

Malawi

Maintenance Orders (Enforcement) Act

Chapter 26:04

Legislation as at 31 December 2014

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Malawi

Maintenance Orders (Enforcement) Act Chapter 26:04

Commenced on 13 April 1921

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

[Repealed by [Marriage, Divorce and Family Relations Act \(Act 4 of 2015\)](#) on 3 July 2015]

An Act to facilitate the enforcement in Malawi of Maintenance Orders

1. Short title

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

2. Interpretation

In this Act, unless inconsistent with the context—

"**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;

"**country**" includes any protected state and any trust territory administered by the Government of any Commonwealth country;

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"**dependants**" means such persons as that person is, according to the law in force in the country in which the maintenance order was made, liable to maintain;

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"**maintenance order**" means an order other than an order of affiliation 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;

"**prescribed**" means prescribed by Rules of Court.

3. Enforcement of maintenance order made in England or Ireland

- (1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any court in any part of England or Ireland, and a certified copy of the order has been transmitted to the Registrar of the High Court, the Registrar shall send a copy of the order to the prescribed officer of a court in Malawi 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 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.
- (2) The court in which an order is to be so 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 Resident Magistrate's court or a subordinate court of the first or second grade.

4. Transmission of order made in Malawi

Where a court in Malawi has, whether before or after the commencement of this Act, 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 England or Ireland, the court shall send to the appropriate authority in England or Ireland, as the case may be, a certified copy of the order.

5. Power to make provisional order against person resident in England or Ireland

- (1) Where an application is made to a court in Malawi 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 appropriate authority in England or Ireland, as the case may be, 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 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 appropriate authority in England or Ireland, as the case may be, and that in the case of an 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. Power of local court to confirm 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 Malawi, 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 Registrar of the High Court, and it appears to the Registrar of the High Court that the person against whom the order was made is resident in Malawi, the Registrar of the High Court may send the said documents to the prescribed officer of a Resident Magistrate's court or a subordinate court of the first or second grade, 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 Malawi 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 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. Power of Chief Justice to make Rules for facilitating communications between courts

The Chief Justice may make Rules as to the manner in which a case can be remitted by a court authorized to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts.

8. Mode of enforcing orders

- (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:

Provided that, if the order is of such a nature that if made by the court in which it is so registered, or by which it is so confirmed, it would be enforceable in like manner as an order of affiliation, the order shall be so enforceable.

- (3) A warrant of distress or commitment issued by a subordinate court for the purpose of enforcing any order so registered or confirmed may be executed in any part of Malawi in the same manner as if the warrant had been originally issued or subsequently endorsed by a subordinate court having jurisdiction in the place where the warrant is executed.

9. Proof of documents of court offices

Any document purporting to be signed by a judge or officer of a court in England or 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. Depositions to be evidence

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

11. Power of President to extend Act to other countries

Where the President is satisfied that reciprocal provisions have been or are about to be made by the legislature of any country for the enforcement within such country or any part thereof of maintenance orders made by courts in Malawi, the President may by proclamation extend this Act to such country or such part thereof and this Act shall thereupon apply in respect of such country or such part as though the references to England or Ireland were references to such country.

[40 of 1971]