



# Maintenance Orders Act 1958

## 1958 CHAPTER 39

### PART III

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

#### 16 Amendment of 15 and 16 Geo. 6. and 1 Eliz. 2. c. 55, s. 74

(1) Section seventy-four of the Magistrates' Courts Act, 1952 (which relates to the enforcement of payments under affiliation orders and orders enforceable as affiliation orders) shall have effect, in relation to complaints under that section made on or after the date on which this section comes into operation and to proceedings in pursuance of such complaints, as if for subsections (3) to (7) thereof there were substituted the following subsections, that is to say—

“(3) In relation to complaints under this section, section forty-seven of this Act shall not apply and section forty-eight thereof shall have effect as if the words " if evidence has been received on a previous occasion " were omitted.

(4) Where at the time and place appointed for the hearing or adjourned hearing of a complaint under this section the complainant appears but the defendant does not, the court may proceed in his absence:

Provided that the court shall not begin to hear the complaint in the absence of the defendant unless either it is proved to the satisfaction of the court, on oath, or in such other manner as may be prescribed, that the summons was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer the complaint.

(5) If a complaint under this section is substantiated on oath, any justice of the peace acting for the same petty sessions area as a court having jurisdiction to hear the complaint may issue a warrant for the defendant's arrest, whether or not a summons has been previously issued.

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*Status: This is the original version (as it was originally enacted).*

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- (6) A magistrates' court shall not impose imprisonment in respect of a default to which a complaint under this section relates unless the court has inquired in the presence of the defendant whether the default was due to the defendant's wilful refusal or culpable neglect, and shall not impose imprisonment as aforesaid if it is of opinion that the default was not so due; and, without prejudice to the foregoing provisions of this subsection, a magistrates' court shall not impose imprisonment as aforesaid—
- (a) in a case in which the court has power to make an attachment of earnings order under the Maintenance Orders Act, 1958, unless the court is of opinion that it is inappropriate to make such an order;
  - (b) in any case, in the absence of the defendant.
- (7) Notwithstanding anything in subsection (3) of section sixty-four of this Act, the period for which a defendant may be committed to prison under a warrant of commitment issued in pursuance of a complaint under this section shall not exceed six weeks.
- (8) The imprisonment or other detention of a defendant under a warrant of commitment issued as aforesaid shall not operate to discharge the defendant from his liability to pay the sum in respect of which the warrant was issued.”
- (2) Subsections (7) and (8) of the said section seventy-four as amended by the foregoing subsection shall have effect in relation to a warrant of commitment issued on or after the date on which this section comes into operation in pursuance of a complaint under that section made before that date (not being a warrant of which the issue was postponed before that date by virtue of section sixty-five of the said Act of 1952) as those subsections have effect in relation to a warrant of commitment issued in pursuance of such a complaint made after that date.