



# Maintenance Enforcement Act 1991

## 1991 CHAPTER 17

### *Magistrates' courts*

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

In Schedule 1 to the <sup>M1</sup>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 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).

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**Changes to legislation:** There are currently no known outstanding effects for the Maintenance Enforcement Act 1991, Section 6. (See end of Document for details)

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- (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 <sup>M2</sup>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 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."

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#### Commencement Information

**II** S. 6 wholly in force at 1.4.1992 see s. 12(2) and [S.I. 1992/455, art. 2](#)

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#### Marginal Citations

**M1** 1989 c. 41.

**M2** 1980 c. 43.

**Changes to legislation:**

There are currently no known outstanding effects for the Maintenance Enforcement Act 1991, Section 6.