



Criminal Justice Act 1988

1988 CHAPTER 33

PART V

JURISDICTION, IMPRISONMENT, FINES, ETC.

Default in payment of fines etc.

61 Default – procedure

- (1) The Magistrates' Courts Act 1980 shall be amended as follows.
- (2) The following subsections shall be added after section 77(2)—
 - “(3) A magistrates' court shall have power at any time to do either or both of the following—
 - (a) to direct that the issue of the warrant of commitment shall be postponed until a time different from that to which it was previously postponed;
 - (b) to vary any of the conditions on which its issue is postponed, but only if it thinks it just to do so having regard to a change of circumstances since the relevant time.
- (4) In this section “the relevant time” means—
 - (a) where neither of the powers conferred by subsection (3) above has been exercised previously, the date when the issue of the warrant was postponed under subsection (2) above; and
 - (b) in any other case, the date of the exercise or latest exercise of either or both of the powers.
- (5) Without prejudice to the generality of subsection (3) above, if on an application by a person in respect of whom issue of a warrant has been postponed it appears to a justice of the peace acting for the petty sessions area in which the warrant has been or would have been issued that since the relevant time there has been a change of circumstances which would make it

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just for the court to exercise one or other or both of the powers conferred by that subsection, he shall refer the application to the court.

(6) Where such an application is referred to the court, it shall be the duty of the clerk of the court—

- (a) to fix a time and place for the application to be heard; and
- (b) to give the applicant notice of the time and place which he fixes.

(7) Where such a notice has been given but the applicant does not appear at the time and place specified in the notice, the court may proceed with the consideration of the application in his absence.

(8) If a warrant of commitment in respect of the sum adjudged to be paid has been issued before the hearing of the application, the court shall have power to order that the warrant shall cease to have effect and, if the applicant has been arrested in pursuance of it, to order that he shall be released, but it shall only make an order under this subsection if it is satisfied that the change of circumstances on which the applicant relies was not put before the court when it was determining whether to issue the warrant.”.

(3) The following subsection shall be inserted after subsection (4) of section 82 (restriction on power to impose imprisonment for default)—

“(4A) The methods of enforcing payment mentioned in subsection (4)(b)(ii) above are—

- (a) a warrant of distress under section 76 above;
- (b) an application to the High Court or county court for enforcement under section 87 below;
- (c) an order under section 88 below;
- (d) an attachment of earnings order; and
- (e) if the offender is under the age of 21, an order under section 17 of the Criminal Justice Act 1982 (attendance centre orders).”.

(4) The following subsections shall be inserted after subsection (5) of that section—

“(5A) A magistrates' court may not issue a warrant of commitment under subsection (5) above at a hearing at which the offender is not present unless the clerk of the court has first served on the offender a notice in writing stating that the court intends to hold a hearing to consider whether to issue such a warrant and giving the reason why the court so intends.

(5B) Where after the occasion of an offender's conviction by a magistrates' court the court holds a hearing for the purpose of considering whether to issue a warrant of commitment for default in paying a sum adjudged to be paid by the conviction, it shall consider such information about the offender's means as is available to it unless it has previously—

- (a) inquired into the offender's means; and
- (b) postponed the issue of the warrant of commitment under section 77(2) above.

(5C) A notice under subsection (5A) above—

- (a) shall state the time and place appointed for the hearing; and

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- (b) shall inform the offender that, if he considers that there are grounds why the warrant should not be issued, he may make representations to the court in person or in writing,
but the court may exercise its powers in relation to the issue of a warrant whether or not he makes representations.
 - (5D) Except as mentioned in subsection (5E) below, the time stated in a notice under subsection (5A) above shall not be earlier than 21 days after the issue of the notice.
 - (5E) Where a magistrates' court exercises in relation to an offender the power conferred by section 77(2) above and at the same hearing issues a notice under subsection (5A) above in relation to him, the time stated in the notice may be a time on any day following the end of the period for which the issue of the warrant of commitment has been postponed.
 - (5F) A notice under subsection (5A) above to be served on any person shall be deemed to be served on that person if it is sent by registered post or the recorded delivery service addressed to him at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by that person.”.
- (5) The following section shall be substituted for section 85—

“85 Power to remit fine

- (1) Where a fine has been imposed on conviction of an offender by a magistrates' court, the court may at any time remit the whole or any part of the fine, but only if it thinks it just to do so having regard to a change of circumstances which has occurred—
 - (a) where the court is considering whether to issue a warrant of commitment after the issue of such a warrant in respect of the fine has been postponed under subsection (2) of section 74 above, since the relevant time as defined in subsection (4) of that section; and
 - (b) in any other case, since the date of the conviction.
- (2) Where the court remits the whole or part of the fine after a term of imprisonment has been fixed, it shall also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole or, as the case may be, shall remit the whole term.
- (3) In calculating the reduction in a term of imprisonment required by subsection (2) above any fraction of a day shall be left out of account.
- (4) Notwithstanding the definition of “fine” in section 150(1) below, references in this section to a fine do not include any other sum adjudged to be paid on conviction, whether as a pecuniary penalty, forfeiture, compensation or otherwise.”.
- (6) In section 121(2) (magistrates' court to consist of at least 2 justices when holding an inquiry into the means of an offender for the purposes of section 82) after the word “above” there shall be inserted the words “or determine under that section at a hearing at which the offender is not present whether to issue a warrant of commitment”.