

Namibia

Reciprocal Enforcement of Maintenance Orders Act, 1995

Act 3 of 1995

Legislation as at 17 November 2003

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Republic of Namibia
Annotated Statutes

Reciprocal Enforcement of Maintenance Orders Act, 1995

Act 3 of 1995

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ACT

To provide for the reciprocal enforcement of maintenance orders made in Namibia and in designated countries, and for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

1. Definitions

In this Act, unless the context otherwise indicates -

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

“**designated country**” means a country declared as such under section 2(1);

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

[\[definition of “Maintenance Act” substituted by Act 9 of 2003\]](#)

“**maintenance court**” means a maintenance court referred to in section 6 of the Maintenance Act;

[\[definition of “maintenance court” substituted by Act 9 of 2003\]](#)

“**maintenance order**” means any order for the periodical payment by any person of sums of money towards the maintenance of any other person whom the first-mentioned person is liable to maintain in accordance with the law of the country in which the order is made;

“**Minister**” means the Minister of Justice;

“**Permanent Secretary**” means the Permanent Secretary: Justice;

“**prescribed**” means prescribed by rules made under this Act;

“**provisional maintenance order**” means a maintenance order having no effect unless and until confirmed by a competent court in the country in which the person against whom it has been made, is resident.

2. Designation of countries for purposes of this Act

- (1) The Minister may, for the purposes of this Act, by notice in the Gazette declare as a designated country any country with which Namibia has in terms of the Namibian Constitution entered into an agreement providing for the reciprocal enforcement of maintenance orders.
- (2) The Minister may by notice in the Gazette withdraw any declaration made under subsection (1).

3. Transmission of maintenance order

When it appears to any court in Namibia that any person against whom it has, before or after the commencement of this Act, made, registered or confirmed a maintenance order, is resident in a designated country, that court shall, with a view to the registration of the maintenance order, transmit to the Permanent Secretary a certified copy of such order for transmission to the administrative head of the Department of Justice of that designated country.

4. Registration of maintenance orders

When a certified copy of a maintenance order made before or after the commencement of this Act by any court in a designated country against any person resident in Namibia, is transmitted to the Permanent Secretary by the administrative head of the Department of Justice of that designated country, the Permanent Secretary shall transmit that copy of the maintenance order to the maintenance court in whose area of jurisdiction the person against whom such order was made, resides or is alleged to reside, and such order shall on receipt thereof be registered by that maintenance court in the prescribed manner.

5. Provisional maintenance orders against persons resident in designated countries

- (1) Notwithstanding anything to the contrary in any law contained, an enquiry may be held under section 13 of the Maintenance Act in the absence of any person resident in a designated country who may be legally liable to maintain any person in Namibia, provided the evidence of all witnesses at the enquiry is read over by or to and signed by them.

[subsection (1) amended by Act 9 of 2003]

- (2)
 - (a) Subject to the provisions of paragraph (c), the maintenance court holding an enquiry contemplated in subsection (1) may only make a provisional maintenance order against a person resident in a designated country and shall, with a view to confirmation of the provisional maintenance order, forward to the Permanent Secretary for transmission to the administrative head of the Department of Justice of that designated country a certified copy of such order, together with the depositions of witnesses and such information as may be available for the identification and location of the person against whom such order has been made.
 - (b) If the person so resident has received sufficient notice of the proceedings at which the provisional maintenance order was made to enable him or her to attend such proceedings, proof of such notice shall accompany the certified copy of such order.
 - (c) If the person so resident consents in writing to a maintenance order, and such consent is produced by a maintenance officer at an enquiry contemplated in this section, the maintenance court may in accordance with such consent make a maintenance order for the purposes of transmission in terms of section 3.

- (3) If the court in the designated country before which the provisional maintenance order has come for confirmation, remits the case for further evidence to the maintenance court which made the provisional maintenance order, that maintenance court shall proceed with the enquiry as if no provisional maintenance order had been made by it and may take into consideration the contents of depositions of witnesses in the court of the designated country before which such order has come for confirmation.

6. Confirmation of provisional maintenance orders

- (1) Upon receipt from the administrative head of the Department of Justice of a designated country of a certified copy of a provisional maintenance order made by a court in that designated country against any person resident in Namibia, together with the depositions of witnesses, the Permanent Secretary shall transmit those documents to the maintenance officer of the maintenance court in whose area of jurisdiction the person against whom such order was made, resides or is alleged to reside, whereupon that maintenance officer shall, with a view to confirmation of such order, institute an enquiry in that maintenance court and may for that purpose cause any person, including any person legally liable to maintain any other person, to be summonsed to appear before that 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 or her earnings and signed by his or her employer.
- (2) If a maintenance court is satisfied that any person against whom a provisional maintenance order referred to in subsection (1) was made, has received reasonable notice of the proceedings at which such order was made, that maintenance court shall limit its enquiry to the determination of the amount to be paid by the respondent towards the maintenance of such other person or persons.
- (3) Any person to be summonsed as a witness shall be summonsed in the manner in which a person may be subpoenaed to appear before a magistrate's court in a criminal trial.
- (4) An enquiry instituted in terms of subsection (1) shall be held in such manner as may be prescribed and the maintenance court holding the enquiry may -
 - (a) make an order confirming the provisional maintenance order without variation or with such variation as it may deem just;
 - (b) remit the case for further evidence to the court which made the provisional maintenance order;
 - (c) refuse to make an order;
 - (d) at any time, on good cause shown, make an order varying or discharging an order made by it under this section.
- (5)
 - (a) Any person who is 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 High Court of Namibia.
 - (b) On appeal the High Court may make such order in the matter as it may deem fit.
- (6) The provisions of sections 12, 13, 14, 15, 36 and 38 of the Maintenance Act shall apply mutatis mutandis in respect of any enquiry held in terms of this section.

[subsection (6) amended by Act 9 of 2003]

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

Any maintenance order registered in terms of section 4 or confirmed under section 6 shall, for the purposes of sections 17(5), 28, 29, 30, 31, 32, 33, 39 and 45 of the Maintenance Act, be deemed to be a maintenance order made under section 17 of the said Act by the Maintenance court where such order has

been so registered or confirmed, as the case may be: Provided that the provisions of section 34 of the said Act shall not apply to any proceedings in respect of a contravention of section 39 of the said Act in so far as such proceedings relate to a maintenance order registered in terms of section 4 of this Act.

[Section 7 is amended by Act 9 of 2003. Not all of the changes are indicated by amendment markings. The capitalisation of “Maintenance court” is reproduced as it appears in the amending Act.]

8. Transmission to designated country of emoluments attachment order made in Namibia

When it appears to any court in Namibia that any person against whom it has, before or after the commencement of this Act, made an order under section 30 of the Maintenance Act is resident in Namibia but is employed or is in receipt of a salary, wage or any other form of remuneration or allowance in a designated country, that court may transmit a certified copy of the record of the proceedings at which such order was made to the Permanent Secretary for transmission to the administrative head of the Department of Justice of that designated country.

[section 8 amended by Act 9 of 2003]

9. Registration of emoluments attachment order made in a designated country

- (1) When a certified copy of the record of the proceedings of a court in a designated country containing an order authorizing any employer of a person mentioned in such order to make on behalf of such person any payments, required to be made in terms of a maintenance order, from the salary, wage or any other form of remuneration or allowance of such person, is received by the Permanent Secretary from the administrative head of the Department of Justice of that designated country, the Permanent Secretary shall transmit that copy of the record of the proceedings containing such order to the maintenance court in whose area of jurisdiction such person is in employment or where the head office of his or her employer is situated, and such order shall on receipt thereof be registered by that maintenance court in the prescribed manner.
- (2) When an order has been registered in terms of subsection (1), the maintenance officer of the maintenance court which effected the registration shall in the prescribed manner cause a notice to be served on any such employer requiring him or her to make any such payments at such time and place and in such manner as may be specified in the notice.
- (3) Any order registered in terms of subsection (1) and any notice served in terms of subsection (2) shall, for the purposes of sections 31(3) and 44 of the Maintenance Act, be deemed to be an order made or a notice served under section 30(1) or 31(1) of the said Act.

[subsection (3) amended by Act 9 of 2003]

10. Certain maintenance moneys payable to clerk of the court

Any sum of money payable in terms of a maintenance order registered in terms of section 4 or confirmed under section 6 or an order registered in terms of section 9 shall be payable to the clerk of the maintenance court where such maintenance order or order has been so registered or confirmed, as the case may be.

11. Procedure and rules of evidence

- (1) Subject to the provisions of this Act and any rules made thereunder, the procedure and rules of evidence, including the competency, compellability, examination or cross-examination of witnesses, to be followed at or in connection with an enquiry held in terms of the Maintenance Act shall, in so far as they can be applied, apply mutatis mutandis in respect of any enquiry held in terms of section 6(4).

- (2) Any certified copy of a provisional maintenance order or of the depositions of witnesses referred to in section 6(1) shall upon its mere production by a maintenance officer at an enquiry held in terms of section 6(4), be admissible as evidence.

12. Rules

The Minister may by notice in the Gazette make rules as to any matter which in terms of this Act is required or permitted to be prescribed.

13. Transitional provisions

- (1) Any country designated under a provision of the Reciprocal Enforcement of Maintenance Orders Act, 1963 (Act [80 of 1963](#)), as a proclaimed country shall be deemed to be a designated country declared under the corresponding provision of this Act.
- (2) Any order registered or confirmed or any other thing done under any provision of the Reciprocal Enforcement of Maintenance Orders Act, 1963, or deemed to have been so registered or confirmed or done, shall be deemed to have been registered or confirmed or done under the corresponding provision of this Act.

14. Repeal of laws

The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

15. Short title

This Act shall be called the Reciprocal Enforcement of Maintenance Orders Act, 1995.

Schedule

LAWS REPEALED

No. and year of law	Short title	Extent of Repeal
Act 80 of 1963	The Reciprocal Enforcement of Maintenance Orders Act, 1963	The whole
Act 70 of 1968	General Law Amendment Act, 1968	Only section 56
Act 40 of 1970	Reciprocal Enforcement of Maintenance Orders Amendment Act, 1970	The whole