



Maintenance Enforcement Act 1991

CHAPTER 17

LONDON: HMSO



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CHAPTER 17

ARRANGEMENT OF SECTIONS

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Section

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Maintenance Enforcement Act 1991

1991 CHAPTER 17

An Act to make provision as to the methods of payment, and the variation of the methods of payment, under maintenance orders made by the High Court and county courts; to re-enact with modifications certain provisions relating to the making and variation of orders requiring money to be paid periodically; to make further provision as to the making, variation and enforcement by magistrates' courts of maintenance orders; to make further provision about proceedings by clerks of magistrates' courts in relation to arrears under certain orders requiring money to be paid periodically; to make further provision as to maintenance orders registered in, or confirmed by, magistrates' courts or registered in the High Court; to extend the power to make attachment of earnings orders in the case of maintenance orders; to amend section 10 of the Courts and Legal Services Act 1990; and for connected purposes. [27th June 1991]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The High Court and county courts

1.—(1) Where the High Court or a county court makes a qualifying periodical maintenance order, it may at the same time exercise either of its powers under subsection (4) below in relation to the order, whether of its own motion or on an application made under this subsection by an interested party.

(2) For the purposes of this section, a periodical maintenance order is an order—

- (a) which requires money to be paid periodically by one person ("the debtor") to another ("the creditor"); and

Maintenance orders in the High Court and county courts: means of payment, attachment of earnings and revocation, variation, etc.

(b) which is a maintenance order;

and such an order is a “qualifying periodical maintenance order” if, at the time it is made, the debtor is ordinarily resident in England and Wales.

(3) Where the High Court or a county court has made a qualifying periodical maintenance order, it may at any later time—

(a) on an application made under this subsection by an interested party, or

(b) of its own motion, in the course of any proceedings concerning the order,

exercise either of its powers under subsection (4) below in relation to the order.

(4) The powers mentioned in subsections (1) and (3) above are—

(a) the power to order that payments required to be made by the debtor to the creditor under the qualifying periodical maintenance order in question shall be so made by such a method of payment falling within subsection (5) below as the court may specify in the particular case; or

(b) the power, by virtue of this section, to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the qualifying periodical maintenance order in question.

1971 c. 32.

(5) The methods of payment mentioned in subsection (4)(a) above are—

(a) payment by standing order; or

(b) payment by any other method which requires the debtor to give his authority for payments of a specific amount to be made from an account of his to an account of the creditor’s on specific dates during the period for which the authority is in force and without the need for any further authority from the debtor.

(6) In any case where—

(a) the court proposes to exercise its power under paragraph (a) of subsection (4) above, and

(b) having given the debtor an opportunity of opening an account from which payments under the order may be made in accordance with the method of payment proposed to be ordered under that paragraph, the court is satisfied that the debtor has failed, without reasonable excuse, to open such an account,

the court in exercising its power under that paragraph may order that the debtor open such an account.

(7) Where in the exercise of its powers under subsection (1) or (3) above, the High Court or a county court has made in relation to a qualifying periodical maintenance order such an order as is mentioned in subsection (4)(a) above (a “means of payment order”), it may at any later time—

(a) on an application made under this subsection by an interested party, or

(b) of its own motion, in the course of any proceedings concerning the qualifying periodical maintenance order,

revoke, suspend, revive or vary the means of payment order.

(8) In deciding whether to exercise any of its powers under this section the court in question having (if practicable) given every interested party an opportunity to make representations shall have regard to any representations made by any such party.

(9) Nothing in this section shall be taken to prejudice—

(a) any power under the Attachment of Earnings Act 1971 which would, apart from this section, be exercisable by the High Court or a county court; or

(b) any right of any person to make any application under that Act; and subsection (7) above is without prejudice to any other power of the High Court or a county court to revoke, suspend, revive or vary an order.

(10) For the purposes of this section—

“debtor” and “creditor” shall be construed in accordance with subsection (2) above;

“interested party” means any of the following, that is to say—

(a) the debtor;

(b) the creditor; and

(c) in a case where the person who applied for the qualifying periodical maintenance order in question is a person other than the creditor, that other person;

“maintenance order” means any order specified in Schedule 8 to the Administration of Justice Act 1970 and includes any such order which has been discharged, if any arrears are recoverable under it;

“qualifying periodical maintenance order” shall be construed in accordance with subsection (2) above, and the references to such an order in subsections (3) and (7) above are references to any such order, whether made before or after the coming into force of this section;

and the reference in subsection (2) above to an order requiring money to be paid periodically by one person to another includes a reference to an order requiring a lump sum to be paid by instalments by one person to another.

Magistrates' courts

2. For section 59 of the Magistrates' Courts Act 1980 (periodical payments through justices' clerk) there shall be substituted the following section—

“Orders for periodical payment: means of payment.

59.—(1) In any case where a magistrates' court orders money to be paid periodically by one person (in this section referred to as “the debtor”) to another (in this section referred to as “the creditor”), then—

(a) if the order is a qualifying maintenance order, the court shall at the same time exercise one of its powers under paragraphs (a) to (d) of subsection (3) below;

(b) if the order is not a maintenance order, the court shall at the same time exercise one of its powers under paragraphs (a) and (b) of that subsection.

Orders for periodical payment in magistrates' courts: means of payment. 1980 c. 43.

(2) For the purposes of this section a maintenance order is a "qualifying maintenance order" if, at the time it is made, the debtor is ordinarily resident in England and Wales.

(3) The powers of the court are—

- (a) the power to order that payments under the order be made directly by the debtor to the creditor;
- (b) the power to order that payments under the order be made to the clerk of the court or to the clerk of any other magistrates' court;
- (c) the power to order that payments under the order be made by the debtor to the creditor by such method of payment falling within subsection (6) below as may be specified;
- (d) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

1971 c. 32.

(4) In any case where—

- (a) the court proposes to exercise its power under paragraph (c) of subsection (3) above, and
- (b) having given the debtor an opportunity of opening an account from which payments under the order may be made in accordance with the method of payment proposed to be ordered under that paragraph, the court is satisfied that the debtor has failed, without reasonable excuse, to open such an account,

the court in exercising its power under that paragraph may order that the debtor open such an account.

(5) In deciding, in the case of a maintenance order, which of the powers under paragraphs (a) to (d) of subsection (3) above it is to exercise, the court having (if practicable) given them an opportunity to make representations shall have regard to any representations made—

- (a) by the debtor,
- (b) by the creditor, and
- (c) if the person who applied for the maintenance order is a person other than the creditor, by that other person.

(6) The methods of payment referred to in subsection (3)(c) above are the following, that is to say—

- (a) payment by standing order; or
- (b) payment by any other method which requires one person to give his authority for payments of a specific amount to be made from an account of his to an account of another's on specific dates

during the period for which the authority is in force and without the need for any further authority from him.

(7) Where the maintenance order is an order—

(a) under the Guardianship of Minors Acts 1971 and 1973,

(b) under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978, or 1978 c. 22.

(c) under, or having effect as if made under, Schedule 1 to the Children Act 1989, 1989 c. 41.

and the court does not propose to exercise its power under paragraph (c) or (d) of subsection (3) above, the court shall, unless upon representations expressly made in that behalf by the person who applied for the maintenance order it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.

(8) The Secretary of State may by regulations confer on magistrates' courts, in addition to their powers under paragraphs (a) to (d) of subsection (3) above, the power (the "additional power") to order that payments under a qualifying maintenance order be made by the debtor to the creditor or the clerk of a magistrates' court (as the regulations may provide) by such method of payment as may be specified in the regulations.

(9) Any reference in any enactment to paragraphs (a) to (d) of subsection (3) above (but not a reference to any specific paragraph of that subsection) shall be taken to include a reference to the additional power, and the reference in subsection (10) below to the additional power shall be construed accordingly.

(10) Regulations under subsection (8) above may make provision for any enactment concerning, or connected with, payments under maintenance orders to apply, with or without modifications, in relation to the additional power.

(11) The power of the Secretary of State to make regulations under subsection (8) above shall be exercisable by statutory instrument and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(12) For the purposes of this section the reference in subsection (1) above to money paid periodically by one person to another includes, in the case of a maintenance order, a reference to a lump sum paid by instalments by one person to another."

Orders for periodical payment in magistrates' courts: proceedings by clerk and penalty for breach. 1980 c. 43.

3. After section 59 of the Magistrates' Courts Act 1980 (orders for periodical payment: means of payment), as substituted by section 2 above, there shall be inserted the following sections—

“Orders for periodical payment: proceedings by clerk.

59A.—(1) Where payments under a relevant UK order are required to be made periodically—

- (a) to or through the clerk of a magistrates' court, or
- (b) by any method of payment falling within section 59(6) above,

and any sums payable under the order are in arrear, the clerk of the relevant court shall, if the person for whose benefit the payments are required to be made so requests in writing, and unless it appears to the clerk that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of those sums.

(2) Where payments under a relevant UK order are required to be made periodically to or through the clerk of a magistrates' court, the person for whose benefit the payments are required to be made may, at any time during the period in which the payments are required to be so made, give authority in writing to the clerk of the relevant court for the clerk to proceed as mentioned in subsection (3) below.

(3) Where authority under subsection (2) above is given to the clerk of the relevant court, the clerk shall, unless it appears to him that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of any sums payable to or through him under the order in question which, on or after the date of the giving of the authority, fall into arrear.

(4) In any case where—

- (a) authority under subsection (2) above has been given to the clerk of a relevant court, and
- (b) the person for whose benefit the payments are required to be made gives notice in writing to the clerk cancelling the authority,

the authority shall cease to have effect and, accordingly, the clerk shall not continue any proceedings already commenced by virtue of the authority.

(5) The person for whose benefit the payments are required to be made shall have the same liability for all the costs properly incurred in or about proceedings taken under subsection (1) above at his request or under subsection (3) above by virtue of his authority (including any costs incurred as a result of any proceedings commenced not being continued) as if the proceedings had been taken by him.

(6) Nothing in subsection (1) or (3) above shall affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under an order of any court.

(7) In this section—

“the relevant court”, in relation to an order, means—

(a) in a case where payments under the order are required to be made to or through the clerk of a magistrates’ court, that magistrates’ court; and

(b) in a case where such payments are required to be made by any method of payment falling within section 59(6) above, the magistrates’ court which made the order or, if the order was not made by a magistrates’ court, the magistrates’ court in which the order is registered;

“relevant UK order” means—

(a) an order made by a magistrates’ court, other than an order made by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972; 1972 c. 18.

(b) an order made by the High Court or a county court (including an order deemed to be made by the High Court by virtue of section 1(2) of the Maintenance Orders Act 1958) and registered under Part I of that Act of 1958 in a magistrates’ court; or 1958 c. 39.

(c) an order made by a court in Scotland or Northern Ireland and registered under Part II of the Maintenance Orders Act 1950 in a magistrates’ court; 1950 c. 37.

and any reference to payments required to be made periodically includes, in the case of a maintenance order, a reference to instalments required to be paid in respect of a lump sum payable by instalments.

Maintenance orders: penalty for breach.

59B.—(1) In any case where—

(a) payments under a relevant English maintenance order are required to be made periodically in the manner mentioned in paragraph (a) or (b) of section 59A(1) above, and

(b) the debtor fails, on or after the date of commencement of this section, to comply with the order in so far as the order relates to the manner of payment concerned,

the person for whose benefit the payments are required to be made may make a complaint to a relevant justice giving details of the failure to comply.

(2) If the relevant justice is satisfied that the nature of the alleged failure to comply may be such as to justify the relevant court in exercising its power under subsection (3) below, he shall issue a summons directed to the debtor requiring him to appear before the relevant court to answer the complaint.

(3) On the hearing of the complaint, the relevant court may order the debtor to pay a sum not exceeding £1000.

(4) Any sum ordered to be paid under subsection (3) above shall for the purposes of this Act be treated as adjudged to be paid by a conviction of a magistrates' court.

(5) In this section—

“debtor” has the same meaning as it has in section 59 above;

“the relevant court” has the same meaning as it has in section 59A above;

“relevant English maintenance order” means—

1972 c. 18.

(a) a maintenance order made by a magistrates' court, other than an order made by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972; or

1958 c. 39.

(b) an order made by the High Court or a county court (other than an order deemed to be made by the High Court by virtue of section 1(2) of the Maintenance Orders Act 1958) and registered under Part I of that Act of 1958 in a magistrates' court;

“relevant justice”, in relation to a relevant court, means a justice of the peace for the petty sessions area for which the relevant court is acting;

and any reference to payments required to be made periodically includes a reference to instalments required to be paid in respect of a lump sum payable by instalments.”

Revocation, variation, etc. of orders for periodical payment in magistrates' courts: general. 1980 c. 43.

4. For section 60 of the Magistrates' Courts Act 1980 (revocation, variation etc., of orders for periodical payment) there shall be substituted the following section—

“Revocation, variation, etc. of orders for periodical payment. 60.—(1) Where a magistrates' court has made an order for money to be paid periodically by one person to another, the court may, by order on complaint, revoke, revive or vary the order.

(2) The power under subsection (1) above to vary an order shall include power to suspend the operation of any provision of the order temporarily and to revive the operation of any provision so suspended.

(3) Where the order mentioned in subsection (1) above is a maintenance order, the power under that subsection to vary the order shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under paragraphs (a) to (d) of section 59(3) above.

(4) In any case where—

- (a) a magistrates' court has made a maintenance order, and
- (b) payments under the order are required to be made by any method of payment falling within section 59(6) above,

an interested party may apply in writing to the clerk of the court for the order to be varied as mentioned in subsection (5) below.

(5) Subject to subsection (8) below, where an application has been made under subsection (4) above, the clerk, after giving written notice (by post or otherwise) of the application to any other interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the clerk.

(6) The clerk may proceed with an application under subsection (4) above notwithstanding that any such interested party as is referred to in subsection (5) above has not received written notice of the application.

(7) In subsections (4) to (6) above "interested party", in relation to a maintenance order, means—

- (a) the debtor;
- (b) the creditor; and
- (c) if the person who applied for the maintenance order is a person other than the creditor, that other person.

(8) Where an application has been made under subsection (4) above, the clerk may, if he considers it inappropriate to exercise his power under subsection (5) above, refer the matter to the court which may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) above.

(9) Subsections (4), (5) and (7) of section 59 above shall apply for the purposes of subsections (3) and (8) above as they apply for the purposes of that section.

(10) None of the powers of the court, or of the clerk of the court, conferred by subsections (3) to (9) above shall be exercisable in relation to a maintenance order which is not a qualifying maintenance order (within the meaning of section 59 above).

(11) For the purposes of this section—

- (a) "creditor" and "debtor" have the same meaning as they have in section 59 above; and

- (b) the reference in subsection (1) above to money paid periodically by one person to another includes, in the case of a maintenance order, a reference to a lump sum paid by instalments by one person to another.”

Variation of orders for periodical payment made under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978. 1978 c. 22.

1980 c. 43.

5. After section 20 of the Domestic Proceedings and Magistrates' Courts Act 1978 (variation, revival and revocation of orders for periodical payments) there shall be inserted the following section—

“Variation of orders for periodical payments: further provisions.

20ZA.—(1) Subject to subsections (7) and (8) below, the power of the court under section 20 of this Act to vary an order for the making of periodical payments shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980.

(2) In any case where—

- (a) a magistrates' court has made an order under this Part of this Act for the making of periodical payments, and
- (b) payments under the order are required to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.),

an application may be made under this subsection to the clerk to the justices for the petty sessions area for which the court is acting for the order to be varied as mentioned in subsection (3) below.

(3) Subject to subsection (5) below, where an application is made under subsection (2) above, the clerk, after giving written notice (by post or otherwise) of the application to the respondent and allowing the respondent, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the clerk.

(4) The clerk may proceed with an application under subsection (2) above notwithstanding that the respondent has not received written notice of the application.

(5) Where an application has been made under subsection (2) above, the clerk may, if he considers it inappropriate to exercise his power under subsection (3) above, refer the matter to the court which, subject to subsections (7) and (8) below, may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980.

(6) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to order that account be opened) shall apply for the purposes of subsections (1) and (5) above as it applies for the purposes of that section.

(7) Before varying the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980, the court shall have regard to any representations made by the parties to the application.

1980 c. 43.

(8) If the court does not propose to exercise its power under paragraph (c) or (d) of subsection (3) of section 59 of the Magistrates' Courts Act 1980, the court shall, unless upon representations expressly made in that behalf by the person to whom payments under the order are required to be made it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.

(9) Subsection (12) of section 20 of this Act shall have effect for the purposes of applications under subsection (2) above as it has effect for the purposes of applications under that section.

(10) None of the powers of the court, or of the clerk to the justices, conferred by this section shall be exercisable in relation to an order under this Part of this Act for the making of periodical payments which is not a qualifying maintenance order (within the meaning of section 59 of the Magistrates' Courts Act 1980)."

6. In Schedule 1 to the Children Act 1989 (financial provision for children), after paragraph 6 (variation etc. of orders for periodical payments) there shall be inserted the following paragraph—

Variation of orders for periodical payment made in magistrates' courts under Schedule 1 to the Children Act 1989.
1989 c. 41.

"Variation of orders for periodical payments etc. made by magistrates' courts

6A.—(1) Subject to sub-paragraphs (7) and (8), the power of a magistrates' court—

- (a) under paragraph 1 or 2 to vary an order for the making of periodical payments, or
- (b) under paragraph 5(6) to vary an order for the payment of a lump sum by instalments,

shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980.

(2) In any case where—

- (a) a magistrates' court has made an order under this Schedule for the making of periodical payments or for the payment of a lump sum by instalments, and
- (b) payments under the order are required to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.),

any person entitled to make an application under this Schedule for the variation of the order (in this paragraph referred to as "the applicant") may apply to the clerk to the justices for the petty sessions area for which the court is acting for the order to be varied as mentioned in sub-paragraph (3).

(3) Subject to sub-paragraph (5), where an application is made under sub-paragraph (2), the clerk, after giving written notice (by post or otherwise) of the application to any interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the clerk.

(4) The clerk may proceed with an application under sub-paragraph (2) notwithstanding that any such interested party as is referred to in sub-paragraph (3) has not received written notice of the application.

(5) Where an application has been made under sub-paragraph (2), the clerk may, if he considers it inappropriate to exercise his power under sub-paragraph (3), refer the matter to the court which, subject to sub-paragraphs (7) and (8), may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980.

1980 c. 43.

(6) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to order that account be opened) shall apply for the purposes of sub-paragraphs (1) and (5) as it applies for the purposes of that section.

(7) Before varying the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980, the court shall have regard to any representations made by the parties to the application.

(8) If the court does not propose to exercise its power under paragraph (c) or (d) of subsection (3) of section 59 of the Magistrates' Courts Act 1980, the court shall, unless upon representations expressly made in that behalf by the applicant for the order it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.

(9) None of the powers of the court, or of the clerk to the justices, conferred by this paragraph shall be exercisable in relation to an order under this Schedule for the making of periodical payments, or for the payment of a lump sum by instalments, which is not a qualifying maintenance order (within the meaning of section 59 of the Magistrates' Courts Act 1980).

(10) In sub-paragraphs (3) and (4) "interested party", in relation to an application made by the applicant under sub-paragraph (2), means a person who would be entitled to be a party to an application for the variation of the order made by the applicant under any other provision of this Schedule if such an application were made."

Maintenance orders in magistrates' courts: enforcement.

7. In section 76 of the Magistrates' Courts Act 1980 (enforcement of sums adjudged to be paid), after subsection (3) there shall be inserted the following subsections—

"(4) Where proceedings are brought for the enforcement of a magistrates' court maintenance order under this section, the court may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) above.

(5) Subsections (4), (5) and (7) of section 59 above shall apply for the purposes of subsection (4) above as they apply for the purposes of that section.

(6) Subsections (4) and (5) above shall not have effect in relation to a maintenance order which is not a qualifying maintenance order (within the meaning of section 59 above)."

8. After section 94 of the Magistrates' Courts Act 1980 (effect of committal on arrears) there shall be inserted the following section—

Interest on arrears.
1980 c. 43.

"Interest on arrears.

94A.—(1) The Secretary of State may by order provide that a magistrates' court, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of an English maintenance order, may order that interest of an amount calculated at the prescribed rate shall be paid on so much of the sum due under the order as they may determine.

(2) In subsection (1) above "the prescribed rate" means such rate of interest as the Secretary of State may by order prescribe.

(3) An order under this section may make provision for the manner in which and the periods by reference to which interest is to be calculated.

(4) Where, by virtue of subsection (1) above, a magistrates' court orders the payment of interest on any sum due under a maintenance order—

- (a) then if it orders that the whole or any part of the interest be paid by instalments that order shall be regarded as an instalments order for the purposes of section 95 below and that section shall accordingly apply in relation to it; and
- (b) the whole of the interest shall be enforceable as a sum adjudged to be paid by the maintenance order.

(5) In this section—

"English maintenance order" means—

(a) a qualifying maintenance order made by a magistrates' court, other than an order made by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972;

1972 c. 18.

or
(b) an order made by the High Court or a county court (other than an order deemed to be made by the High Court by virtue of section 1(2) of the Maintenance Orders Act 1958) and registered under Part I of that Act of 1958 in a magistrates' court;

1958 c. 39.

"qualifying maintenance order" has the same meaning as it has in section 59 above.

(6) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument made with the concurrence of the Treasury and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

Amendment of orders transferred under s.24A of the Social Security Act 1986.
1986 c. 50.

9.—(1) In section 24A of the Social Security Act 1986 (recovery of expenditure on income support: additional amounts and transfer of orders under s.24), after subsection (4) (transfer of right to receive payments under the order to the dependent parent) there shall be inserted the following subsection—

“(4A) In any case where—

- (a) notice is given to a magistrates’ court under subsection (3) above,
- (b) payments under the order are required to be made by any method of payment falling within section 59(6) of the Magistrates’ Courts Act 1980 (standing order, etc.), and
- (c) the clerk to the justices for the petty sessions area for which the court is acting decides that payment by that method is no longer possible,

1980 c. 43.

the clerk shall amend the order to provide that payments under the order shall be made by the liable parent to the clerk.”

(2) After subsection (7) of that section (transfer back of right to receive payments under the order to the Secretary of State) there shall be inserted the following subsections—

“(7A) Subject to subsections (7B) and (7C) below, in any case where—

- (a) notice is given to a magistrates’ court under subsection (7) above, and
- (b) the method of payment under the order which subsists immediately before the day on which the transfer under subsection (7) above takes effect differs from the method of payment which subsisted immediately before the day on which the transfer under subsection (3) above (or, if there has been more than one such transfer, the last such transfer) took effect,

the clerk to the justices for the petty sessions area for which the court is acting shall amend the order by reinstating the method of payment under the order which subsisted immediately before the day on which the transfer under subsection (3) above (or, as the case may be, the last such transfer) took effect.

(7B) The clerk shall not amend the order under subsection (7A) above if the Secretary of State gives notice in writing to the clerk, on or before the day on which the notice under subsection (7) above is given, that the method of payment under the order which subsists immediately before the day on which the transfer under subsection (7) above takes effect is to continue.

(7C) In any case where—

- (a) notice is given to a magistrates' court under subsection (7) above,
- (b) the method of payment under the order which subsisted immediately before the day on which the transfer under subsection (3) above (or, if there has been more than one such transfer, the last such transfer) took effect was any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), and
- (c) the clerk decides that payment by that method is no longer possible,

1980 c.43.

the clerk shall amend the order to provide that payments under the order shall be made by the liable parent to the clerk.”

Registered maintenance orders

10. Schedule 1 to this Act, which by amending certain enactments applies some of the preceding provisions of this Act with modifications to maintenance orders registered in or confirmed by magistrates' courts or registered in the High Court, shall have effect.

Amendment of certain enactments relating to registered or confirmed maintenance orders.

General

11.—(1) Schedule 2 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, shall have effect.

Minor and consequential amendments and repeals.

(2) The enactments specified in Schedule 3 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

12.—(1) This Act may be cited as the Maintenance Enforcement Act 1991.

Short title, commencement, application and extent.

(2) The provisions of this Act, other than this section (which comes into force on the passing of this Act), shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different provisions or for different purposes of the same provision.

(3) In the application of any amendment made by this Act which has effect in relation to orders made, confirmed or registered by a court, it is immaterial whether the making, confirmation or registration occurred before or after the coming into force of the amendment.

(4) Except for paragraphs 3 to 6 of Schedule 1, section 10 (in so far as it relates to those paragraphs) and this section, which extend to Scotland and Northern Ireland, this Act extends to England and Wales only.

SCHEDULES

Section 10.

SCHEDULE 1

**AMENDMENT OF CERTAIN ENACTMENTS RELATING TO MAINTENANCE ORDERS
REGISTERED IN OR CONFIRMED BY MAGISTRATES' COURTS OR REGISTERED IN THE
HIGH COURT**

The Maintenance Orders (Facilities for Enforcement) Act 1920 (c. 33)

1.—(1) In section 4 of the Maintenance Orders (Facilities for Enforcement) Act 1920 (power of court of summary jurisdiction to confirm maintenance order made out of UK), after subsection (5) there shall be inserted the following subsections—

“(5A) Where a magistrates’ court confirms a provisional order under this section, it shall at the same time exercise one of its powers under subsection (5B).

(5B) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates’ court;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates’ court, by such method of payment falling within section 59(6) of the Magistrates’ Courts Act 1980 (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

(5C) In deciding which of the powers under subsection (5B) it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.

(5D) Subsection (4) of section 59 of the Magistrates’ Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (5B) as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

- “(a) the court proposes to exercise its power under paragraph (b) of section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920, and”.

(2) For subsection (6) of that section (which provides that where a provisional order is confirmed it may be varied or rescinded as if it had been made by the confirming court and includes power to remit the order to the court which made it) there shall be substituted the following subsections—

“(6) Subject to subsection (6A), where a provisional order has been confirmed under this section, it may be varied or revoked in like manner as if it had originally been made by the confirming court.

(6A) Where the confirming court is a magistrates’ court, section 60 of the Magistrates’ Courts Act 1980 (revocation, variation etc. of orders for periodical payment) shall have effect in relation to a provisional order confirmed under this section—

- (a) as if in subsection (3) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920”;
- (b) as if in subsection (4) for paragraph (b) there were substituted—

“(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates’ court, by any method of payment falling within section 59(6) above (standing order, etc.)”;

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and as if after the words “the court” there were inserted “which made the order”;

- (c) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920”; 1920 c. 33.
- (d) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;
- (e) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920”;
- (f) as if for subsections (9) and (10) there were substituted the following subsections—

“(9) In deciding, for the purposes of subsections (3) and (8) above, which of the powers under section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920 it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsections (3) and (8) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920, and”.

(6B) Where on an application for variation or revocation the confirming 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.”

2. In section 6 of that Act (mode of enforcing orders registered in or confirmed by courts under Act), in subsection (2) (which provides that if the order is of such a nature that if made by the court it would be enforceable as a magistrates’ court maintenance order it shall be so enforceable), for the words “the order shall be so enforceable” there shall be substituted “the order shall, subject to the modifications of sections 76 and 93 of the Magistrates’ Courts Act 1980 (enforcement of sums adjudged to be paid and complaint for arrears) specified in subsections (2ZA) and (2ZB) of section 18 of the Maintenance Orders Act 1950 (enforcement of registered orders), be so enforceable”. 1980 c. 43. 1950 c. 37.

The Maintenance Orders Act 1950 (c. 37)

3.—(1) In section 18 of the Maintenance Orders Act 1950 (enforcement of registered orders), in subsection (2) (orders registered in magistrates’ courts to be enforceable as magistrates’ courts maintenance orders) for the words “shall be enforceable” there shall be substituted “shall, subject to the modifications of sections 76 and 93 of the Magistrates’ Courts Act 1980 specified in subsections (2ZA) and (2ZB) of this section, be enforceable”.

(2) After that subsection there shall be inserted the following subsections—

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“(2ZA) Section 76 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—

“(4) Where proceedings are brought for the enforcement of a magistrates’ court maintenance order under this section, the court may vary the order by exercising one of its powers under subsection (5) below.

(5) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates’ court;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates’ court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

1971 c. 32.

(6) In deciding which of the powers under subsection (5) above it is to exercise, the court shall have regard to any representations made by the debtor (within the meaning of section 59 above).

(7) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (5) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 76(5) below, and”.

(2ZB) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as if for paragraph (b) there were substituted—

“(b) if the court is of the opinion that it is appropriate—

- (i) to make an attachment of earnings order; or
- (ii) to exercise its power under paragraph (b) of section 76(5) above.”

4.—(1) In section 19 of that Act (functions of collecting officers, etc.), in subsection (2) (court to order that payments under maintenance order registered in court of summary jurisdiction in England or Northern Ireland be made to collecting officer, unless court satisfied it is undesirable to do so) for the words “unless it is satisfied that it is undesirable to do so” there shall be substituted “unless, in the case of a court of summary jurisdiction in Northern Ireland, it is satisfied that it is undesirable to do so”.

(2) For subsection (3) of that section (order under subsection (2) may be varied or revoked) there shall be substituted the following subsection—

“(3) An order made under subsection (2) of this section—

- (a) by a court of summary jurisdiction in England may be varied or revoked by an exercise of the powers conferred by virtue of section 18(2ZA) or section 22(1A) or (1E) of this Act;
- (b) by a court of summary jurisdiction in Northern Ireland may be varied or revoked by a subsequent order.”

5. In section 22 of that Act (discharge and variation of maintenance orders registered in summary or sheriff courts), after subsection (1) (power of registering court to vary rate of payments under order) there shall be inserted the following subsections—

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“(1A) The power of a magistrates’ court in England and Wales to vary a maintenance order under subsection (1) of this section shall include power, if the court is satisfied that payment has not been made in accordance with the order, to vary the order by exercising one of its powers under subsection (1B) of this section.

(1B) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates’ court in England and Wales;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates’ court in England and Wales, by such method of payment falling within section 59(6) of the Magistrates’ Courts Act 1980 (standing order, etc.) as may be specified; 1980 c. 43.
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order. 1971 c. 32.

(1C) In deciding which of the powers under subsection (1B) of this section it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.

(1D) Subsection (4) of section 59 of the Magistrates’ Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (1B) of this section as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 22(1B) of the Maintenance Orders Act 1950, and” 1950 c. 37.

(1E) Subsections (4) to (11) of section 60 of the Magistrates’ Courts Act 1980 (power of clerk and court to vary maintenance order) shall apply in relation to a maintenance order for the time being registered under this Part of this Act in a magistrates’ court in England and Wales as they apply in relation to a maintenance order made by a magistrates’ court in England and Wales but—

- (a) as if in subsection (4) for paragraph (b) there were substituted—
 - “(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates’ court, by any method of payment falling within section 59(6) above (standing order, etc.)”;
 - and as if after the words “the court” there were inserted “which made the order”;
- (b) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of section 22(1B) of the Maintenance Orders Act 1950”;
- (c) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;
- (d) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “section 22(1B) of the Maintenance Orders Act 1950”;
- (e) as if for subsections (9) and (10) there were substituted the following subsections—

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1950 c. 37.

“(9) In deciding which of the powers under section 22(1B) of the Maintenance Orders Act 1950 it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (8) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 22(1B) of the Maintenance Orders Act 1950, and”.

6. In section 24 of that Act (cancellation of registration), after subsection (5) (effect of cancellation of order registered in court of summary jurisdiction) there shall be inserted the following subsection—

“(5A) On the cancellation of the registration of a maintenance order registered in a magistrates’ court in England and Wales, any order—

(a) made in relation thereto by virtue of the powers conferred by section 18(2ZA) or section 22(1A) or (1E) of this Act, and

(b) requiring payment to the clerk of a magistrates’ court in England and Wales (whether or not by any method of payment falling within section 59(6) of the Magistrates’ Courts Act 1980),

1980 c. 43.

shall cease to have effect; but until the person liable to make payments under the maintenance order receives the prescribed notice of the cancellation, he shall be deemed to comply with the maintenance order if he makes payments in accordance with any such order which was in force immediately before the cancellation.”

The Maintenance Orders Act 1958 (c. 39)

7. In section 2 of the Maintenance Orders Act 1958 (registration of orders), for subsection (6) (section 19(1) to (4) of Maintenance Orders Act 1950 to have effect for the purposes of Part I) there shall be substituted the following subsections—

“(6) Where a magistrates’ court order is registered under this Part of this Act in the High Court, then—

(a) if payments under the magistrates’ court order are required to be made (otherwise than to the clerk of a magistrates’ court) by any method of payment falling within section 59(6) of the Magistrates’ Courts Act 1980 (standing order, etc.), any order requiring payment by that method shall continue to have effect after registration;

(b) any order by virtue of which sums payable under the magistrates’ court order are required to be paid to the clerk of a magistrates’ court (whether or not by any method of payment falling within section 59(6) of that Act) on behalf of the person entitled thereto shall cease to have effect.

(6ZA) Where a High Court or county court order is registered under this Part of this Act in a magistrates’ court, then—

(a) if a means of payment order (within the meaning of section 1(7) of the Maintenance Enforcement Act 1991) has effect in relation to the order in question, it shall continue to have effect after registration; and

(b) in any other case, the magistrates’ court shall order that all payments to be made under the order in question (including any arrears accrued before registration) shall be made to the clerk of the court or the clerk of any other magistrates’ court.

(6ZB) Any such order as to payment—

- (a) as is referred to in paragraph (a) of subsection (6) of this section may be revoked, suspended, revived or varied by an exercise of the powers conferred by section 4A of this Act; and
- (b) as is referred to in paragraph (a) or (b) of subsection (6ZA) of this section may be varied or revoked by an exercise of the powers conferred by section 3(2A) or (2B) or section 4(2A), (5A) or (5B) of this Act.

(6ZC) Where by virtue of the provisions of this section or any order under subsection (6ZA)(b) of this section payments under an order cease to be or become payable to the clerk of a magistrates' court, the person liable to make the payments shall, until he is given the prescribed notice to that effect, be deemed to comply with the order if he makes payments in accordance with the order and any order under subsection (6ZA)(b) of this section of which he has received such notice."

8.—(1) In section 3 of that Act (enforcement of registered orders), in subsection (2) (order registered in magistrates' court to be enforceable as magistrates' court maintenance order) for the words "Subject to the provisions of the next following subsection" there shall be substituted "Subject to the provisions of subsections (2A) to (3) of this section".

(2) After that subsection there shall be inserted the following subsections—

"(2A) Where an order registered in a magistrates' court is an order other than one deemed to be made by the High Court by virtue of section 1(2) of this Act, section 76 of the Magistrates' Courts Act 1980 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—

1980 c. 43.

"(4) Where proceedings are brought for the enforcement of a magistrates' court maintenance order under this section, the court may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) above.

(5) In deciding which of the powers under paragraphs (a) to (d) of section 59(3) above it is to exercise, the court shall have regard to any representations made by the debtor and the creditor (which expressions have the same meaning as they have in section 59 above).

(6) Subsection (4) of section 59 above shall apply for the purposes of subsection (4) above as it applies for the purposes of that section."

(2B) Where an order registered in a magistrates' court is an order deemed to be made by the High Court by virtue of section 1(2) of this Act, sections 76 and 93 of the Magistrates' Courts Act 1980 (enforcement of sums adjudged to be paid and complaint for arrears) shall have effect subject to the modifications specified in subsections (2ZA) and (2ZB) of section 18 of the Maintenance Orders Act 1950 (enforcement of registered orders)."

1950 c. 37.

9.—(1) In section 4 of that Act (variation of orders registered in magistrates' courts), after subsection (2) (power of court to vary rate of payments under order) there shall be inserted the following subsections—

"(2A) The power of a magistrates' court to vary a registered order under subsection (2) of this section shall include power, if the court is satisfied that payment has not been made in accordance with the order, to vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980.

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(2B) Subsection (4) of section 59 of that Act shall apply for the purposes of subsection (2A) of this section as it applies for the purposes of that section.

(2C) In deciding which of the powers under paragraphs (a) to (d) of section 59(3) of that Act it is to exercise, the court shall have regard to any representations made by the debtor and the creditor (which expressions have the same meaning as they have in section 59 of that Act)."

(2) After subsection (5) of that section there shall be inserted the following subsections—

1980 c. 43.

"(5A) Subject to the following provisions of this section, subsections (4) to (11) of section 60 of the Magistrates' Courts Act 1980 (power of clerk and court to vary maintenance orders) shall apply in relation to a registered order (other than one deemed to be made by the High Court by virtue of section 1(2) of this Act) as they apply in relation to a maintenance order made by a magistrates' court (disregarding section 23(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 and section 15(2) of the Children Act 1989) but—

1978 c. 22.

1989 c. 41.

- (a) as if in subsection (8) after the words "the court which may" there were inserted "subject to subsection (10) below"; and
- (b) as if for subsections (9) and (10) there were substituted the following subsections—

"(9) Subsection (4) of section 59 above shall apply for the purposes of subsection (8) above as it applies for the purposes of that section.

(10) In deciding which of the powers under paragraphs (a) to (d) of section 59(3) above it is to exercise, the court shall have regard to any representations made by the debtor and the creditor."

(5B) Subject to the following provisions of this section, subsections (4) to (11) of section 60 of the Magistrates' Courts Act 1980 (power of clerk and court to vary maintenance orders) shall apply in relation to a registered order deemed to be made by the High Court by virtue of section 1(2) of this Act as they apply in relation to a maintenance order made by a magistrates' court (disregarding section 23(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 and section 15(2) of the Children Act 1989) but—

- (a) as if in subsection (4) for paragraph (b) there were substituted—
 - "(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court, by any method of payment falling within section 59(6) above (standing order, etc.);"
 and as if after the words "the court" there were inserted "which made the order";
- (b) as if in subsection (5) for the words "to the clerk" there were substituted "in accordance with paragraph (a) of subsection (9) below";
- (c) as if in subsection (7), paragraph (c) and the word "and" immediately preceding it were omitted;
- (d) as if in subsection (8) for the words "paragraphs (a) to (d) of section 59(3) above" there were substituted "subsection (9) below";
- (e) as if for subsections (9) and (10) there were substituted the following subsections—
 - "(9) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

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1971 c. 32.

(10) In deciding which of the powers under subsection (9) above it is to exercise, the court shall have regard to any representations made by the debtor.

(10A) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (9) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 60(9) below”.

(3) At the beginning of subsection (6A) of that section (no application for variation in respect of order deemed to be made by High Court by virtue of section 1(2) of Act) there shall be inserted the words “Except as provided by subsection (5B) of this section”.

10. After section 4 of that Act (variation of orders registered in magistrates' courts) there shall be inserted the following section—

“Variation etc. of orders registered in the High Court.

4A.—(1) The provisions of this section shall have effect with respect to orders registered in the High Court other than maintenance orders deemed to be made by a magistrates' court by virtue of section 1(4) of this Act, and the reference in subsection (2) of this section to a registered order shall be construed accordingly.

(2) The High Court may exercise the same powers in relation to a registered order as are exercisable by the High Court under section 1 of the Maintenance Enforcement Act 1991 in relation to a qualifying periodical maintenance order (within the meaning of that section) which has been made by the High Court, including the power under subsection (7) of that section to revoke, suspend, revive or vary—

- (a) any such order as is referred to in paragraph (a) of section 2(6) of this Act which continues to have effect by virtue of that paragraph; and
- (b) any means of payment order (within the meaning of section 1(7) of that Act of 1991) made by virtue of the provisions of this section.”

11. In section 5 of that Act (cancellation of registration), for subsection (5) (effect of cancellation on order registered in magistrates' court) there shall be substituted the following subsections—

“(5) On the cancellation of the registration of a High Court or county court order—

- (a) any order which requires payments under the order in question to be made (otherwise than to the clerk of a magistrates' court) by any method of payment falling within section 59(6) of the

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1980 c. 43.

Magistrates' Courts Act 1980 or section 1(5) of the Maintenance Enforcement Act 1991 (standing order, etc.) shall continue to have effect; and

- (b) any order made under section 2(6ZA)(b) of this Act or by virtue of the powers conferred by section 3(2A) or (2B) or section 4(2A), (5A) or (5B) of this Act and which requires payments under the order in question to be made to the clerk of a magistrates' court (whether or not by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980) shall cease to have effect;

but, in a case falling within paragraph (b) of this subsection, until the defendant receives the prescribed notice of the cancellation he shall be deemed to comply with the High Court or county court order if he makes payment in accordance with any such order as is referred to in paragraph (b) of this subsection which was in force immediately before the cancellation and of which he has notice.

(6) On the cancellation of the registration of a magistrates' court order—

- (a) any order which requires payments under the magistrates' court order to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 or section 1(5) of the Maintenance Enforcement Act 1991 (standing order, etc.) shall continue to have effect; and
- (b) in any other case, payments shall become payable to the clerk of the original court;

but, in a case falling within paragraph (b) of this subsection, until the defendant receives the prescribed notice of the cancellation he shall be deemed to comply with the magistrates' court order if he makes payments in accordance with any order which was in force immediately before the cancellation and of which he has notice.

(7) In subsections (5) and (6) of this section "High Court order" and "magistrates' court order" shall be construed in accordance with section 2(6A) of this Act."

The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18)

12. In section 7 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (confirmation by UK court of provisional maintenance order made in reciprocating country), after subsection (5) (registration etc. of order) there shall be inserted the following subsections—

"(5A) Where a magistrates' court in England and Wales confirms a provisional order under this section, it shall at the same time exercise one of its powers under subsection (5B) below.

(5B) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court in England and Wales;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court in England and Wales, by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

1971 c. 32.

(5C) In deciding which of the powers under subsection (5B) above it is to exercise, the court shall have regard to any representations made by the payer under the order. SCH. 1

(5D) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (5B) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted— 1980 c. 43.

“(a) the court proposes to exercise its power under paragraph (b) of section 7(5B) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.” 1972 c. 18.

13.—(1) In section 8 of that Act (enforcement of maintenance order registered in UK court), in subsection (4) (orders enforceable as magistrates' court maintenance orders) after the words “An order which by virtue of this section is enforceable by a magistrates' court shall” there shall be inserted “subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980 specified in subsections (4A) and (4B) below”.

(2) After that subsection there shall be inserted the following subsections—

“(4A) Section 76 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—

“(4) Where proceedings are brought for the enforcement of a magistrates' court maintenance order under this section, the court may vary the order by exercising one of its powers under subsection (5) below.

(5) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order. 1971 c. 32.

(6) In deciding which of the powers under subsection (5) above it is to exercise, the court shall have regard to any representations made by the debtor (within the meaning of section 59 above).

(7) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (5) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 76(5) below, and”.”

(4B) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as if for paragraph (b) there were substituted—

“(b) if the court is of the opinion that it is appropriate—

- (i) to make an attachment of earnings order; or
- (ii) to exercise its power under paragraph (b) of section 76(5) above.””

SCH. 1 14. In section 9 of that Act (variation and revocation of maintenance order registered in UK court), after subsection (1) (registering court to have same power to revoke or vary order as if order had been made by court, including power to revoke or vary order by way of provisional order) there shall be inserted the following subsection—

1980 c. 43. “(1ZA) Where the registering court is a magistrates’ court in England and Wales, section 60 of the Magistrates’ Courts Act 1980 (revocation, variation etc. of orders for periodical payment) shall have effect in relation to the registered order—

(a) as if in subsection (3) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (3A) below” and after that subsection there were inserted—

“(3A) The powers of the court are—

(a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates’ court;

(b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates’ court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;

(c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.”;

1971 c. 32.

(b) as if in subsection (4) for paragraph (b) there were substituted—

“(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates’ court, by any method of payment falling within section 59(6) above (standing order, etc.)”;

and as if after the words “the court” there were inserted “which made the order”;

(c) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of subsection (3A) above”;

(d) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;

(e) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (3A) above”;

(f) as if for subsections (9) and (10) there were substituted the following subsections—

“(9) In deciding, for the purposes of subsections (3) and (8) above, which of the powers under subsection (3A) above it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (3A) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 60(3A) below, and”.”

15.—(1) In section 27 of that Act (general provisions relating to application for recovery of maintenance in England, etc.), after subsection (7) there shall be inserted the following subsections—

“(7A) Where a magistrates’ court in England and Wales makes an order on the complaint, section 59 of the Magistrates’ Courts Act 1980 (orders for periodical payment: means of payment) and subsection (2) of section 32 of the Domestic Proceedings and Magistrates’ Courts Act 1978 (extension of section 59) shall not apply, but the court shall, at the same time that it makes the order, exercise one of its powers under subsection (7B) below.

SCH. 1
1980 c. 43.
1978 c. 22.

(7B) The powers of the court are—

- (a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates’ court in England and Wales;
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates’ court in England and Wales, by such method of payment falling within section 59(6) of the Magistrates’ Courts Act 1980 (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

1971 c. 32.

(7C) In deciding which of the powers under subsection (7B) above it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.

(7D) Subsection (4) of section 59 of the Magistrates’ Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (7B) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 27(7B) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.

1972 c. 18.

(2) Subsection (9) of that section (payment to be in such manner and to such person as may be prescribed and certain enactments not to apply) shall cease to have effect.

16. In section 28 of that Act (complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse), after the word “18” there shall be inserted “20ZA”.

17. In section 28A of that Act (complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse), in subsection (3) (modifications of 1978 Act), in paragraph (e) after the word “18” there shall be inserted “20ZA”.

18.—(1) In section 33 of that Act (enforcement of orders), in subsection (3) (order registered in magistrates’ court other than court by which order made enforceable as magistrates’ court maintenance order), for the words “shall be enforceable” there shall be substituted “shall, subject to the modifications of sections 76 and 93 of the Magistrates’ Courts Act 1980 (enforcement of sums adjudged to be paid and complaint for arrears) specified in subsections (4A) and (4B) of section 8 of this Act, be enforceable”.

(2) After that subsection there shall be inserted the following subsection—

“(3A) Where, by virtue of being registered in the magistrates’ court in which it was made, a registered order is enforceable as a magistrates’ court maintenance order, sections 76 and 93 of the Magistrates’ Courts Act 1980 shall have effect subject to the modifications specified in subsections (4A) and (4B) of section 8 of this Act.”

SCH. 1 19.—(1) In section 34 of that Act (variation and enforcement of orders), at the beginning of subsection (1) (order registered in court other than court which made it variable as if made by registering court) there shall be inserted the words “Subject to section 34A of this Act”.

(2) After that section there shall be inserted the following section—

“Variation of orders by magistrates’ courts in England and Wales.

34A.—(1) The provisions of this section shall have effect in relation to a registered order which is registered in a magistrates’ court in England and Wales (whether or not the court made the order) in place of the following enactments, that is to say—

1980 c. 43.

(a) subsections (3) to (11) of section 60 of the Magistrates’ Courts Act 1980;

1978 c. 22.

(b) section 20ZA of the Domestic Proceedings and Magistrates’ Courts Act 1978; and

1989 c. 41.

(c) paragraph 6A of Schedule 1 to the Children Act 1989.

(2) The power of a magistrates’ court in England and Wales to vary a registered order shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under subsection (3) below.

(3) The powers of the court are—

1971 c. 32.

(a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates’ court in England and Wales;

(b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates’ court in England and Wales, by such method of payment falling within section 59(6) of the Magistrates’ Courts Act 1980 (standing order, etc.) as may be specified;

(c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

(4) In any case where—

(a) a registered order is registered in a magistrates’ court in England and Wales, and

(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates’ court in England and Wales, by any method of payment falling within section 59(6) of the Magistrates’ Courts Act 1980 (standing order, etc.),

an interested party may apply in writing to the clerk of the court in which the order is registered for the order to be varied as mentioned in subsection (5) below.

(5) Subject to subsection (8) below, where an application has been made under subsection (4) above, the clerk, after giving written notice (by post or otherwise) of the application to any other interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made in accordance with paragraph (a) of subsection (3) above.

(6) The clerk may proceed with an application under subsection (4) above notwithstanding that any such interested party as is referred to in subsection (5) above has not received written notice of the application.

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(7) In subsections (4) to (6) above “interested party”, in relation to an order, means the debtor or the creditor.

(8) Where an application has been made under subsection (4) above, the clerk may, if he considers it inappropriate to exercise his power under subsection (5) above, refer the matter to the court which may vary the order by exercising one of its powers under subsection (3) above.

(9) In deciding, for the purposes of subsections (2) and (8) above, which of the powers under subsection (3) above it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Subsection (4) of section 59 of the Magistrates’ Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (3) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

1980 c. 43.

“(a) the court proposes to exercise its power under paragraph (b) of section 34A(3) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.

1972 c. 18.

(11) In this section “creditor” and “debtor” have the same meaning as they have in section 59 of the Magistrates’ Courts Act 1980.”

20. In section 35 of that Act (further provisions with respect to variation etc. of orders by magistrates’ courts), at the end of subsection (1) (court to have jurisdiction to hear application for variation or revocation notwithstanding one of the parties is outside England and Wales) there shall be inserted the words “but none of the powers of the court, or of the clerk of the court, conferred by section 34A of this Act shall be exercisable in relation to such an application”.

The Civil Jurisdiction and Judgments Act 1982 (c. 27)

21.—(1) In section 5 of the Civil Jurisdiction and Judgments Act 1982 (recognition and enforcement of maintenance orders), in subsection (5A) (registered order enforceable as magistrates’ court maintenance order), for the words “shall be enforceable” there shall be substituted “shall, subject to the modifications of sections 76 and 93 of the Magistrates’ Courts Act 1980 specified in subsections (5B) and (5C) below, be enforceable”.

(2) After that subsection there shall be inserted the following subsections—

“(5B) Section 76 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—

“(4) Where proceedings are brought for the enforcement of a magistrates’ court maintenance order under this section, the court may vary the order by exercising one of its powers under subsection (5) below.

(5) The powers of the court are—

(a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates’ court;

- SCH. 1
- 1971 c. 32.
- (b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above (standing order, etc.) as may be specified;
- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.
- (6) In deciding which of the powers under subsection (5) above it is to exercise, the court shall have regard to any representations made by the debtor (within the meaning of section 59 above).
- (7) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (5) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—
- “(a) the court proposes to exercise its power under paragraph (b) of section 76(5) below, and”.
- (5C) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as if for paragraph (b) there were substituted—
- “(b) if the court is of the opinion that it is appropriate—
- (i) to make an attachment of earnings order; or
- (ii) to exercise its power under paragraph (b) of section 76(5) above.””

Section 11(1).

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS

The Attachment of Earnings Act 1971 (c. 32)

- 1.—(1) In section 3 of the Attachment of Earnings Act 1971 (application for attachment of earnings order and conditions of court's power to make it), in subsection (1) (persons who may apply for order), in paragraph (c) for the words “section 59(1)” there shall be substituted “section 59”.
- (2) Subsection (2) of that section (application, other than by debtor, for attachment of earnings order to secure maintenance payments not to be made unless at least 15 days have elapsed since maintenance order made) shall cease to have effect.
- (3) At the beginning of subsection (3) of that section (attachment of earnings order not to be made, other than on application of debtor, unless one or more payments have not been made) there shall be inserted the words “Subject to subsection (3A) below”.
- (4) After that subsection there shall be inserted the following subsection—
- “(3A) Subsection (3) above shall not apply where the relevant adjudication is a maintenance order.”
- (5) In subsection (4) of that section (power of court to make attachment of earnings order where certain enforcement proceedings brought), the words “subject to subsection (5) below” shall cease to have effect.
- (6) Subsection (5) of that section (attachment of earnings order not to be made, other than on application of debtor, if debtor's failure to make payments is not due to his wilful refusal or culpable neglect) shall cease to have effect.

The Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22)

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2. In section 23 of the Domestic Proceedings and Magistrates' Courts Act 1978 (supplementary provisions with respect to variation and revocation of orders), in subsection (2) (power of magistrates' court under section 60 of 1980 Act to vary etc. order not to apply to order under Part I of Act)—

- (a) after the word "money" there shall be inserted "and the power of the clerk of a magistrates' court to vary such an order"; and
- (b) after the word "and" there shall be inserted "the power of a magistrates' court".

3. In section 32 of that Act (enforcement etc. of orders for payment of money), in subsection (2) (which applies section 59 of 1980 Act with modifications to orders under Part I of Act)—

- (a) for the words "subsection (2)" there shall be substituted "subsection (7)"; and
- (b) for the words "the applicant for the order" there shall be substituted "the person who applied for the maintenance order".

The Justices of the Peace Act 1979 (c. 55)

4. In section 29 of the Justices of the Peace Act 1979 (functions of justices' clerk as collecting officer), in subsection (3) (powers under section without prejudice to provisions of section 59 of 1980 Act)—

- (a) for the words "section 59" there shall be substituted "sections 59 and 59A"; and
- (b) after the words "justices' clerk" there shall be inserted "and proceedings by the clerk, etc."

The Magistrates' Courts Act 1980 (c. 43)

5. In section 62 of the Magistrates' Courts Act 1980 (provisions as to payments required to be made to a child, etc), in subsection (1) (which permits payments to be made to person with whom child has his home and permits that person to request clerk of court, under section 59(3) of 1980 Act, to proceed for recovery of arrears), in sub-paragraph (ii) for the words "request the clerk to the magistrates' court, under subsection (3) of section 59 above" there shall be substituted "request or authorise the clerk of the magistrates' court under subsection (1) or subsection (2) respectively of section 59A above".

6. In section 75 of that Act (power to dispense with immediate payment), after subsection (2) (power to order payment by instalments) there shall be inserted the following subsections—

"(2A) An order under this section that a lump sum required to be paid under a maintenance order shall be paid by instalments (a "maintenance instalments order") shall be treated for the purposes of sections 59, 59B and 60 above as a maintenance order.

(2B) Subsections (5) and (7) of section 59 above (including those subsections as they apply for the purposes of section 60 above) shall have effect in relation to a maintenance instalments order—

- (a) as if in subsection (5), paragraph (c) and the word "and" immediately preceding it were omitted; and
- (b) as if in subsection (7)—

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(i) the reference to the maintenance order were a reference to the maintenance order in respect of which the maintenance instalments order in question is made;

(ii) for the words "the person who applied for the maintenance order" there were substituted "the debtor".

(2C) Section 60 above shall have effect in relation to a maintenance instalments order as if in subsection (7), paragraph (c) and the word "and" immediately preceding it were omitted."

7. In section 93 of that Act (complaint for arrears), in subsection (6) (court not to impose imprisonment in certain circumstances) for paragraphs (a) and (b) there shall be substituted—

"(a) in the absence of the defendant; or

(b) in a case where the court has power to do so, if it is of the opinion that it is appropriate—

(i) to make an attachment of earnings order; or

(ii) to order that payments under the order be made by any method of payment falling within section 59(6) above; or

(c) where the sum to which the default relates comprises only interest which the defendant has been ordered to pay by virtue of section 94A(1) below."

8. For section 95 of that Act (power to remit arrears) there shall be substituted the following section—

"Remission of arrears and manner in which arrears to be paid.

95.—(1) On the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a magistrates' court maintenance order, a magistrates' court may remit the whole or any part of the sum due under the order.

(2) If, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a magistrates' court maintenance order, a magistrates' court orders that the whole or any part of the sum due under the order be paid by instalments (an "instalments order"), then—

(a) if the maintenance order is an English maintenance order, the court shall at the same time exercise one of its powers under paragraphs (a) to (d) of section 59(3) above in relation to the instalments order;

(b) if the maintenance order is a non-English maintenance order, the court shall at the same time exercise one of its powers under subsection (3) below in relation to the instalments order.

(3) The powers of the court referred to in subsection (2)(b) above are—

(a) the power to order that payments under the order be made directly to the clerk of the court or the clerk of any other magistrates' court;

(b) the power to order that payments under the order be made to the clerk of the court, or to the clerk of any other magistrates' court, by such method of payment falling within section 59(6) above as may be specified;

(c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

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(4) The court may in the course of any proceedings concerning an instalments order or the magistrates' court maintenance order to which it relates vary the instalments order by exercising—

- (a) in respect of an English maintenance order, one of the powers referred to in subsection (2)(a) above;
- (b) in respect of a non-English maintenance order, one of its powers under subsection (3) above.

(5) In respect of an English maintenance order, subsections (4), (5) and (7) of section 59 above shall apply for the purposes of subsections (2)(a) and (4)(a) above as they apply for the purposes of that section.

(6) In respect of a non-English maintenance order—

- (a) subsection (4) of section 59 above shall apply for the purposes of subsections (2)(b) and (4)(b) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—

“(a) the court proposes to exercise its power under paragraph (b) of section 95(3) below;”, and

- (b) in deciding which of the powers under subsection (3) above it is to exercise the court shall have regard to any representations made by the debtor (within the meaning of section 59 above).

(7) In this section—

“English maintenance order” has the same meaning as it has in section 94A above;

“non-English maintenance order” means—

(a) a maintenance order registered in, or confirmed by, a magistrates' court—

- (i) under the Maintenance Orders (Facilities for Enforcement) Act 1920; 1920 c. 33.
- (ii) under Part II of the Maintenance Orders Act 1950; 1950 c. 37.
- (iii) under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972; or 1972 c. 18.
- (iv) under Part I of the Civil Jurisdiction and Judgments Act 1982; 1982 c. 27.

(b) an order deemed to be made by the High Court by virtue of section 1(2) of the Maintenance Orders Act 1958 and registered under Part I of that Act in a magistrates' court; or 1958 c. 39.

(c) a maintenance order made by a magistrates' court by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972.”

9. In section 143 of that Act (power to alter sums specified in certain provisions), in subsection (2) (which lists those provisions) after paragraph (d) there shall be inserted the following paragraph—

“(dd) section 59B(3) above;”.

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The Children Act 1989 (c. 41)

10. In section 15 of the Children Act 1989 (orders for financial relief with respect to children), in subsection (2) (power of magistrates' court under section 60 of 1980 Act to vary etc. order not to apply to order under Schedule 1) after the word "money" there shall be inserted "and the power of the clerk of a magistrates' court to vary such an order".

The Courts and Legal Services Act 1990 (c. 41)

11.—(1) In section 10 of the Courts and Legal Services Act 1990 (family proceedings in magistrates' courts and related matters), for subsection (1) (meaning of "family proceedings") there shall be substituted the following subsection—

1978 c. 22. “(1) In subsection (2) “family proceedings” means proceedings under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978.”

1980 c. 43. (2) In subsection (2) of that section (which allows the same provision to be made by rules under section 144 of the 1980 Act in relation to family proceedings as may be made under section 93 of the Children Act 1989 in relation to relevant proceedings under that section) for the words from the beginning to “section 144 of that Act” there shall be substituted “Rules made under section 144 of the Magistrates' Courts Act 1980”.

Section 11(2).

SCHEDULE 3

ENACTMENTS REPEALED

Chapter	Short title	Extent of repeal
1971 c. 32.	The Attachment of Earnings Act 1971.	In section 3, subsection (2), in subsection (4) the words “subject to subsection (5) below”, and subsection (5).
1972 c. 18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 27(9).
1980 c. 43.	The Magistrates' Courts Act 1980.	In Schedule 7, paragraph 97(b).
1989 c. 41.	The Children Act 1989.	In Schedule 13, paragraph 44(1).

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