

## SCHEDULES

### 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 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—

“(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).”

- 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.

(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—

“(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—

- (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.
- (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—
- “4A   Variation etc. of orders registered in the High Court**
- (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 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.”