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STATUTORY INSTRUMENTS

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**2005 No. 384**

The Criminal Procedure Rules 2005

PART 52

ENFORCEMENT OF FINES

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### **Notice to defendant of fine or forfeited recognizance**

**52.1.**—(1) Where under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(1) or section 67(2) of the Criminal Justice Act 1988(2) a magistrates' court is required to enforce payment of a fine imposed or recognizance forfeited by the Crown Court or where a magistrates' court allows time for payment of a sum adjudged to be paid by a summary conviction, or directs that the sum be paid by instalments, or where the offender is absent when a sum is adjudged to be paid by a summary conviction, the magistrates' court officer shall serve on the offender notice in writing stating the amount of the sum and, if it is to be paid by instalments, the amount of the instalments, the date on which the sum, or each of the instalments, is to be paid and the places and times at which payment may be made; and a warrant of distress or commitment shall not be issued until the preceding provisions of this rule have been complied with.

(2) A notice under this rule shall be served by delivering it to the offender or by sending it to him by post in a letter addressed to him at his last known or usual place of abode.

*[Note. Formerly rule 46 of the Magistrates' Courts Rules 1981(3).]*

### **Payment of fine to be made to magistrates' court officer**

**52.2.**—(1) A person adjudged by the conviction of a magistrates' court to pay any sum shall, unless the court otherwise directs, pay that sum, or any instalment of that sum, to the court officer.

(2) Where payment of any sum or instalment of any sum adjudged to be paid by the conviction or order of a magistrates' court is made to any person other than the court officer, that person, unless he is the person to whom the court has directed payment to be made or, in the case of a child, is the person with whom the child has his home, shall, as soon as may be, account for and, if the court officer so requires, pay over the sum or instalment to the court officer.

(3) Where payment of any sum adjudged to be paid by the conviction or order of a magistrates' court, or any instalment of such a sum, is directed to be made to the court officer for another court, the court officer for the court that adjudged the sum to be paid shall pay over any sums received by him on account of the said sum or instalment to the court officer for that other court.

*[Note. Formerly rule 48 of the Magistrates' Courts Rules 1981.]*

### **Duty of magistrates' court officer to give receipt**

**52.3.** The court officer for a magistrates' court shall give or send a receipt to any person who makes a payment to him in pursuance of a conviction or order of a magistrates' court and who asks for a receipt.

*[Note. Formerly rule 49 of the Magistrates' Courts Rules 1981.]*

### **Application to magistrates' court for further time**

**52.4.** An application under section 75(2) of the Magistrates' Courts Act 1980(4) (further time to pay) may, unless the court requires the applicant to attend, be made in writing.

*[Note. Formerly rule 51 of the Magistrates' Courts Rules 1981.]*

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(1) 2000 c. 6; section 40(1) is amended by paragraph 74(1) and (4) of Part 2 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.  
(2) 1988 c. 33.  
(3) S.I. 1981/552; amending instruments relevant to this Part are S.I. 1983/523, 1988/2132, 1989/384, 1990/1190, 1991/1991, 1992/457, 1992/2072, 1993/1183, 1999/2765, 2001/167, 2001/160 and 2003/1236.  
(4) 1980 c. 43.

### **Notice of date of hearing of means inquiry, etc in magistrates' court**

**52.5.** Where a magistrates' court, under section 86(1) of the Magistrates' Courts Act 1980 (power of magistrates' court to fix day for appearance of offender at means inquiry etc)(**5**), has fixed a day on which an offender must appear in person before the court and, under section 86(3), fixes a later day in substitution for the day previously fixed, service of the notice of the substituted day may be effected in any manner in which service of a summons may be effected under rule 4.1(1).

*[Note. Formerly rule 52 of the Magistrates' Courts Rules 1981.]*

### **Review of terms of postponement of warrant of commitment by magistrates' court**

**52.6.** An application under section 77(5) of the Magistrates' Courts Act 1980(**6**) may be made in writing or in person and where under that section a justice of the peace refers such an application to the court, notice of the time and place fixed under section 77(6)(**7**) for the hearing of the application may be deemed to have been given if it is sent by registered post or the recorded delivery service addressed to the applicant at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by the applicant.

*[Note. Formerly rule 52A of the Magistrates' Courts Rules 1981.]*

### **Notice to defendant before enforcing magistrates' court order**

**52.7.—(1)** A warrant of commitment shall not be issued for disobedience to an order of a magistrates' court unless the defendant has been previously served with a copy of the minute of the order, or the order was made in his presence and the warrant is issued on that occasion:

Provided that this paragraph shall not apply to an order to pay money.

(2) A copy of the minute of the order shall be served under this rule by delivering it to the defendant or by sending it to him by post in a letter addressed to him at his last known or usual place of abode.

*[Note. Formerly rule 53 of the Magistrates' Courts Rules 1981.]*

### **Execution of magistrates' court distress warrant**

**52.8.—(1)** A warrant of distress issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order—

- (a) shall name or otherwise describe the person against whom the distress is to be levied;
- (b) shall be directed to the constables of the police area in which the warrant is issued or to the civilian enforcement officers for the area in which they are employed, or to a person named in the warrant and shall, subject to, and in accordance with, the provisions of this rule, require them to levy the said sum by distress and sale of the goods belonging to the said person; and
- (c) may where it is directed to the constables of a police area, instead of being executed by any of those constables, be executed by any person under the direction of a constable.

(2) The warrant shall authorise the person charged with the execution of it to take as well any money as any goods of the person against whom the distress is levied; and any money so taken shall be treated as if it were the proceeds of the sale of goods taken under the warrant.

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(5) Section 86 (1) was amended by section 51(2) of the Criminal Justice Act 1982 (c. 48).

(6) Section 77(5) is amended by paragraph 218(1) and (2) of Schedule 8 to the Courts Act 2003 (c. 39) with effect from a date to be appointed.

(7) Section 77(6) was substituted by article 3 of S.I. 2001/618.

(3) The warrant shall require the person charged with the execution to pay the sum to be levied to the court officer for the court that issued the warrant.

(4) A warrant to which this rule applies may be executed by the persons to whom it was directed or by any of the following persons, whether or not the warrant was directed to them—

- (a) A constable for any police area in England and Wales, acting in his own police area;
- (b) where the warrant is one to which section 125A of the Magistrates' Courts Act 1980<sup>(8)</sup> applies, a civilian enforcement officer within the meaning of section 125A of the 1980 Act; and
- (c) where the warrant is one to which section 125A of the 1980 Act applies, any of the individuals described in section 125B(1) of the 1980 Act<sup>(9)</sup>;

and in this rule any reference to the person charged with the execution of a warrant includes any of the above persons who is for the time being authorised to execute the warrant, whether or not they have the warrant in their possession at the time.

(5) A person executing a warrant of distress shall—

- (a) either—
  - (i) if he has the warrant with him, show it to the person against whom the distress is levied, or
  - (ii) otherwise, state where the warrant is and what arrangements may be made to allow the person against whom distress is levied to inspect it;
- (b) explain, in ordinary language, the sum for which distress is levied and the reason for the distress;
- (c) where the person executing the warrant is one of the persons referred to in paragraph (4) (b) or (c) above, show the person against whom distress is levied a written statement under section 125A(4) or 125B(4) as appropriate; and
- (d) in any case, show documentary proof of his identity.

(6) There shall not be taken under the warrant the clothing or bedding of any person or his family or the tools, books, vehicles or other equipment which he personally needs to use in his employment, business or vocation, provided that in this paragraph the word “person” shall not include a corporation.

(7) The distress levied under any such warrant as aforesaid shall be sold within such period beginning not earlier than the 6th day after the making of the distress as may be specified in the warrant, or if no period is specified in the warrant, within a period beginning on the 6th day and ending on the 14th day after the making of the distress:

Provided that with the consent in writing of the person against whom the distress is levied the distress may be sold before the beginning of the said period.

(8) The clerk of the court which issued the warrant may, on the application of the person charged with the execution of it, extend the period within which the distress must be sold by any number of days not exceeding 60; but following the grant of such an application there shall be no further variation or extension of that period.

(9) The said distress shall be sold by public auction or in such other manner as the person against whom the distress is levied may in writing allow.

(10) Notwithstanding anything in the preceding provisions of this rule, the said distress shall not be sold if the sum for which the warrant was issued and the charges of taking and keeping the distress have been paid.

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<sup>(8)</sup> Section 125A was inserted by section 92 of the Access to Justice Act 1999 (c. 22).

<sup>(9)</sup> Section 125B was inserted by section 93(2) of the Access to Justice Act 1999 (c. 22).

(11) Subject to any direction to the contrary in the warrant, where the distress is levied on household goods, the goods shall not, without the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale; and so much of the goods shall be impounded as is in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark.

(12) The person charged with the execution of any such warrant as aforesaid shall cause the distress to be sold, and may deduct out of the amount realised by the sale all costs and charges incurred in effecting the sale; and he shall return to the owner the balance, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant.

(13) The person charged with the execution of any such warrant as aforesaid shall as soon as practicable send to the court officer for the court that issued it a written account of the costs and charges incurred in executing it; and the court officer shall allow the person against whom the distress was levied to inspect the account within one month after the levy of the distress at any reasonable time to be appointed by the court.

(14) If any person pays or tenders to the person charged with the execution of any such warrant as aforesaid the sum mentioned in the warrant, or produces a receipt for that sum given by the court officer for the court that issued the warrant, and also pays the amount of the costs and charges of the distress up to the time of the payment or tender or the production of the receipt, the person as aforesaid shall not execute the warrant, or shall cease to execute it, as the case may be.

*[Note. Formerly rule 54 of the Magistrates' Courts Rules 1981.]*

#### **Payment after imprisonment imposed by magistrates' court**

**52.9.**—(1) The persons authorised for the purposes of section 79(2) of the Magistrates' Courts Act 1980<sup>(10)</sup> to receive a part payment are—

- (a) unless there has been issued a warrant of distress or commitment, the court officer for the court enforcing payment of the sum, or any person appointed under section 88 of that Act to supervise the offender;
- (b) where the issue of a warrant of commitment has been suspended on conditions which provide for payment to be made to the court officer for another magistrates' court, that court officer;
- (c) any constable holding a warrant of distress or commitment or, where the warrant is directed to some other person, that person; and
- (d) the governor or keeper of the prison or place in which the defaulter is detained, or other person having lawful custody of the defaulter:

Provided that—

- (i) the said governor or keeper shall not be required to accept any sum tendered in part payment under the said section 79(2) of the 1980 Act except on a week-day between 9 o'clock in the morning and 5 o'clock in the afternoon, and
- (ii) no person shall be required to receive in part payment under the said subsection (2) an amount which, or so much of an amount as, will not procure a reduction of the period for which the defaulter is committed or ordered to be detained.

(2) Where a person having custody of a defaulter receives payment of any sum he shall note receipt of the sum on the warrant of commitment.

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<sup>(10)</sup> Section 79(2) was amended by paragraph 219(b) of Schedule 8 to the Courts Act 2003 (c. 39).

(3) Where the magistrates' court officer for a court other than the court enforcing payment of the sums receives payment of any sum he shall inform the magistrates' court officer for the other court.

(4) Where a person appointed under section 88 of the 1980 Act(11) to supervise an offender receives payment of any sum, he shall send it forthwith to the magistrates' court officer for the court which appointed him.

*[Note. Formerly rule 55 of the Magistrates' Courts Rules 1981.]*

### **Order for supervision made by magistrates' court**

**52.10.**—(1) Unless an order under section 88(1) of the Magistrates' Courts Act 1980 is made in the offender's presence, the court officer for the court making the order shall deliver to the offender, or serve on him by post, notice in writing of the order.

(2) It shall be the duty of any person for the time being appointed under the said section to advise and befriend the offender with a view to inducing him to pay the sum adjudged to be paid and thereby avoid committal to custody and to give any information required by a magistrates' court about the offender's conduct and means.

*[Note. Formerly rule 56 of the Magistrates' Courts Rules 1981.]*

### **Transfer of magistrates' court fine order**

**52.11.**—(1) The court officer for a magistrates' court which has made a transfer of fine order under section 89(12) or 90(13) or section 90 as applied by section 91(14) of the Magistrates' Courts Act 1980 shall send to the clerk of the court having jurisdiction under the order a copy of the order.

(2) Where a magistrates' court has made a transfer of fine order in respect of a sum adjudged to be paid by a court in Scotland or in Northern Ireland the court officer shall send a copy of the order to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be.

(3) Where a court officer receives a copy of a transfer of fine order (whether made in England and Wales, or in Scotland or in Northern Ireland) specifying his court as the court by which payment of the sum in question is to be enforceable, he shall thereupon, if possible, deliver or send by post to the offender notice in writing.

(4) Where under a transfer of fine order a sum adjudged to be paid by a Scottish court or by a Northern Irish court is enforceable by a magistrates' court—

- (a) if the sum is paid, the court officer shall send it to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be; or
- (b) if the sum is not paid, the court officer shall inform the clerk of the Scottish court or the clerk of the Northern Irish court, as the case may be, of the manner in which the adjudication has been satisfied or that the sum, or any balance thereof, appears to be irrecoverable.

*[Note. Formerly rule 57 of the Magistrates' Courts Rules 1981.]*

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(11) Section 88 was amended by paragraph 53(a)(i),(ii) and (b) of Schedule 14 to the Criminal Justice Act 1982 (c. 48) and by paragraph 68 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by paragraphs 58 and 64(a) of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

(12) Section 89 was amended by section 47(1) of the Criminal Justice and Public Order Act 1994 (c. 33), paragraphs 95 and 107 of Schedule 13 to the Access to Justice Act 1999 (c. 22) and paragraph 225(1), (2), (3) and (4) of Schedule 8 to the Courts Act 2003 (c. 39).

(13) Section 90 was amended by paragraphs 95 and 108 of Schedule 13 to the Access to Justice Act 1999 (c. 22), paragraph 226 of Schedule 8 to the Courts Act 2003 (c. 39) and section 47(2) of the Criminal Justice and Public Order Act 1994 (c. 33).

(14) Section 91 was amended by paragraph 227(1), (2) and (3) of Schedule 8 to the Courts Act 2003, paragraphs 95 and 109 of Schedule 13 to the Access to Justice Act 1999, and paragraph 69 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (there are other amendments not relevant to this rule).

### **Directions by magistrates' court that money found on defaulter shall not be applied in satisfaction of debt**

**52.12.** Where the defaulter is committed to, or ordered to be detained in, a prison or other place of detention, any direction given under section 80(2) of the Magistrates' Courts Act 1980 shall be endorsed on the warrant of commitment.

*[Note. Formerly rule 64 of the Magistrates' Courts Rules 1981.]*

### **Particulars of fine enforcement to be entered in magistrates' court register**

**52.13.**—(1) Where the court on the occasion of convicting an offender of an offence issues a warrant of commitment for a default in paying a sum adjudged to be paid by the conviction or, having power to issue such a warrant, fixes a term of imprisonment under section 77(2) of the Magistrates' Courts Act 1980(**15**), the reasons for the court's action shall be entered in the register, or any separate record kept for the purpose of recording particulars of fine enforcement.

- (2) There shall be entered in the register, or any such record, particulars of any—
- (a) means inquiry under section 82 of the 1980 Act(**16**);
  - (b) hearing under subsection (5) of the said section 82;
  - (c) allowance of further time for the payment of a sum adjudged to be paid by a conviction;
  - (d) direction that such a sum shall be paid by instalments including any direction varying the number of instalments payable, the amount of any instalments payable and the date on which any instalment becomes payable;
  - (e) distress for the enforcement of such a sum;
  - (f) attachment of earnings order for the enforcement of such a sum;
  - (g) decision of the Secretary of State to make deductions from income support under section 24 of the Criminal Justice Act 1991(**17**);
  - (h) order under the 1980 Act placing a person under supervision pending payment of such a sum;
  - (i) order under section 85(1) of the 1980 Act(**18**) remitting the whole or any part of a fine;
  - (j) order under section 120(4) of the 1980 Act(**19**) remitting the whole or any part of any sum enforceable under that section (forfeiture of recognizance);
  - (k) authority granted under section 87(3) of the 1980 Act(**20**) authorising the taking of proceedings in the High Court or county court for the recovery of any sum adjudged to be paid by a conviction;
  - (l) transfer of fine order made by the court;
  - (m) order transferring a fine to the court;

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(15) Section 77(2) was amended by paragraph 50 of Schedule 14 to the Criminal Justice Act 1982 (c. 48), paragraph 66 Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and is further amended by Schedule 7 and paragraphs 58 and 62 of Part II of Schedule 8 to the Criminal Justice and Court Services Act 2000 (c. 43), with effect from a date to be appointed.

(16) Section 82 was amended by section 61(1), (3) and (4) and paragraph 52(b) of Schedule 14 to the Criminal Justice Act 1982 (c. 48), paragraphs (1) and (2) of Schedule 8 to the Criminal Justice Act 1988 (c. 33), section 55 of and paragraph 10(1) of Schedule 4 to the Crime (Sentences) Act 1997 (c. 43) and is further amended by paragraphs 58 and 63(b) of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43), Part 7 of Schedule 37 to the Criminal Justice Act 2003 (c. 44), and paragraphs 220(1) and (2) of Schedule 8 to the Courts Act 2003 (c. 39) with effect from dates to be appointed (there are other amendments which are not relevant to this rule).

(17) 1991 c. 53.

(18) Section 85(1) substituted by section 61(1) and (5) of the Criminal Justice Act 1988 (c. 44).

(19) Section 120 was amended by section 55 of the Crime and Disorder Act 1998 (c. 37).

(20) Section 87(3) was amended by paragraph 223(1) and (3) of Schedule 8 to the Courts Act 2003 (c. 39).

- (n) order under section 140(1) of the Powers of Criminal Courts (Sentencing) Act 2000(21) specifying the court for the purpose of enforcing a fine imposed or a recognizance forfeited by the Crown Court; and
- (o) any fine imposed or recognizance forfeited by a coroner which has to be treated as imposed or forfeited by the court;
- (p) reference by a justice of the peace of an application under section 77(5) of the 1980 Act(22) for a review of the terms on which a warrant of commitment is postponed; or
- (q) order under section 77(3) of the 1980 Act(23) varying the time for which or the conditions subject to which a warrant of commitment is postponed.

*[Note. Formerly rule 65 of the Magistrates' Courts Rules 1981. As to the requirement to keep a register, see rule 6.1.]*

### **Attendance Centre Order imposed by magistrates' court in default of payment of a financial penalty**

**52.14.**—(1) Where any person is ordered, under section 60 of the Powers of Criminal Courts (Sentencing) Act 2000(24), to attend at an attendance centre in default of payment of a sum of money, payment may thereafter be made—

- (a) of the whole of the said sum, to the court officer for the magistrates' court which made the order, or
- (b) of the whole or, subject to paragraph (2), any part of the said sum, to the officer in charge of the attendance centre specified in the order (“the officer in charge”).

(2) The officer in charge may not accept a part payment that would not secure the reduction by one or more complete hours of the period of attendance specified in the order.

(3) On receiving a payment under paragraph (1) the court officer shall forthwith notify the officer in charge.

(4) The officer in charge shall pay any money received by him under paragraph (1) above to the court officer and shall note the receipt of the money in the register maintained at the attendance centre.

*[Note. Formerly rule 3 of the Magistrates' Courts (Attendance Centre) Rules 1992(25) and rule 27 of the Magistrates' Courts (Children and Young Persons) Rules 1992(26).]*

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(21) 2000 c. 6; section 140(1) is amended by paragraph 71(1) and (4)(a) of Part 2 of Schedule 3 and Part 4 of Schedule 37 to the Criminal Justice Act 2003 (c. 44) with effect from a date to be appointed.

(22) Section 77(5) was inserted by section 61(1) and (2) of the Criminal Justice Act 1988 (c. 44) and is amended by paragraph 218(1) and (2) of Schedule 8 to the Courts Act 2003 (c. 39) with effect from a date to be appointed.

(23) Section 77(3) was inserted by section 61(1) and (2) of the Criminal Justice Act 1988 (c. 33).

(24) Section 60 was amended by article 5(1) and (4) of S.I. 2001/618 and is further amended by paragraphs 90 and 102 of Part 1 of Schedule 32 and Part 7 of Schedule 37 and Paragraphs 160 and 173 of Part II of Schedule 7 to the Criminal Justice and Court Services Act 2000 (c. 43) with effect from a date to be appointed.

(25) S.I. 1992/2069; amended by 2001/615.

(26) S.I. 1992/2071; amended by 2001/615 and 2003/1236.