



# Maintenance Orders Act 1958

1958 CHAPTER 39 6 and 7 Eliz 2

An Act to make provision for the registration in the High Court or a magistrates' court of certain maintenance orders made by the order of those courts or a county court and with respect to the enforcement and variation of registered orders; to make provision for the attachment of sums falling to be paid by way of wages, salary or other earnings or by way of pension for the purpose of enforcing certain maintenance orders; to amend section seventy-four of the Magistrates' Courts Act, 1952; to make provision for the review of committals to prison by magistrates' courts for failure to comply with maintenance orders; to enable Orders in Council under section twelve of the Maintenance Orders (Facilities for Enforcement) Act, 1920, to be revoked or varied; and for purposes connected with the matters aforesaid. [7th July 1958]

## PART I

### REGISTRATION, ENFORCEMENT AND VARIATION OF CERTAIN MAINTENANCE ORDERS

#### Modifications etc. (not altering text)

C2 Pt.I (ss. 1–5) applied by Administration of Justice Act 1977 (c. 38, SIF 37), s. 3, sch. 3 para. 10

#### 1 Application of Part I.

- (1) The provisions of this Part of this Act shall have effect for the purpose of enabling maintenance orders to which this Part of this Act applies to be registered—
- (a) in the case of an order made by the High Court or a county court, in a magistrates' court; and
  - (b) in the case of an order made by a magistrates' court, in the High Court,
- and, subject to those provisions, while so registered—
- (i) to be enforced in like manner as an order made by the court of registration; and
  - (ii) in the case of an order registered in a magistrates' court, to be varied by a magistrates' court.

*Status: Point in time view as at 01/02/1991. This version of this Act contains provisions that are not valid for this point in time.*

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[<sup>F1</sup>(1A) In the following provisions of this Act “maintenance order” means any order specified in Schedule 8 to the <sup>MI</sup>Administration of Justice Act 1970.]

[<sup>F2</sup>(2) For the purposes of subsection (1) above, a maintenance order made by a court in Scotland or Northern Ireland and registered in England under Part II of the Maintenance Orders Act 1950 shall be deemed to have been made by the court in England in which it is so registered.

(2A) This Part of this Act applies—

- (a) to maintenance orders made by the High Court or a county court, or a magistrates’ court, other than orders registered in Scotland or Northern Ireland under Part II of the Maintenance Orders Act 1950, and
- (b) to maintenance orders made by a court in Scotland or Northern Ireland and registered in England under Part II of the Maintenance Orders Act 1950.]

(3) Without prejudice to the provisions of section twenty-one of this Act, in this Part of this Act, unless the context otherwise requires, the following expressions have the following meanings—

“High Court order”, “county court order” and “magistrates’ court order” mean an order made by the High Court, a county court or a magistrates’ court, as the case may be;

“order” means a maintenance order to which this Part of this Act applies;

“original court” and “court of registration”, in relation to an order, mean the court by which the order was made or, as the case may be, the court in which the order is registered;

“registered” means registered in accordance with the provisions of this Part of this Act, and “registration” shall be construed accordingly;

and for the purposes of this Part of this Act an order for the payment by the defendant of any costs incurred in proceedings relating to a maintenance order, being an order for the payment of costs made while the maintenance order is not registered, shall be deemed to form part of that maintenance order.

[<sup>F3</sup>(4) For the purposes of this section a maintenance order [<sup>F4</sup>which is registered in a magistrates’ court under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972 or Part I of the Civil Jurisdiction and Judgments Act 1982] shall be deemed to be a maintenance order made by that court.]

#### Textual Amendments

- F1** S. 1(1A) added by [Administration of Justice Act 1970 \(c. 31\), s. 27\(3\)](#)
- F2** S. 1(2)(2A) substituted for s. 1(2) by [Administration of Justice Act 1977 \(c. 38, SIF 37\), s. 3, Sch. 3 para. 1](#), with effect in relation to the enforcement in one part of the United Kingdom of maintenance orders made in another part.
- F3** S. 1(4) added by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18\), Sch. para. 4](#)
- F4** Words substituted by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 43:5\), ss. 15\(4\), 36\(6\), 52, Sch. 12 Pt. I para. 3](#)

#### Modifications etc. (not altering text)

- C3** Pt.I (ss. 1–5) applied by [Administration of Justice Act 1977 \(c. 38, SIF 37\), s. 3, sch. 3 para. 10](#)

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## Marginal Citations

M1 1970 c. 31.

## 2 Registration of orders.

- (1) A person entitled to receive payments under a High Court or county court order may apply for the registration of the order to the original court, and the court may, if it thinks fit, grant the application.
- (2) Where an application for the registration of such an order is granted—
  - (a) no proceedings shall be begun, and no writ, warrant or other process shall be issued, for the enforcement of the order before the registration of the order or the expiration of the prescribed period from the grant of the application, whichever first occurs; and
  - (b) the original court shall, on being satisfied within the period aforesaid by the person who made the application that no such proceedings or process begun or issued before the grant of the application remain pending or in force, cause a certified copy of the order to be sent to the clerk of the magistrates' court acting for the petty sessions area in which the defendant appears to be;but if at the expiration of the period aforesaid the original court has not been so satisfied, the grant of the application shall become void.
- (3) A person entitled to receive payments under a magistrates' court order who considers that the order could be more effectively enforced if it were registered may apply for the registration of the order to the original court, and the court [<sup>F5</sup>may, if it thinks fit, grant the application].

[<sup>F6</sup>(3A) Without prejudice to subsection (3) of this section, where a magistrates' court order provides both for the payment of a lump sum and for the making of periodical payments, a person entitled to receive a lump sum under the order who considers that, so far as it relates to that sum, the order could be more effectively enforced if it were registered may apply to the original court for the registration of the order so far as it so relates, and the court may, if it thinks fit, grant the application.

(3B) Where an application under subsection (3A) of this section is granted in the case of a magistrates' court order, the provisions of this Part of this Act shall have effect in relation to that order as if so far as it relates to the payment of a lump sum it were a separate order.]

- (4) Where an application for the registration of a magistrates' court order is granted—
  - (a) no proceedings for the enforcement of the order shall be begun before the registration takes place and no warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the grant of the application;
  - (b) any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the grant of the application, unless the defendant has then already been detained in pursuance of the warrant; and
  - (c) the original court shall, on being satisfied in the prescribed manner that no process for the enforcement of the order issued before the grant of the application remains in force, cause a certified copy of the order to be sent to the prescribed officer of the High Court.

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- (5) The officer or clerk of a court who receives a certified copy of an order sent to him under this section shall cause the order to be registered in that court.
- (6) Subsections (1) to (4) of section nineteen of the <sup>M2</sup>Maintenance Orders Act, 1950 (which provide for the suspension, while a magistrates' court order is registered under Part II of that Act, of any provision of the order requiring payments to be made through a third party, for ordering payments under an order so registered in a magistrates' court to be paid through a collecting officer, and for authorising a person to make payments otherwise than in accordance with the requirements of that section until he has notice of those requirements) shall have effect for the purposes of this Part of this Act as if for any reference in that section to the said Part II and a maintenance order there were substituted a reference to this Part of this Act and a maintenance order to which this Part of this Act applies.

[<sup>F7</sup>(6A) In this section—

“High Court order” includes a maintenance order deemed to be made by the High Court by virtue of section 1(2) above, and

“magistrates' court order” includes a maintenance order deemed to be made by a magistrates' court by virtue of that subsection.]

- (7) In this section “certified copy” in relation to an order of a court means a copy certified by the proper officer of the court to be a true copy of the order or of the official record thereof.

#### Textual Amendments

- F5** Words substituted by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), ss. 37(1), 52, **Sch. 11 Pt. I para. 2(2)**
- F6** [S. 2\(3A\)\(3B\)](#) inserted by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), ss. 37(1), 52, **Sch. 11 Pt. I para. 2(3)**
- F7** [S. 2\(6A\)](#) added by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), s. 3, **Sch. 3 para. 2**, with effect in relation to the enforcement in one part of the United Kingdom of maintenance orders made in another part.

#### Modifications etc. (not altering text)

- C4** [Pt. I](#) (ss. 1–5) applied by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), s. 3, **sch. 3 para. 10**
- C5** [S. 2](#) (except subsection (6A)) modified by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), **ss. 36(3), 52**
- C6** [S. 2](#) extended by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), **s. 24B(4)(a)(ii)** (as inserted by [Social Security Act 1990 \(c. 27, SIF 113:1\)](#), **s. 8(1)**)

#### Marginal Citations

- M2** [1950 c. 37](#).

#### [<sup>F8</sup>2A Interest on sums recoverable under certain orders registered in the High Court.

- (1) Where, in connection with an application under section 2(3) of this Act for the registration of a magistrates' court order, the applicant shows in accordance with rules of court—
- (a) that the order, though deemed for the purposes of section 1 of this Act to have been made by a magistrates' court in England, was in fact made in another

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part of the United Kingdom or in a country or territory outside the United Kingdom; and

- (b) that, as regards any sum for whose payment the order provides, interest on that sum at a particular rate is, by the law of that part or of that country or territory, recoverable under the order from a particular date or time,

then, if the original court grants the application and causes a certified copy of the order to be sent to the prescribed officer of the High Court under section 2(4)(c) of this Act, it shall also cause to be sent to him a certificate in the prescribed form showing, as regards that sum, the rate of interest so recoverable and the date or time from which it is so recoverable.

- (2) The officer of the court who receives a certificate sent to him under the preceding subsection shall cause the certificate to be registered in that court together with the order to which it relates.
- (3) Where an order is registered together with a certificate under this section, then, subject to any provision made under the next following subsection, sums payable under the order shall carry interest at the rate specified in the certificate from the date or time so specified.
- (4) Provision may be made by rules of court as to the manner in which and the periods by reference to which any interest payable by virtue of subsection (3) is to be calculated and paid, including provision for such interest to cease to accrue as from a prescribed date.
- (5) Except as provided by this section sums payable under registered orders shall not carry interest.]

#### Textual Amendments

**F8** S. 2A inserted by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), ss. 37(1), 52, **Sch. 11 Pt. II para. 6(2)**

#### Modifications etc. (not altering text)

**C7** S. 2A modified by [Civil Jurisdiction and Judgments Act 1982, \(c. 27, SIF 45:3\)](#), ss. 36(3), 52

### 3 Enforcement of registered orders.

- (1) Subject to the provisions of [<sup>F9</sup>section 2A of this Act and] this section, a registered order shall be enforceable in all respects as if it had been made by the court of registration and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of a registered order may be taken accordingly.
- [<sup>F10</sup>(2) Subject to the provisions of the next following subsection, an order registered in magistrates' court shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980.]
- (3) Where an order remains or becomes registered after the discharge of the order, no proceedings shall be taken by virtue of that registration except in respect of arrears which were due under the order at the time of the discharge and have not been remitted.
- [<sup>F11</sup>(3A) Any person under an obligation to make payments under an order registered in a magistrates' court shall give notice of any change of address to the clerk of the court; and any person who without reasonable excuse fails to give such a notice shall be

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liable on summary conviction to a fine not exceeding level 2 on the standard scale (as defined in section 75 of the Criminal Justice Act 1982).]

- (4) Except as provided by this section, no proceedings shall be taken for or with respect to the enforcement of a registered order.

#### Textual Amendments

- F9** Words inserted by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), ss. 37(1), 52, **Sch. 11 Pt. II para. 6(3)**
- F10** [S. 3\(2\)](#) substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(1), **Sch. 2 para. 18**
- F11** [S. 3\(3A\)](#) inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), ss. 46(1), 48, **Sch. 1 para. 4**

#### Modifications etc. (not altering text)

- C8** [Pt. I](#) (ss. 1–5) applied by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), s. 3, **sch. 3 para. 10**

## 4 Variation of orders registered in magistrates' courts.

- (1) The provisions of this section shall have effect with respect to the variation of orders registered in magistrates' courts, and references in this section to registered orders shall be construed accordingly.
- (2) Subject to the following provisions of this section—
- (a) the court of registration may exercise the same jurisdiction to vary any rate of payments specified by a registered order (other than jurisdiction in a case where a party to the order is not present in England when the application for variation is made) as is exercisable, apart from this subsection, by the original court; and
  - (b) a rate of payments specified by a registered order shall not be varied except by the court of registration or any other magistrates' court to which the jurisdiction conferred by the foregoing paragraph is extended by rules of court.
- (3) ..... <sup>F12</sup>
- (4) If it appears to the court to which an application is made by virtue of subsection (2) of this section for the variation of a rate of payments specified by a registered order [<sup>F13</sup>that it is for any reason] appropriate to remit the application to the original court, the first-mentioned court shall so remit the application, and the original court shall thereupon deal with the application as if the order were not registered.
- (5) Nothing in subsection (2) of this section shall affect the jurisdiction of the original court to vary a rate of payments specified by a registered order if an application for the variation of that rate is made to that court—
- (a) in proceedings for a variation of provisions of the order which do not specify a rate of payments; or
  - (b) at a time when a party to the order is not present in England.
- (6) No application for any variation of a registered order shall be made to any court while proceedings for any variation of the order are pending in any other court.

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[<sup>F14</sup>(6A) No application for any variation in respect of a registered order shall be made to any court in respect of an order made by the Court of Session or the High Court in Northern Ireland and registered in that court in accordance with the provisions of this Part of this Act by virtue of section 1(2) above.]

[<sup>F15</sup>(6B) No application for any variation of a registered order shall be made to any court in respect of an order for periodical or other payments made under Part III of the Matrimonial and Family Proceedings Act 1984.]

(7) Where a magistrates' court, in exercise of the jurisdiction conferred by subsection (2) of this section, varies or refuses to vary a registered order, an appeal from the variation or refusal shall lie to the High Court; . . . <sup>F16</sup>

#### Textual Amendments

**F12** S. 4(3) repealed by Administration of Justice Act 1970 (c. 31), s. 48(2), Sch. 11

**F13** Words substituted by Administration of Justice Act 1970 (c. 31), s. 48(3)

**F14** S. 4(6A) added by Administration of Justice Act 1977 (c. 38, SIF 37), s. 3, Sch. 3 para. 3, with effect in relation to the enforcement in one part of the United Kingdom of maintenance orders made in another part.

**F15** S. 4(6B) inserted by Matrimonial and Family Proceedings Act 1984 (c. 42, SIF 49:3), ss. 46(1), 48, Sch. 1 para. 5

**F16** Words repealed by Administration of Justice Act 1977 (c. 38, SIF 37), s. 32(4), Sch. 5 Pt. IV

#### Modifications etc. (not altering text)

**C9** Pt.I (ss. 1–5) applied by Administration of Justice Act 1977 (c. 38, SIF 37), s. 3, sch. 3 para. 10

VALID FROM 01/04/1992

#### [4A <sup>F17</sup>Variation etc. of orders registered in the High Court.

(1) The provisions of this section shall have effect with respect to orders registered in the High Court other than maintenance orders deemed to be made by a magistrates' court by virtue of section 1(4) of this Act, and the reference in subsection (2) of this section to a registered order shall be construed accordingly.

(2) The High Court may exercise the same powers in relation to a registered order as are exercisable by the High Court under section 1 of the Maintenance Enforcement Act 1991 in relation to a qualifying periodical maintenance order (within the meaning of that section) which has been made by the High Court, including the power under subsection (7) of that section to revoke, suspend, revive or vary—

(a) any such order as is referred to in paragraph (a) of section 2(6) of this Act which continues to have effect by virtue of that paragraph; and

(b) any means of payment order (within the meaning of section 1(7) of that Act of 1991) made by virtue of the provisions of this section.]

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### Textual Amendments

**F17** S. 4A inserted (1.4.1992) by Maintenance Enforcement Act (c. 17, SIF 49:3), s. 10, Sch. 1 para. 10; S.I. 1992/455, art.2.

## 5 Cancellation of registration.

- (1) If a person entitled to receive payments under a registered order desires the registration to be cancelled, he may give notice under this section.
- (2) Where the original court varies or discharges an order registered in a magistrates' court, the original court may, if it thinks fit, give notice under this section.
- (3) Where [<sup>F18</sup>the original court] discharges an order registered in the High Court and it appears to [<sup>F18</sup>the original court], whether by reason of the remission of arrears by that court or otherwise, that no arrears under the order remain to be recovered, [<sup>F18</sup>the original court] shall give notice under this section.
- (4) Notice under this section shall be given to the court of registration; and where such notice is given—
  - (a) no proceedings for the enforcement of the registered order shall be begun before the cancellation of the registration and no writ, warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the giving of the notice;
  - (b) where the order is registered in a magistrates' court, any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the giving of the notice, unless the defendant has then already been detained in pursuance of the warrant; and
  - (c) the court of registration shall cancel the registration on being satisfied in the prescribed manner—
    - (i) that no process for the enforcement of the registered order issued before the giving of the notice remains in force; and
    - (ii) in the case of an order registered in a magistrates' court, that no proceedings for the variation of the order are pending in a magistrates' court.

[<sup>F19</sup>(4A) For the purposes of a notice under subsection (2) or (3) above—

“court of registration” includes any court in which an order is registered under Part II of the Maintenance Orders Act 1950, and

“registration” includes registration under that Act.]

- (5) On the cancellation of the registration of a High Court or county court order, any order made in relation thereto under subsection (2) of section nineteen of the <sup>M3</sup>Maintenance Orders Act, 1950, as applied by subsection (6) of section two of this Act, shall cease to have effect, but until the defendant receives the prescribed notice of the cancellation he shall be deemed to comply with the High Court or county court order if he makes payments in accordance with any order under the said subsection (2) as so applied which was in force immediately before the cancellation and of which he has notice.



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**Textual Amendments**

- F18** Words substituted by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), s. 3, **Sch. 3 para. 4(a)**, with effect in relation to the enforcement in one part of the United Kingdom of maintenance orders made in another part.
- F19** [S. 5\(4A\)](#) added by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), s. 3, **Sch. 3 para. 4(b)**, with effect in relation to the enforcement in one part of the United Kingdom of maintenance orders made in another part.

**Modifications etc. (not altering text)**

- C10** Pt.I (ss. 1–5) applied by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), s. 3, **sch. 3 para. 10**
- C11** [S. 5\(2\)](#) modified by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), **ss. 36(3)**, 52
- C12** [S. 5\(3\)](#) modified by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), **ss. 36(3)**, 52
- C13** [S. 5\(4\)](#) modified by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), **ss. 36(3)**, 52
- C14** [S. 5\(4A\)](#) modified by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), **ss. 36(3)**, 52

**Marginal Citations**

- M3** 1950 c. 37.

**PART II**

ATTACHMENT OF EARNINGS ORDERS

**6—8.** ..... **F20**

**Textual Amendments**

- F20** [Ss. 6–8](#) repealed by [Administration of Justice Act 1970 \(c. 31\)](#), **Sch. 11**

**9** ..... **F21**

**Textual Amendments**

- F21** [S. 9](#) repealed by [Attachment of Earnings Act 1971 \(c. 32\)](#), **Sch. 6**

**10—15** ..... **F22**

**Textual Amendments**

- F22** [Ss. 10–15](#) repealed by [Administration of Justice Act 1970 \(c. 31\)](#), **Sch. 11**

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## PART III

### MISCELLANEOUS AND SUPPLEMENTAL

#### Miscellaneous

16 ..... F23

#### Textual Amendments

**F23** S. 16 repealed by Magistrates' Courts Act 1980 (c. 43, SIF 82), Sch. 9

#### 17 Prohibition of committal more than once in respect of same arrears.

Where a defendant has been imprisoned or otherwise detained under an order or warrant of commitment issued in respect of his failure to pay a sum due under a maintenance order, then, notwithstanding anything in this Act, no such order or warrant (other than a warrant of which the issue has been postponed under paragraph (ii) of subsection (5) of the next following section) shall thereafter be issued in respect of that sum or any part thereof.

#### Modifications etc. (not altering text)

**C15** S. 17 extended by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 24, 30, Sch. 3 Pt. I para. 2(2)

#### 18 Powers of magistrates to review committals, etc.

(1) Where, for the purpose of enforcing a maintenance order, a magistrates' court has exercised its power under [F24]subsection (2) of section 77 of the Magistrates' Courts Act 1980], or this section to postpone the issue of a warrant of commitment and under the terms of the postponement the warrant falls to be issued, then—

- (a) the warrant shall not be issued except in pursuance of subsection (2) or paragraph (a) of subsection (3) of this section; and
- (b) the clerk of the court shall give notice to the defendant stating that if the defendant considers there are grounds for not issuing the warrant he may make an application to the court in the prescribed manner requesting that the warrant shall not be issued and stating those grounds.

(2) If no such application is received by the clerk of the court within the prescribed period, any justice of the peace acting for the same petty sessions area as the court may issue the warrant of commitment at any time after the expiration of that period; and if such an application is so received any such justice may, after considering the statements contained in the application—

- (a) if he is of opinion that the application should be further considered, refer it to the court;
- (b) if he is not of that opinion, issue the warrant forthwith;

and when an application is referred to the court under this subsection, the clerk of the court shall give to the defendant and the person in whose favour the maintenance order

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in question was made notice of the time and place appointed for the consideration of the application by the court.

(3) On considering an application referred to it under the last foregoing subsection the court shall, unless in pursuance of subsection (6) of this section it remits the whole of the sum in respect of which the warrant could otherwise be issued, either—

- (a) issue the warrant; or
- (b) further postpone the issue thereof until such time and on such conditions, if any, as the court thinks just; or
- (c) if in consequence of any change in the circumstances of the defendant the court considers it appropriate so to do, order that the warrant shall not be issued in any event.

(4) A defendant who is for the time being imprisoned or otherwise detained under a warrant of commitment issued by a magistrates' court for the purpose of enforcing a maintenance order, and who is not detained otherwise than for the enforcement of such an order, may make an application to the court in the prescribed manner requesting that the warrant shall be cancelled and stating the grounds of the application; and thereupon any justice of the peace acting for the same petty sessions area as the court may, after considering the statements contained in the application—

- (a) if he is of opinion that the application should be further considered, refer it to the court;
- (b) if he is not of that opinion, refuse the application;

and when an application is referred to the court under this subsection, the clerk of the court shall give to the person in charge of the prison or other place in which the defendant is detained and the person in whose favour the maintenance order in question was made notice of the time and place appointed for the consideration of the application by the court.

(5) On considering an application referred to it under the last foregoing subsection, the court shall, unless in pursuance of the next following subsection it remits the whole of the sum in respect of which the warrant was issued or such part thereof as remains to be paid, either—

- (a) refuse the application; or
- (b) if the court is satisfied that the defendant is unable to pay, or to make any payment or further payment towards, the sum aforesaid and if it is of opinion that in all the circumstances of the case the defendant ought not to continue to be detained under the warrant, order that the warrant shall cease to have effect when the person in charge of the prison or other place aforesaid is informed of the making of the order;

and where the court makes an order under paragraph (b) of this subsection, it may if it thinks fit also—

- (i) fix a term of imprisonment in respect of the sum aforesaid or such part thereof as remains to be paid, being a term not exceeding so much of the term of the previous warrant as, after taking into account any reduction thereof by virtue of the next following subsection, remained to be served at the date of the order; and
- (ii) postpone the issue of a warrant for the commitment of the defendant for that term until such time and on such conditions, if any, as the court thinks just.

(6) On considering an application under this section in respect of a warrant or a postponed warrant, the court may, if the maintenance order in question is an affiliation order or

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an order enforceable as an affiliation order, remit the whole or any part of the sum due under the order; and where the court remits the sum or part of the sum in respect of which the warrant was issued or the postponed warrant could have been issued, [<sup>F25</sup>section 79 of the Magistrates' Courts Act 1980] (which provides that on payment of the sum for which imprisonment has been ordered by a magistrates' court the order shall cease to have effect and that on payment of part of that sum the period of detention shall be reduced proportionately) shall apply as if payment of that sum or part had been made as therein mentioned.

- (7) Where notice of the time and place appointed for the consideration of an application is required by this section to be given to the defendant or the person in whose favour the maintenance order in question was made and the defendant or, as the case may be, that person does not appear at that time and place, the court may proceed with the consideration of the application in his absence.
- (8) A notice required by this section to be given by the clerk of a magistrates' court to any person shall be deemed to be given to that person if it is sent by registered post 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.

#### Textual Amendments

**F24** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 23\(a\)](#)

**F25** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 24](#)

#### Modifications etc. (not altering text)

**C16** [S. 18](#) extended by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), ss. 24, 30, [Sch. 3 Pt. I para. 2\(2\)](#)

### [<sup>F26</sup>19] **Revocation and variation of Orders in Council under 10 & 11 Geo. 5. c. 33, s. 12.**

Her Majesty may by Order in Council revoke or vary any Order in Council made under section twelve of the <sup>M4</sup>Maintenance Orders (Facilities for Enforcement) Act, 1920 (which provides for the extension of that Act by Order in Council to certain oversea territories), and an Order under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient for the purposes of that Act.]

#### Textual Amendments

**F26** [S. 19](#) repealed (prosp.) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18\)](#), [s. 22\(2\)](#)

#### Marginal Citations

**M4** [1920 c. 33](#).

### *Supplemental*

## 20 **Special provisions as to magistrates' courts.**

- (1) Notwithstanding anything in this Act, . . . <sup>F27</sup> the clerk of a magistrates' court who is entitled to receive payments under a maintenance order for transmission to another person shall not—

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- (a) apply for the registration of the maintenance order under Part I of this Act or give notice in relation to the order in pursuance of subsection (1) of section five thereof; . . . <sup>F27</sup>
- (b) . . . . . <sup>F28</sup>
- unless he is requested in writing to do so by a person entitled to receive the payments through him; and where the clerk is requested as aforesaid—
- (i) he shall comply with the request unless it appears to him unreasonable in the circumstances to do so;
- (ii) the person by whom the request was made shall have the same liabilities for all the costs properly incurred in or about any proceedings taken in pursuance of the request as if the proceedings had been taken by that person;
- . . . <sup>F27</sup>
- (2) . . . <sup>F27</sup> An application to a magistrates' court by virtue of subsection (2) of section four of this Act for the variation of a maintenance order . . . <sup>F27</sup> shall be made by complaint.
- (3) It is hereby declared that a magistrates' court has jurisdiction to hear a complaint by or against a person residing outside England for the discharge or variation of an attachment of earnings order made by a magistrates' court; and where such a complaint is made against a person residing outside England, then—
- [<sup>F29</sup>(a) if he resides in Scotland or Northern Ireland, section fifteen of the Maintenance Orders Act, 1950 (which relates to the service of process on persons residing in those countries) shall have effect in relation to the complaint as it has effect in relation to the proceedings therein mentioned; and]
- (b) . . . . . <sup>F30</sup>
- (4),(5)
- . . . . . <sup>F30</sup>
- (6) . . . . . <sup>F31</sup>
- (7) . . . . . <sup>F32</sup>
- (8) For the avoidance of doubt it is hereby declared that a complaint may be made to enforce payment of a sum due and unpaid under a maintenance order notwithstanding that a previous complaint has been made in respect of that sum or a part thereof and whether or not an order was made in pursuance of the previous complaint.

**Textual Amendments**

- F27** Words repealed by [Attachment of Earnings Act 1971 \(c. 32\)](#), [Sch. 6](#)
- F28** [S. 20\(1\)\(b\)\(c\)](#) repealed by [Attachment of Earnings Act 1971 \(c. 32\)](#), [Sch. 6](#)
- F29** The text of [s. 20\(3\)\(a\)](#) which is spent (N.I.) is repealed (E.W.) (S.) by [Attachment of Earnings Act 1971 \(c. 32\)](#), [Sch. 6](#)
- F30** [S. 20\(3\)\(b\)\(4\)\(5\)](#) repealed by [Attachment of Earnings Act 1971 \(c. 32\)](#), [Sch. 6](#)
- F31** [S. 20\(6\)](#) repealed by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 9](#)
- F32** [S. 20\(7\)](#) repealed by [Attachment of Earnings Act 1971 \(c. 32\)](#), [Sch. 6](#)

**Modifications etc. (not altering text)**

- C17** [S. 20](#) set out as amended (E.W.) by [Attachment of Earnings Act 1971 \(c. 32\)](#) in [Sch. 5](#) to that Act

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**C18** The text of s. 20(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**21 Interpretation, etc.**

(1) In this Act, unless the context otherwise requires, the following expressions have the following meanings—

.....<sup>F33</sup>, “magistrates’ court” and “petty sessions area” have the meanings assigned to them by [<sup>F34</sup>the Magistrates’ Courts Act 1980] and for the purposes of the definition of a magistrates’ court the reference to that Act in [<sup>F34</sup>subsection (2) of section 148 thereof] shall be construed as including a reference to this Act;

.....<sup>F35</sup>  
 “defendant”, in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under the maintenance order;

.....<sup>F35</sup>  
 “England” includes Wales;

.....<sup>F35</sup>  
 “prescribed” means prescribed by rules of court;

“proper officer”, in relation to a magistrates’ court, means the clerk of the court;

“rules of court”, in relation to a magistrates’ court, means rules under section fifteen of the <sup>M5</sup>Peace Act, 1949.

(2) Any reference in this Act to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive such payments either directly or through another person or for transmission to another person.

(3) Any reference in this Act to proceedings relating to an order includes a reference to proceedings in which the order may be made.

(4) Any reference in this Act to costs incurred in proceedings relating to a maintenance order shall be construed, in the case of a maintenance order made by the High Court, as a reference to such costs as are included in an order for costs relating solely to that maintenance order.

(5) .....<sup>F36</sup>

(6) Any reference in this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment.

**Textual Amendments**

**F33** Words repealed by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(4), [Sch. 4](#)

**F34** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 24](#)

**F35** Definitions of “attachment of earnings order”, “earnings”, “employer”, “excepted sums”, and “maintenance order” repealed by [Administration of Justice Act 1970 \(c. 31\)](#), [Sch. 11](#)

**F36** [S. 21\(5\)](#) repealed by [Administration of Justice Act 1970 \(c. 31\)](#), [Sch. 11](#)

**Modifications etc. (not altering text)**

**C19** [S. 21](#) applied (14.10.1991) by [S.I. 1991/1247](#), [rule7.22](#)

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### Marginal Citations

**M5** 1949 c. 101.

**22** <sup>F37</sup> .....

### Textual Amendments

**F37** S. 22 repealed by [Northern Ireland Constitution Act 1973 \(c. 36\)](#), [Sch. 6 Pt. I](#)

### **23 Short title, extent, commencement and repeals.**

(1) This Act may be cited as the Maintenance Orders Act, 1958.

[<sup>F38</sup>(2) The following provisions of this Act, namely—  
section 2 [<sup>F39</sup>section 2A];  
section 5(2), (3), (4) and (4A);  
extend to Scotland and Northern Ireland.

(2A) section 20(3)(a) above extends to Northern Ireland.

(2B) Subject to subsections (2) and (2A) above, this Act extends only to England.]

(3) This Act shall come into operation on such date as the Secretary of State may by order, made by statutory instrument, appoint; and different dates may be so appointed for the purposes of different provisions of this Act.

(4) Subsection (2) of section eight of the <sup>M6</sup>Guardianship of Infants Act, 1925, and section ten of the <sup>M7</sup>Affiliation Proceedings Act, 1957, are hereby repealed; but nothing in this subsection shall affect any order in force or deemed to be in force under either of those provisions at the commencement of this subsection, and any such order may be discharged or varied as if this subsection had not been passed.

### Subordinate Legislation Made

**P1** S. 23(3) power fully exercised (11.12.1958): 16.2.1959 for whole Act by [S.I. 1958/2111](#)

### Textual Amendments

**F38** S. 23(2)(2A)(2B) substituted for s. 23(2) by [Administration of Justice Act 1977 \(c. 38, SIF 37\)](#), s. 3, [Sch. 3 para. 5](#), with effect in relation to the enforcement in one part of the United Kingdom of maintenance orders made in another part.

**F39** Words inserted by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 45:3\)](#), ss. 36(6), 52, [Sch. 12 Pt. III para. 2](#)

### Marginal Citations

**M6** 1925 c. 45.

**M7** 1957 c. 55.

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F40F40 SCHEDULE

.....  
**Textual Amendments**

**F40** Sch. repealed by [Administration of Justice Act 1970 \(c. 31\)](#), **Sch. 11**

.....  
**F40**



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