

## SCHEDULES

### SCHEDULE 2

Section 11(1).

#### 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)*

- 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

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- (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)—  
     (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

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- (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—

**“95 Remission of arrears and manner in which arrears to be paid**

- (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.
- (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.

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- (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;
  - (ii) under Part II of the Maintenance Orders Act 1950;
  - (iii) under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972; or
  - (iv) under Part I of the Civil Jurisdiction and Judgments Act 1982;
- (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
- (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;”.

*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—

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

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- (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”.