within the Commonwealth or of any other State for the enforcement within such territory or other State of maintenance orders made by courts in Zimbabwe, he may, by statutory instrument, declare that this Act shall apply to maintenance orders made by courts within such territory or other State, and thereupon this Act shall apply to such maintenance orders.