

Zambia

Maintenance Orders (Enforcement) Act, 1921 Chapter 56

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Maintenance Orders (Enforcement) Act, 1921

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Zambia

Maintenance Orders (Enforcement) Act, 1921

Chapter 56

Commenced on 29 November 1921

[This is the version of this document at 31 December 1996.]

An Act to make provision for the registration in Zambia of maintenance orders made in England and Ireland and for reciprocity for orders made in Zambia; to prescribe the procedure for the confirmation of provisional orders; to provide for the enforcement of registered and confirmed orders; to provide for reciprocity with other Commonwealth countries; and to provide for matters incidental to or connected with the foregoing.

1. Short title

This Act may be cited as the Maintenance Orders (Enforcement) Act.*

*The provisions of this Act ceased to apply to the maintenance of children with effect from 28th April 1995.

2. Interpretation

In this Act, unless the context otherwise requires—

"**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 that person is, according to the law in force where the maintenance order was made, liable to maintain;

"**maintenance order**" means an order, other than an order of affiliation, for the periodical payment of sums of money toward the maintenance of the wife or other dependants of the person against whom the order is made and, in the case of orders made in Ireland, shall include any order or decree for the recovery or repayment of the cost of relief or maintenance made by virtue of the provisions of the Poor Relief (Ireland) Acts, 1839 to 1914, of the United Kingdom.

3. Registration of order made in England or Ireland

(1) Where a maintenance order has, whether before or after the commencement of this Act, been made against any person by any court of England or Ireland and a certified copy of the order has been transmitted by a Secretary of State to the President, the President shall send a copy of the order to the prescribed officer of a court in Zambia for registration; and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

*The provisions of this Act ceased to apply to the maintenance of children with effect from 28th April 1995.

(2) The court in which an order is to be registered as aforesaid shall, if the court by which the order was made was a court of superior jurisdiction, be the High Court, and, if the court was not a court of superior jurisdiction, be a subordinate court.

[as amended by No. 36 of 1933]

4. Transmission to Secretary of State of order made in Zambian court

Where a court in Zambia has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in England or Ireland, the court shall send to the President for transmission to a Secretary of State, a certified copy of the order.

5. Provisional order may be made in absentia and procedure thereon

- (1) Where an application is made to a court in Zambia for a maintenance order against any person, and it is proved that that person is resident in England or Ireland, 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 England or Ireland.
- (2) The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.
- (3) Where such an order is made, the court shall send to the President for transmission to a Secretary of State 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 such provisional order has come before a court in England or Ireland for confirmation, and the order has by that court been remitted to the court which made the order for the purpose of taking further evidence, that 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. If upon the hearing of such evidence 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 President and dealt with in like manner as the original depositions.
- (5) 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, on the making of a varying or rescinding order, the court shall send a certified copy thereof to the President for transmission to a Secretary of State, and that 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.
- (6) 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. Procedure on provisional order made in England or Ireland

- (1) Where a maintenance order has been made by a court in England or Ireland and the order is provisional only and has no effect unless and until confirmed by a court in Zambia, and 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 President, and it appears to the President that the person against whom the order was made is resident in Zambia, the President may send the said documents to the prescribed officer of a court 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 requisitions the court shall issue such a summons and cause it to be served upon such person.

- (2) A summons so issued may be served in Zambia 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, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.
- (7) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

7. Enforcement of order

- (1) A court in which an order has been registered under this Act, or by which an order has been confirmed under this Act, and the officers of such court, shall take all such steps for enforcing the order as may be prescribed.
- (2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt recoverable summarily.
- (3) A warrant of execution or an order of commitment issued by a subordinate court for the purpose of enforcing any order so registered or confirmed may be executed in any part of Zambia in the same manner as if the warrant or order had been originally issued or subsequently endorsed by a subordinate court having jurisdiction in the place where the warrant or order is executed.

[as amended by No. 36 of 1933]

8. Rules

The High Court may, by statutory instrument, make rules—

- (a) regulating the procedure and practice of the High Court and subordinate courts for carrying out the provisions of this Act;
- (b) as to the manner in which cases may be remitted by a court authorised to confirm a provisional order to the court which made the provisional order;
- (c) generally for facilitating communications between such courts.

[No. 36 of 1933]

9. Signature on documents of court officers

Any document purporting to be signed by a Judge or officer of a court outside Zambia 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.

10. Depositions may be received in evidence

Depositions taken in a court in England or Ireland for the purposes of this Act may be received in evidence in proceedings before courts in Zambia under this Act.

11. Provision for reciprocity with other Common-wealth countries

Where the President is satisfied that reciprocal provisions have been made by the legislature of any country within the Commonwealth for the enforcement within such country of maintenance orders made by courts in Zambia, the President may, by statutory Proclamation, extend this Act to such country, and this Act shall thereupon apply in respect of such country as though the references to England or Ireland were references to such country and the references to a Secretary of State were references to the Governor or other appropriate authority of such country.

[No. 39 of 1929 as amended by No. 13 of 1954]