

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

BUITENGEWONE



EXTRAORDINARY

Staatskoerant

VAN DIE REPUBLIEK VAN SUID AFRIKA

THE REPUBLIC OF SOUTH AFRICA

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PRICE 5c

[No. 550.

DEPARTMENT OF THE PRIME MINISTER.

No. 1022.]

[5th July, 1963.

It is hereby notified that the State President has assented to the following Acts which are hereby published for general information:—

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No. 80 of 1963: Reciprocal Enforcement of Maintenance Orders Act, 1963 48

No. 80, 1963.]

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 other incidental matters.

(English text signed by the State President.)
(Assented to 28th June, 1963.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Definitions.

1. In this Act, unless the context otherwise indicates—
 - (i) “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; (ii)
 - (ii) “maintenance court” means a maintenance court contemplated in section *two* of the Maintenance Act, 1963; (v)
 - (iii) “maintenance order” means any order, other than an order of affiliation, for the periodical payment by any person of sums of money towards the maintenance of any other person whom he is liable to maintain in accordance with the law of the country in which the order is made; (iv)
 - (iv) “Minister” means the Minister of Justice; (iii)
 - (v) “prescribed” means prescribed by rules made under this Act; (vi)
 - (vi) “proclaimed country” means a country or territory in respect of which this Act applies in terms of section *two*; (i)
 - (vii) “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. (vii)

Application of Act.

2. (1) The State President may by proclamation in the *Gazette* declare that this Act shall apply in respect of any country or territory in which there is in his opinion a law providing for the enforcement therein of maintenance orders made by courts of the Republic.
- (2) The State President may by like proclamation withdraw any such proclamation.

Registration of maintenance orders made in proclaimed countries.

3. 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 by the Secretary of State or the officer administering the government of such country, 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.

Confirmation of provisional maintenance orders made in proclaimed countries.

4. (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—

- (a) make an order confirming the provisional maintenance order without modification or with such modification as to it may seem just;
- (b) remit the case for further evidence to the court which made the provisional order;
- (c) make no order;
- (d) 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 *eight, nine and ten* of the Maintenance Act, 1963, shall *mutatis mutandis* apply in respect of any enquiry held under this section.

Certain maintenance moneys payable to clerk of the court.

5. Any sum of money payable in terms of a maintenance order registered under section *three* or confirmed under section *four* shall be deemed to be payable in the first instance to the clerk of the maintenance court where such order has been so registered or confirmed.

Certain maintenance orders deemed for certain purposes to have been made under Maintenance Act, 1963.

6. Any maintenance order registered under section *three* or confirmed under section *four* shall for the purposes of sections *eleven, twelve and fourteen* of the Maintenance Act, 1963, be deemed to be a maintenance order made under that Act by the maintenance court where such order has been so registered or confirmed: Provided that in a prosecution for a contravention of the said section *eleven* in respect of an order registered under section *three*, the provisions of section *thirteen* of the said Act shall not apply.

Transmission to proclaimed country of maintenance orders made in Republic.

7. 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 to the Secretary of State or the officer administering the government of such country.

Provisional maintenance orders against persons resident in proclaimed countries.

8. (1) Notwithstanding anything to the contrary in any other law contained an enquiry may be held under section *five* of the Maintenance Act, 1963, 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.

(2) The court holding the enquiry may make a provisional maintenance order only, against the person so resident and shall, with a view to confirmation of the provisional maintenance order, forward to the Minister for transmission to the Secretary of State or the officer administering the government of the proclaimed country 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.

(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 sub-section (4) of section *five* of the Maintenance Act, 1963, as the case may be, by the court which made such provisional order.

Rules.

9. 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.

Repeal of laws.

10. (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 this Act.

(3) Any country or territory in respect of which the provisions of the Maintenance Orders Act, 1923 (Act No. 15 of 1923), applied immediately prior to the commencement of this Act, shall be deemed to be a proclaimed country.

Short title and commencement.

11. 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.

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