

eSwatini

Maintenance Orders Act

Act 77 of 1921

Legislation as at 1 December 1998

FRBR URI: /akn/sz/act/1921/77/eng@1998-12-01

There may have been updates since this file was created.

PDF created on 21 February 2024 at 16:04.

Collection last checked for updates: 1 December 1998.

[Check for updates](#)



About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.laws.africa
info@laws.africa

There is no copyright on the legislative content of this document.
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Maintenance Orders Act
Contents

1. Short title 1

2. Interpretation 1

3. Enforcement of overseas maintenance orders in Swaziland 1

4. Transmission of certain orders 2

5. Provisional order against person overseas 2

6. Procedure to make final an overseas order 2

7. Enforcement of order 3

8. Rules of procedure 3

9. Presumption of validity of court document 4

10. Evidence 4

11. Savings 4

12. Enforcement 4

eSwatini

Maintenance Orders Act

Act 77 of 1921

Commenced on 21 October 1921

[This is the version of this document at 1 December 1998.]

An Act to facilitate the enforcement in Swaziland of maintenance orders made in England, N. Ireland, and certain other countries.

1. Short title

This Act may be cited as the Maintenance Orders Act.

2. Interpretation

In this Act—

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

“**Commonwealth**” includes any protected state, protectorate or trust territory as defined in the British Nationality Act, 1948;

“**dependants**” means such persons as any person is, according to the law in force in the country or part thereof in which the maintenance order was made, liable to maintain;

“**magistrate’s court**” means a court established under the Subordinate Courts Proclamation;

“**maintenance order**” means an order other than an order made against a father for the maintenance of an illegitimate child, for the periodical payment of sums of money towards 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 includes 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;

“**Minister**” means the Minister for Home Affairs;

“**prescribed**” means prescribed by rules of court;

“**Secretary of State**” means one of Her Britannic Majesty’s Principal Secretaries of State.

3. Enforcement of overseas maintenance orders in Swaziland

(1) Where a maintenance order has, whether before or after the taking effect of this Act, been made against any person by any court in the United Kingdom or Northern Ireland, and certified copy of the order has been transmitted by a Secretary of State to the Prime Minister, he shall send the copy of the order to the Minister, who shall transmit such copy to the registrar or clerk of a court in Swaziland for registration; and on receipt of such order by the registrar or clerk of court he shall register it in the prescribed manner, and it 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 the power to enforce the order accordingly.

(2) The court in which an order is to be registered in terms of sub-section (1) 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 Magistrate’s Court.

[Amended P.29/1962]

4. Transmission of certain orders

Where a court in Swaziland has, whether before or after the taking effect 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 Northern Ireland, the court shall send to the Minister for transmission through the Prime Minister to a Secretary of State a certified copy of the order.

[Amended P.29/1962]

5. Provisional order against person overseas

- (1) Where an application is made to a magistrate's court for a maintenance order against a person, and it is proved that that person is resident in the United Kingdom or Northern 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 the United Kingdom or Northern 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 Minister for transmission through the High Court 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 the United Kingdom or Northern Ireland for confirmation and the order has by that court been remitted to the magistrate's 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.
- (5) 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 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 magistrate's 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 Minister for transmission through the Prime Minister to a Secretary of State and that in the case of an order varying the original order the order shall not have 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.

[Amended P.29/1962]

6. Procedure to make final an overseas order

- (1) Where a maintenance order has been made by a court in the United Kingdom or Northern Ireland and the order is provisional only and has no effect unless and until confirmed by a court in Swaziland, 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

through a Secretary of State and the Prime Minister to the Minister, and it appears to the Minister that the person against whom the order was made is resident in Swaziland, the Minister may send the said documents to the clerk of a magistrate's 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 requisition 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 Swaziland in the same manner as if it had been originally issued or subsequently endorsed by the magistrate's Court having jurisdiction in the place where the person happens to be.
- (3) At the hearing the person on whom the summons was served may 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 a 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 modification 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 magistrates' 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 such steps for enforcing the order as may be prescribed.
- (2) Every order shall be enforceable as if the order were for the payment of a civil debt recoverable summarily.
- (3) A writ of execution or a decree of civil imprisonment issued by a magistrate's court for the purpose of enforcing any order so registered or confirmed may be executed in any part of Swaziland in the same manner as if the writ or decree had been originally issued or subsequently endorsed by a magistrate's court having jurisdiction in the district where the writ or decree is executed.

8. Rules of procedure

The High Court Act and the Subordinate Courts Act shall, save in so far as provision is made to the contrary by this Act, apply to proceedings under this Act, and the power to make rules shall include power to make rules regulating the procedure of courts under this Act, 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, and generally for facilitating communications between such courts.

9. Presumption of validity of court document

Any document purporting to be signed by a judge or officer of a court in the United Kingdom or Northern Ireland 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. Evidence

Depositions taken in a court in the United Kingdom or Northern Ireland may be received in evidence in proceedings before magistrate's courts under this Act.

11. Savings

Such provisions of the Roman-Dutch law in force in Swaziland as relate to maintenance orders and the provisions of the Reciprocal Enforcement of Judgements Act, [No. 4 of 1922](#), shall be and are hereby extended and modified so as to be consistent with the provisions of this Act.

12. Enforcement

Where the Prime Minister is satisfied that legal provision exists in any country within the Commonwealth, or in the Republic of Ireland or in the Republic of South Africa or South-West Africa, or in any part of such country, for the enforcement within it of maintenance orders made by courts in Swaziland, the Prime Minister may, by notice in the *Gazette*, extend this Act to such country, territory or part, and this Act shall thereupon apply in respect of such country, or part as though references to the United Kingdom or Northern Ireland were references to such country or part, and references to the Secretary of State were references to the Government of such country or part.

[Amended P.29/1962]