

1959 No. 3 (L. 1)

**The Magistrates' Courts (Maintenance Orders Act, 1958)
Rules, 1959**

<i>Made - - - -</i>	<i>1st January, 1959</i>
<i>Laid before Parliament</i>	<i>8th January, 1959</i>
<i>Coming into Operation</i>	<i>16th February, 1959</i>

I, the Right Honourable David, Viscount Kilmuir, Lord High Chancellor of Great Britain, in exercise of the power conferred on me by section fifteen of the Justices of the Peace Act, 1949(a), as extended by section one hundred and twenty-two of the Magistrates' Courts Act, 1952(b), do hereby, after consultation with the Rule Committee appointed under the said section fifteen, make the following Rules:—

PART I

PROCEDURE UNDER PART I OF THE ACT

Applications for registration under section 2 (3) of the Act

1. An application for the registration in the High Court of a magistrates' court order need not be in writing or on oath.

Manner in which magistrates' court is to be satisfied as to various matters

2.—(1) On an application for the registration in the High Court of a magistrates' court order, the court shall be satisfied in the manner provided by paragraph (4) of this Rule as to the amount due and unpaid under the order at the time the application was made.

(2) Where such an application as aforesaid is granted, the court shall be satisfied in the manner provided by paragraph (4) of this Rule that no process for the enforcement of the order issued before the grant of the application remains in force.

(3) Where the court receives a notice given under section five of the Act (which relates to the cancellation of registration), the court shall be satisfied in the manner provided by paragraph (4) of this Rule that no process for the enforcement of the order issued before the giving of the notice remains in force and that no proceedings for the variation of the order are pending in a magistrates' court.

(4) For the purpose of satisfying the court as to the matters referred to in this Rule—

(a) if the person through or to whom payments are ordered to be made is the clerk of a magistrates' court, there shall be produced a certificate in that behalf purporting to be signed by the clerk in the form numbered 1, 2 or 3, as the case may be, in the Schedule to these Rules ;

(a) 12, 13 & 14 Geo. 6. c. 101.

(b) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 55.

- (b) in any other case, there shall be produced a document purporting to be a statutory declaration in that behalf in the form numbered 4, 5 or 6, as the case may be, in the Schedule to these Rules.

Copy of magistrates' court order sent to the High Court for registration

3. Where an application for the registration of a magistrates' court order is granted and the court is satisfied that no process issued for the enforcement of the order before the grant of the application remains in force, the court shall, in accordance with paragraph (c) of subsection (4) of section two of the Act, cause the clerk to send a copy of the order, certified to be a true copy thereof in the form numbered 7 in the Schedule to these Rules—

- (a) in the case of an order made under the Guardianship of Infants Act, 1925(a), to the Senior Master of the High Court (Queen's Bench Division);
- (b) in the case of an order made under the Affiliation Proceedings Act, 1957(b), under section forty-three or forty-four of the National Assistance Act, 1948(c), under section twenty-six of the Children Act, 1948(d), or under section eighty-seven of the Children and Young Persons Act, 1933(e), to the Senior Master of the High Court (Queen's Bench Division) or to such district registrar as may be specified by the applicant;
- (c) in any other case, to the Senior Registrar of the Principal Probate Registry of the High Court or to such district registrar of a Registry in which proceedings can be taken under the Matrimonial Causes Rules, 1957(f), as may be specified by the applicant.

Registration of High Court or county court order in a magistrates' court

4. Where a clerk of a magistrates' court in accordance with paragraph (b) of subsection (2) of section two of the Act receives from an officer of the High Court or the registrar of a county court a certified copy of a High Court or county court order, he shall cause the order to be registered in his court by means of a memorandum entered and signed by him in the register and shall send written notice to that officer of the High Court or the registrar of the county court, as the case may be, that it has been duly registered.

Notices as respects payments through a clerk of a magistrates' court

5.—(1) A notice under subsection (4) of section nineteen of the Maintenance Orders Act, 1950(g), as applied by subsection (6) of section two of the Act, that the payments under a High Court or county court order have, on its registration in a magistrates' court, become payable through the clerk of a magistrates' court shall be given by the clerk of the court of registration in the form numbered 8 in the Schedule to these Rules.

(2) A notice under the said subsection (4), as so applied, that the payments under a magistrates' court order have, on its registration in the High Court, ceased to be payable to a clerk to a magistrates' court shall be given by the clerk of the original court and shall be in the form numbered 9 in the Schedule to these Rules and, where payments have been payable through a clerk other than the clerk of the original court, he shall send a copy of the said notice to that other clerk.

(a) 15 & 16 Geo. 5. c. 45. (b) 5 & 6 Eliz. 2. c. 55. (c) 11 & 12 Geo. 6. c. 29.
 (d) 11 & 12 Geo. 6. c. 43. (e) 23 & 24 Geo. 5. c. 12. (f) S.I. 1957/619 (1957 II, p. 2406).
 (g) 14 Geo. 6. c. 37.

(3) A notice under subsection (5) of section five of the Act that the registration in a magistrates' court of a High Court or county court order has been cancelled and that payments thereunder have ceased to be payable through a clerk of a magistrates' court shall be given by the clerk of the court of registration and shall be in the form numbered 10 in the Schedule to these Rules and, where payments have been payable through a clerk other than the clerk of the court of registration, he shall send a copy of the said notice to that other clerk.

(4) A notice given in accordance with the preceding provisions of this Rule shall be delivered to the person liable to make payments under the order to which the notice relates or sent by post to that person at his last known address.

Remission to the original court of application for variation of registered maintenance order

6. An order under subsection (4) of section four of the Act remitting an application for the variation of a High Court or county court order registered in a magistrates' court to the original court shall be in the form numbered 11 in the Schedule to these Rules.

Notice of variation, remission, discharge or cancellation of registration by a magistrates' court of a registered order

7.—(1) Where a High Court or county court order registered in a magistrates' court is, under subsection (2) of section four of the Act, varied by a magistrates' court, the clerk of the last-mentioned court shall give notice of the variation to the High Court or county court, as the case may be.

(2) Where an application for the variation of a High Court or county court order registered in a magistrates' court is, under subsection (4) of section four of the Act, remitted to the original court by a magistrates' court, the clerk of the last-mentioned court shall give notice of the remission to the High Court or county court, as the case may be.

(3) Where the registration of a High Court or county court order in a magistrates' court is, under subsection (4) of section five of the Act, cancelled by the court of registration, the clerk of the last-mentioned court shall give notice of cancellation to the High Court or county court, as the case may be, stating, if such be the case, that the cancellation is in consequence of a notice given under subsection (1) of the said section five.

(4) Where a magistrates' court order registered in the High Court is varied or discharged by a magistrates' court, the clerk of the last-mentioned court shall give notice of the variation or discharge, as the case may be, to the High Court.

(5) Notice under the preceding provisions of this Rule shall be given by sending to the appropriate officer of the High Court or the registrar of the county court, as the case may be, a copy of the order of variation, remission, cancellation or discharge, as the case may be, certified to be a true copy thereof by the clerk of the magistrates' court and marked, in the case of a High Court maintenance order, with the title and cause number, if any, and in the case of a county court maintenance order, with the plaint or application number.

(6) For the purposes of the preceding paragraph the appropriate officer of the High Court shall be—

(a) in relation to a High Court order registered in a magistrates' court, the officer to whom notice of registration was given under Rule 4 of these Rules;

(b) in relation to a magistrates' court order registered in the High Court, the officer to whom a copy of the order was sent under Rule 3 of these Rules.

(7) Where a magistrates' court order registered in the High Court is discharged by a magistrates' court and it appears to the last-mentioned court that no arrears remain to be recovered, notice under subsection (3) of section five of the Act shall be given by an endorsement in the form numbered 12 in the Schedule to these Rules on the certified copy of the order of discharge referred to in paragraph (5) of this Rule.

Notices received from the High Court or a county court or from a person entitled to payments

8. Where any notice is received—

- (a) of the registration in the High Court of a magistrates' court order ;
- (b) of the discharge or variation by the High Court or a county court of a High Court or county court order registered in a magistrates' court ;
- (c) under subsection (1) or (2) of section five of the Act (which relates to the cancellation of registration) ;

the clerk of the magistrates' court shall cause particulars of the notice to be registered in his court by means of a memorandum entered and signed by him in the register and, in the case of a notice under subsection (1) or (2) of section five of the Act, shall cause the person in possession of any warrant of commitment, issued but not executed, for the enforcement of the order to be informed of the giving of the notice.

Jurisdiction as respects complaints for variation of High Court maintenance orders

9. Rule 34 of the Magistrates' Courts Rules, 1952(a), (which relates to jurisdiction to hear certain complaints), shall apply to a complaint for the variation of a High Court order registered in a magistrates' court as if the order were an affiliation order made by the court of registration and as if in paragraph (4) of the said Rule for the words "shall cause" there were substituted the words "may cause".

PART II

PROCEDURE UNDER PART II OF THE ACT

Attachment of earnings order

10. An attachment of earnings order shall be in the form numbered 13 in the Schedule to these Rules.

Orders and notices to be served on and given to employer

11.—(1) Where a magistrates' court makes an attachment of earnings order or an order varying or discharging such an order, the clerk of the court shall cause a copy of the order to be served on the person to whom the order is directed and shall send a copy of the order to the defendant.

(2) Where an attachment of earnings order made by a magistrates' court ceases to have effect as provided in subsection (2) of section nine of the Act, the clerk of the administering court shall give notice in writing of the cessation to the person to whom the attachment of earnings order was directed.

Particulars of defendant

12. The particulars of the defendant for the purpose of enabling him to be identified which, so far as they are known, are to be included in an attachment of earnings order under subsection (3) of section six of the Act and

which the defendant may be ordered to give to the court under subsection (1) of section eleven of the Act shall be—

- (a) full name and address ;
- (b) age ;
- (c) national insurance number ;
- (d) place of work ;
- (e) nature of work and works number, if any.

Defendant not employed by person to whom attachment of earnings order directed

13. A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time thereafter, has on no occasion during the period of four weeks immediately preceding that time been the defendant's employer shall forthwith, under subsection (4) of section ten of the Act, give notice to the court which made the order in the form numbered 14 in the Schedule to these Rules.

Notice of application for appropriate variation order

14. The clerk of a magistrates' court, by which an application under subsection (5) of section nine of the Act for the appropriate variation of an attachment of earnings order is to be heard, shall give notice in writing of the time and place appointed for the hearing of the application to such person entitled to receive payment under the related maintenance order as is specified by the attachment of earnings order.

Jurisdiction as respects complaints for the discharge and variation of attachment of earnings orders

15.—(1) This Rule shall apply to a complaint for the discharge or variation of an attachment of earnings order except where the related maintenance order—

- (a) is an affiliation order and jurisdiction is confined by paragraph (a) of subsection (2) of section eighty-eight of the Children and Young Persons Act, 1933, to courts having jurisdiction in the place where the person liable thereunder is residing ;
- (b) is an order made under section eighty-seven of the Children and Young Persons Act, 1933 ;
- (c) is an order made under section forty-three of the National Assistance Act, 1948.

(2) Where a complaint is made to a justice of the peace acting for the same petty sessions area as the court which made the attachment of earnings order and it appears to him that—

- (a) the person in whose favour the attachment of earnings order was made, or
- (b) the person liable to make payments under the related maintenance order,

is for the time being in some petty sessions area other than that for which the justice is acting, or that the complainant is the clerk of a magistrates' court acting for such other area, then, if it appears to the justice that the complaint may be more conveniently dealt with by a magistrates' court acting for that other area, he may cause the clerk of the court to send the complaint by post to the clerk of the other court and for that purpose shall write down the complaint if this has not already been done.

(3) On receipt by the clerk of a magistrates' court of a complaint under the preceding paragraph, he shall bring the complaint before the court and the court shall issue a summons requiring the person appropriate under subsection (4) of section twenty of the Act to appear before it, and shall hear and determine the complaint.

Complaints for variation or discharge of attachment of earnings orders against persons outside United Kingdom

16.—(1) Where a complaint for the variation or discharge of an attachment of earnings order is made against a person who resides outside the United Kingdom and that person does not appear at the time and place appointed for the hearing of the complaint, then, subject to paragraph (2) of this Rule, the court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint in accordance with subsection (3) of section twenty of the Act if it is proved to the satisfaction of the court that the complainant has taken any of the following steps to give the person against whom the complaint is made notice of the complaint and of the time and place appointed for the hearing thereof, that is to say—

- (a) has caused written notice of the matters aforesaid to be delivered to the said person ;
- (b) has caused written notice of the matters aforesaid to be sent by post addressed to the said person at his last known or usual place of abode or at his place of business or at such other address at which there is ground for believing that it will reach him ; or
- (c) has caused notice of the matters aforesaid to be inserted in one or more newspapers on one or more occasions.

(2) Where it is proposed to take any such steps as are mentioned in sub-paragraph (b) or (c) of the preceding paragraph, the complainant shall apply for directions to a justice of the peace acting for the same petty sessions area as that of the court by which the complaint is to be heard, and the taking of such steps shall be effective for the purposes of this Rule only if they were taken in accordance with the directions given by the said justice.

(3) Paragraph (1) of Rule 55 of the Magistrates' Courts Rules, 1952, shall apply for the purpose of proving the delivery of a written notice in pursuance of sub-paragraph (a) of paragraph (1) of this Rule as it applies for the purpose of proving the service of a summons.

In relation to a solemn declaration made outside the United Kingdom, paragraph (1) of the said Rule 55, as applied by this paragraph, shall have effect as if for the reference to the authorities mentioned in the said paragraph (1) there were substituted a reference to a consular officer of Her Majesty's Government in the United Kingdom or any person for the time being authorised by law, in the place where the declarant is, to administer an oath for any judicial or other legal purpose.

(4) Paragraph (2) of the said Rule 55 shall apply for the purpose of proving the sending of a written notice in pursuance of sub-paragraph (b) of paragraph (1) of this Rule, or the insertion of a notice in a newspaper in pursuance of sub-paragraph (c) thereof, as it applies for the purpose of proving the service of any process, provided, as respects the insertion of a notice in a newspaper, that a copy of the newspaper containing the notice is annexed to the certificate.

Applications under section twelve of the Act

17.—(1) An application under section twelve of the Act, for a determination whether payments of a particular class or description are earnings for the purposes of an attachment of earnings order, shall be in writing and may be made by the applicant in person, by his solicitor or by such other person as may be authorised by him in that behalf.

(2) The parties to proceedings in pursuance of such an application as aforesaid shall be the person to whom the attachment of earnings order is directed, the person in whose favour the order is made and the person liable to make payments under the related maintenance order.

(3) Where such an application as aforesaid is made to a court and a justice of the peace acting for the same petty sessions area as the court determines that the application could more conveniently be dealt with by a magistrates' court acting for some other petty sessions area being an area where one of the parties is for the time being or an area where the person to whom the attachment of earnings order is directed trades or conducts business, he may cause the clerk of the court to send by post to the clerk of that other court the application together with the name and other particulars of each of the parties, and the clerk of that other court shall bring the application before that court.

(4) The clerk of the court by which such an application as aforesaid is to be heard—

(a) shall serve written notice on the parties to the proceedings of the time and place appointed for the hearing of the application; and

(b) shall, when the hearing is concluded, give written notice to the parties to the proceedings, of the determination of the court.

(5) A court may, if the applicant does not appear, dismiss such an application as aforesaid and shall not begin to hear such an application in the absence of any of the other parties to the proceedings unless it is proved to the satisfaction of the court, on oath or in the manner prescribed by Rule 55 of the Magistrates' Courts Rules, 1952, that the provisions of sub-paragraph (a) of the preceding paragraph of this Rule have been complied with.

Method of making payment under attachment of earnings order

18.—(1) A clerk of a magistrates' court to whom any payment under an attachment of earnings order is to be made shall notify the person to whom the order is directed and such person entitled to receive payments under the related maintenance order as is specified by the attachment of earnings order of the hours during which, and the place at which, payments are, subject to the provisions of this Rule, to be made and received.

(2) If an employer makes any payment under an attachment of earnings order to a clerk of a magistrates' court by post, he shall do so at his own risk and expense.

(3) A clerk of a magistrates' court may send by post any payment under an attachment of earnings order to such person entitled thereto as is specified by the attachment of earnings order at the request and at the risk and expense of that person.

Payments under attachment of earnings order after imprisonment imposed

19.—(1) Where imprisonment or other detention has been imposed for the purpose of enforcing a maintenance order, the clerk of a magistrates' court to whom any payment under a related attachment of earnings order is to be made—

- (a) in relation to such a payment shall be a person authorised to receive the said payment for the purposes of subsection (2) of section sixty-seven of the Magistrates' Courts Act, 1952 (which relates to release from custody and reduction of detention on payment);
 - (b) on receiving such a payment shall notify the person authorised for the purposes aforesaid by paragraph (1) of Rule 45 of the Magistrates' Courts Rules, 1952, of the sum received.
- (2) Where a person receives notice of the receipt of a sum under the preceding paragraph of this Rule, he shall note the receipt of that sum on the warrant of commitment, if any, held by him.

Service of orders and notices

20. Where under section eleven of the Act (which relates to statements of earnings, etc.) an order is directed to the defendant or to a person appearing to be an employer of the defendant or where under this Part of these Rules a copy of an order is to be served or a notice is to be given to any person—

- (a) service may be effected on, or notice may be given to, a person other than a corporation by delivering it to the person to whom it is directed or by sending it by post in a letter addressed to him at his last known or usual place of abode or, in the case of a person appearing to be an employer of the defendant or of a person to whom the related attachment of earnings order is directed, at his place of business;
- (b) service may be effected on, or notice given to, a corporation by delivering the document at, or sending it to—
 - (i) such office or place as the corporation may, for the purpose of this Rule, have specified in writing to the court which made the order or the related attachment of earnings order in relation to the defendant or to the class or description of persons to which he belongs, or
 - (ii) the registered office of the corporation if that office is in England and Wales or, if there is no registered office in England and Wales, any place therein where the corporation trades or conducts its business.

PART III

MISCELLANEOUS AND SUPPLEMENTAL

Administering court to be informed of proceedings in foreign court

21. Where any decision is reached, or warrant of distress or commitment is issued, in pursuance of a complaint or application relating to a maintenance order or the enforcement of a maintenance order (including an application under section twelve of the Act, which relates to the determination whether payments are earnings), being a complaint or application heard by a magistrates' court other than the administering court—

- (a) the clerk of the first-mentioned court shall forthwith send by post to the clerk of the administering court an extract from the register containing a minute or memorandum of the decision or of the issue of the warrant as the case may be;
- (b) on receipt of the extract the last-mentioned clerk shall enter the minute or memorandum in his register.

Review of committals, etc.

22.—(1) Where for the purpose of enforcing a maintenance order a magistrates' court has exercised its power under subsection (2) of section

sixty-five of the Magistrates' Courts Act, 1952, or subsection (3) or (5) of section eighteen of the Act to postpone the issue of a warrant of commitment and under the terms of the postponement the warrant falls to be issued, the clerk of the court shall give notice to the defendant in the form numbered 15 in the Schedule to these Rules and shall attach to the said notice a copy of the form numbered 16 in the said Schedule.

(2) An application under subsection (1) of the said section eighteen requesting that the warrant shall not be issued shall be in the form numbered 16 in the Schedule to these Rules and shall be delivered to the clerk of the court or sent to him by post.

(3) For the purposes of subsection (2) of the said section eighteen the period for the receipt by the clerk of an application under subsection (1) of the said section shall be the period of eight days beginning with the day on which the clerk sends to the defendant the notice referred to in paragraph (1) of this Rule.

(4) An application under subsection (4) of the said section eighteen requesting that a warrant of commitment which has been executed shall be cancelled shall be in the form numbered 17 in the Schedule to these Rules.

(5) Where an application by a defendant under subsection (1) or (4) of the said section eighteen is considered by the court the clerk of the court shall give notice of the decision of the court, if the person in question is not present—

(a) to the person in whose favour the maintenance order in question was made ; and

(b) except where an application under subsection (1) of the said section eighteen is dismissed, to the defendant.

(6) Where on considering an application by a defendant under subsection (4) of the said section eighteen the court—

(a) makes an order under paragraph (b) of subsection (5) of the said section for the cancellation of the warrant of commitment ; or

(b) remits under subsection (6) of the said section the whole or any part of the sum in respect of which the warrant was issued ;

the clerk of the court shall forthwith give written notice of the decision to the person in charge of the prison or other place in which the defendant is detained.

Warrants of commitment

23.—(1) A warrant of commitment for the enforcement of a maintenance order, being an affiliation order or an order enforceable as an affiliation order, issued in pursuance of a complaint under section seventy-four of the Magistrates' Courts Act, 1952, as amended by section sixteen of the Act, shall be in the form numbered 18 in the Schedule to these Rules:

Provided that where the issue of the warrant has been postponed under section sixty-five of the Magistrates' Courts Act, 1952, or under section eighteen of the Act the warrant shall be in the form numbered 19 in the Schedule to these Rules.

(2) A warrant of commitment for the enforcement of a maintenance order, not being an affiliation order or an order enforceable as an affiliation order, the issue of which has been postponed under section sixty-five of the Magistrates' Courts Act, 1952, or under section eighteen of the Act, shall be in the form numbered 20 in the Schedule to these Rules.

Revocations

24.—(1) The forms of warrants of commitment numbered 20 and 21 in the Schedule to the Bastardy (Forms) Order, 1915(a), shall be omitted therefrom and the form numbered 88 in the Schedule to the Magistrates' Courts (Forms) Rules, 1952(b), shall cease to apply to a warrant of commitment the issue of which has been postponed under section sixty-five of the Magistrates' Courts Act, 1952, or under section eighteen of the Act, being a warrant of commitment for the enforcement of a maintenance order.

(2) The forms numbered 23, 24 and 25 in the Schedule to the Bastardy (Forms) Order, 1915 (which relate to the attachment of pension or income), shall be omitted therefrom.

(3) The following provisions of the Magistrates' Courts Rules, 1952, are hereby revoked, that is to say:—

(a) paragraph (8) of Rule 34 (which relates to the giving of information as respects certain proceedings in a foreign court); and

(b) Rule 36 (which relates to the attachment of income or pension).

Interpretation

25.—(1) Subsection (3) of section one of the Act shall apply to the interpretation of Part I of these Rules as it applies to the interpretation of Part I of the Act.

(2) Section twenty-one of the Act shall apply to the interpretation of these Rules as it applies to the interpretation of the Act.

(3) The Interpretation Act, 1889(c), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(4) Any reference in these Rules to the Act is a reference to the Maintenance Orders Act, 1958(d).

(5) Any reference in these Rules to the administering court in relation to a maintenance order or a related attachment of earnings order is a reference to the magistrates' court—

(a) which made the maintenance order;

(b) in which the maintenance order is registered under the Act, under Part II of the Maintenance Orders Act, 1950, or under the Maintenance Orders (Facilities for Enforcement) Act, 1920(e); or

(c) by which the maintenance order was confirmed under the Maintenance Orders (Facilities for Enforcement) Act, 1920.

(6) Any reference in these Rules to the register is a reference to the register kept in accordance with Rule 54 of the Magistrates' Courts Rules, 1952.

(7) Any reference in these Rules to a form in the Schedule to these Rules shall include a reference to a form to the like effect with such variations as the circumstances may require.

Citation and commencement

26. These Rules may be cited as the Magistrates' Courts (Maintenance Orders Act, 1958) Rules, 1959, and shall come into operation on the sixteenth day of February, 1959.

Dated the first day of January, 1959.

Kilmuir, C.

(a) S.R. & O. 1915/208 (Rev. III, p. 57; 1915 I, p. 15). (b) S.I. 1952/2191 (1952 II, p. 1619).
(c) 52 & 53 Vict. c. 63. (d) 6 & 7 Eliz. 2. c. 39. (e) 10 & 11 Geo. 5. c. 33.

SCHEDULE

FORMS

1

Certificate of clerk of magistrates' court as to amount due and unpaid
(M.O. Act, 1958, s. 2(3).)

I hereby certify that the amount due and unpaid at the date of this certificate under (insert particulars of maintenance order) made on the day of 19 , by the Magistrates' Court sitting at , the payments whereunder are at present required to be made to me, is .

Dated the day of , 19 .

J.C.,

Clerk of the Magistrates' Court sitting at .

2

Certificate of clerk of magistrates' court that no process for enforcement remains in force (M.O. Act, 1958, s. 2(4)(c).)

I hereby certify that at the date of this certificate no process remains in force for the enforcement of (insert particulars of maintenance order) made on the day of 19 , by the Magistrates' Court sitting at , the payments whereunder are at present required to be made to me.

Dated the day of , 19 .

J.C.,

Clerk of the Magistrates' Court sitting at .

3

Certificate of clerk of magistrates' court that no process for enforcement remains in force and no proceedings for variation are pending (M.O. Act, 1958, s. 5(4)(c).)

I hereby certify that at the date of this certificate no process remains in force for the enforcement and no proceedings are pending in a Magistrates' Court for the variation of (insert particulars of maintenance order) made on the day of 19 , by the [High Court] [County Court] the payments whereunder are at present required to be made through me.

Dated the day of , 19 .

J.C.,

Clerk of the Magistrates' Court sitting at .

4

Declaration as to the amount due and unpaid (M.O. Act, 1958, s. 2(3).)

I, G.H., of , do solemnly and sincerely declare that the amount due and unpaid at the date of this declaration under (insert particulars of maintenance order) made on the day of , 19 , by the Magistrates' Court sitting at , whereunder I am entitled to receive payments, is .

And I make this solemn declaration, conscientiously believing the same to be true, by virtue of the provisions of the Statutory Declarations Act, 1835.

G.H.

Declared at , the day of , 19 ,
before me,

J.P.,

Justice of the Peace for the [county] of .
(Or other description)

5

Declaration that no process for enforcement remains in force
(M.O. Act, 1958, s. 2(3).)

I, G.H., of _____, do solemnly and sincerely declare that at the date of this declaration no process remains in force for the enforcement of (*insert particulars of maintenance order*) made on the _____ day of _____, 19____, by the Magistrates' Court sitting at _____, whereunder I am entitled to receive payments.

And I make this solemn declaration, conscientiously believing the same to be true, by virtue of the provisions of the Statutory Declarations Act, 1835.

G.H.

Declared at _____, the _____ day of _____, 19____,
before me,

J.P.,

Justice of the Peace for the [county] of _____.
(*Or other description*)

6

Declaration that no process for enforcement remains in force and no proceedings for variation are pending (M.O. Act, 1958, s. 5(4)(c).)

I, G.H., of _____, do solemnly and sincerely declare that at the date of this declaration no process remains in force for the enforcement and no proceedings are pending in a Magistrates' Court for the variation of (*insert particulars of maintenance order*) made on the _____ day of _____, 19____, by the [High Court] [_____ County Court] whereunder I am entitled to receive payments.

And I make this solemn declaration, conscientiously believing the same to be true, by virtue of the provisions of the Statutory Declarations Act, 1835.

G.H.

Declared at _____, the _____ day of _____, 19____,
before me,

J.P.,

Justice of the Peace for the [county] of _____.
(*Or other description*)

7

Certificate of clerk of magistrates' court that copy of maintenance order is a true copy sent for registration (M.O. Act, 1958, s. 2(4)(c).)

I hereby certify that this is a true copy of (*insert particulars of maintenance order*) and that it is sent to _____ in accordance with the provisions of paragraph (c) of subsection (4) of section two of the Maintenance Orders Act, 1958, and of Rule 3 of the Magistrates' Courts (Maintenance Orders Act, 1958) Rules, 1959.

Dated the _____ day of _____, 19____.

J.C.,

Clerk of the Magistrates' Court sitting at _____.

8

Notice that payments have become payable through the clerk of a magistrates' court
(M.O. Act, 1958, s. 2(5); M.O. Act, 1950, s. 19(4).)

In the [county] of _____ . Petty Sessional Division of _____].
Before the Magistrates' Court sitting at _____ .

To A.B., of

You are hereby given notice that the sums payable by you under (*insert particulars of maintenance order*) made on the day of , 19 , by the [High Court] [County Court], and registered in this Court under Part I of the Maintenance Orders Act, 1958, have under an order of this Court dated the day of , 19 , become payable through [me] [the clerk of the Magistrates' Court sitting at].

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be sent to the clerk of the Magistrates' Court at (*state address*).

Dated the day of , 19 .

J.C.,

Clerk of the Magistrates' Court sitting at .

9

Notice that payments under a magistrates' court order have ceased to be payable through the clerk of a magistrates' court (M.O. Act, 1958, s. 2 (5); M.O. Act, 1950, s. 19 (4).)

In the [county of . Petty Sessional Division of].
Before the Magistrates' Court sitting at .

To A.B., of

You are hereby given notice that the sums payable by you under (*insert particulars of maintenance order*) made on the day of , 19 , by this Court have by reason of the registration of the said order in the High Court ceased to be payable to (*state clerk of Magistrates' Court to whom payments have hitherto been required to be made*).

Payments under the order (including payments in respect of any sums due at the date of the receipt by you of this notice) should henceforth be paid to (*state name and address of the person entitled to payments under the order*).

Dated the day of , 19 .

J.C.,

Clerk of the Magistrates' Court sitting at .

10

Notice of cancellation of registration of a High Court or county court order (M.O. Act, 1958, s. 5 (5).)

In the [county of . Petty Sessional Division of].
Before the Magistrates' Court sitting at .

To A.B., of

You are hereby given notice that the registration in this Court under Part I of the Maintenance Orders Act, 1958, of (*insert particulars of maintenance order*) made on the day of , 19 , by the [High Court] [County Court] has been cancelled.

Sums payable by you under the said order have by reason of the cancellation of the registration of the said order ceased to be payable through (*state clerk of Magistrates' Court through whom payments have hitherto been required to be made*).

Payments under the order (including payments in respect of any sums due on the date of the receipt by you of this notice) should henceforth be paid to (*state name and address of person entitled to payments under the order*).

Dated the day of , 19 .

J.C.,

Clerk of the Magistrates' Court sitting at .

11

Order remitting to the original court application for variation of registered maintenance order (M.O. Act, 1958, s. 4 (4).)

In the [county of . Petty Sessional Division of].
Before the Magistrates' Court sitting at .

Complaint has been made by C.D., of
(hereinafter called the complainant) who states that by (*insert particulars of maintenance order*) made on the . day of ., 19 ., by the
[High Court] [. County Court] and registered on the . day
of ., 19 ., in the Magistrates' Court sitting at
A.B. (hereinafter called the defendant) [or he/she] was ordered (*state shortly terms of original order, and mention any subsequent order and effect thereof*):

And the complainant has applied for the said order to be varied by an order requiring . on the ground that

[And the said complaint has been sent to the Clerk of this Court in pursuance of Rule 34 of the Magistrates' Courts Rules, 1952.]

It appearing to this Court that it is appropriate to remit the application to the [High Court] [. County Court], it is ordered that the application be so remitted.

Dated the . day of ., 19 .
J.P.,

Justice of the Peace for the [county] first above mentioned.

12

Endorsement that no arrears remain to be recovered (M.O. Act, 1958, s. 5 (3).)

In the [county of . Petty Sessional Division of].
Before the Magistrates' Court sitting at .

Whereas it appeared to this Court this day on discharging (*insert particulars of maintenance order*) that no arrears remain to be recovered thereunder notice is hereby given under subsection (3) of section five of the Maintenance Orders Act, 1958.

Dated the . day of ., 19 .
J.C.,

Clerk of the Magistrates' Court sitting at .

13

Attachment of earnings order (M.O. Act, 1958, ss. 6, 7.)

In the [county of . Petty Sessional Division of].
Before the Magistrates' Court sitting at .

To E.M. of .

A.B. of ., aged . years, whose national
insurance number is . and who works at .
as a . (Works No. .) (hereinafter called the defendant) is
under a maintenance order made on the . day of ., 19 .,
by the (*insert court*) required to make payments of . a week
to G.H.:

And on the complaint of C.D. of ., a person entitled to receive the said payments, it appears that at the time the complaint was made there was due under the order and unpaid an amount equal to not less than four weekly payments required by the order and that earnings fall to be paid by you to the defendant.

It is hereby ordered that out of those earnings you shall make payments in accordance with the Schedule to the Maintenance Orders Act, 1958, to the Clerk of [this Court] [the Magistrates' Court sitting at _____] for transmission to [G.H.] of _____ a person entitled to receive payments under the maintenance order.

And it is further ordered that for the purpose of calculating the said payments the normal deduction rate shall be _____ a _____ and the protected earnings rate shall be _____ a _____.

Dated the _____ day of _____, 19 _____ J.P.,

Justice of the Peace for the [county] first above mentioned.

NOTE.—(1) This order does not come into force until the expiration of seven days from the date when a copy is served on the person to whom it is directed. (2) A copy of an explanatory booklet [is enclosed] [may be obtained from the Clerk of the Court].

14

Notice that defendant is not employed by person to whom an attachment of earnings order is directed (M.O. Act, 1958, s. 10(4).)

To the Magistrates' Court sitting at _____

An attachment of earnings order made by the Court on the _____ day of _____, 19 _____, relating to earnings falling to be paid to A.B. of _____, (hereinafter called the defendant) was directed to, and served on me, E.M. of _____:

I give notice that on no occasion during the period of four weeks immediately preceding the _____ day of _____, 19 _____, have I been the defendant's employer, that is to say, a person by whom as a principal and not as a servant or agent earnings within the meaning of the Maintenance Orders Act, 1958, fell to be paid to the defendant.

Dated the _____ day of _____, 19 _____ E.M.

15

Notice that warrant of commitment falls to be issued (M.O. Act, 1958, s. 18(1).)

In the [county of _____] Petty Sessional Division of _____].
Before the Magistrates' Court sitting at _____.
To A.B., of _____.

PLEASE READ THIS NOTICE CAREFULLY

On the _____ day of _____, 19 _____, this Court postponed the issue of a warrant of commitment in your case for the enforcement of (*insert particulars of maintenance order*) (*insert the terms of postponement*).

You have failed to comply with these terms of postponement and the warrant committing you to prison for a term of _____ now falls to be issued unless you pay under the maintenance order [the sum] [the net sum, after making deductions in respect of income tax.] of _____.

If you consider that there are grounds for not issuing the warrant you may make an application to the Court on the attached form requesting that the warrant shall not be issued and stating those grounds.

If no such application is received by me on or before the _____ day of _____, 19 _____, and you fail to pay the sum referred to above the warrant will be issued.

If such an application is received by me on or before the _____ day of _____, 19 _____, it will be considered by a justice who may either refer it to the Court for further consideration or dismiss the application and issue the warrant forthwith.

Dated the _____ day of _____, 19 _____ J.C.,

Clerk of the Magistrates' Court sitting at _____.

16

Application requesting that warrant should not be issued

(*M.O. Act, 1958, s. 18(1).*)

To the Magistrates' Court sitting at
I, A.B., of , have received the notice sent to me by the
Clerk of the Court and dated the day of , 19 .

I hereby request that the warrant of commitment shall not be issued. The grounds of my request are as follows:—

Dated the day of , 19 .
A.B.

NOTE.—This application should be delivered or sent by post to the Clerk of the Court (*insert address*).

17

Application requesting that warrant should be cancelled

(*M.O. Act, 1958, s. 18(4).*)

To the Magistrates' Court sitting at

I, A.B., hereby request that the warrant of commitment under which I am for the time being imprisoned [or otherwise detained] should be cancelled. The grounds of my request are as follows:—

Dated the day of , 19 .
A.B.

18

Warrant of commitment for the enforcement of affiliation order or order enforceable as an affiliation order for use in case of immediate issue (M.C. Act, 1952, ss. 64, 74.)

In the [county of . Petty Sessional Division of]

To each and all of the constables of and to the Governor
of Her Majesty's prison at [or the Police Officer in charge
of]

Whereas on a complaint made by C.D., of , that A.B.,
of (hereinafter called the defendant) had made default in
payment of the sums ordered to be paid by (*insert particulars of maintenance order*)
it was proved to the Magistrates' Court sitting at , that the
defendant did owe to , of , the sum
of , under the order and the sum of for costs
thereunder.

And whereas the Court having inquired in the presence of the defendant whether the default was due to his wilful refusal or culpable neglect is not of the opinion that it was not so due.

And whereas [the Court is of opinion that it is inappropriate to make an attachment of earnings order] [there is no power to make an attachment of earnings order].

It is ordered, the defendant not being absent, that he be committed to prison [or detained in police custody] for (*state period*) unless he sooner pays the said sums due from him as aforesaid [together with the costs of enforcement] as set out below.

You the said constables are hereby required to take the defendant and convey him to the Governor of Her Majesty's prison [or the Police Officer in charge of]
at and you the said Governor [or Police Officer] to receive the
defendant into your custody and keep him for (*state period*) from his arrest under
this order or until he be sooner discharged in due course of law.

Dated the day of , 19 .
J.P.,
Justice of the Peace for the [county] first above mentioned.

	£	s.	d.
Amount found due			
Deductions in respect of Income Tax			
Net amount			
Enforcement costs payable			
Total sum payable by defendant			

(Endorsement of payments)

Date of Receipt	£	s.	d.	Signature

Warrant of commitment for enforcement of affiliation order or order enforceable as an affiliation order for use where issue has been postponed (M.C. Act, 1952, ss. 64, 65, 74; M.O. Act, 1958, s. 18.)

In the [county of _____]. Petty Sessional Division of _____].
To each and all of the constables of _____ and to the Governor
of Her Majesty's prison at _____ [or the Police Officer in charge
of _____].

Whereas on a complaint made by C.D., of _____, that A.B., of _____ (hereinafter called the defendant) had made default in payment of the sums ordered to be paid by *(insert particulars of maintenance order)* it was proved to the Magistrates' Court sitting at _____, that the defendant did owe to _____, of _____, the sum of _____ under the order and the sum of _____ for costs thereunder.

And whereas the Court having inquired in the presence of the defendant whether the default was due to his wilful refusal or culpable neglect was not of the opinion that it was not so due.

And whereas [the Court was of opinion that it was inappropriate to make an attachment of earnings order] [there was no power to make an attachment of earnings order],

And whereas the Court, the defendant not being absent, on the _____ day of _____, 19____, fixed a term of imprisonment (*insert term*) and postponed issue of the warrant of commitment (*insert terms of postponement unless there has been a further postponement*).

[And whereas on the application of the defendant the Court on the _____ day of _____, 19____, further postponed the issue of the warrant (*insert terms of further postponement*):]

[And whereas on the application of the defendant the warrant having been executed the Court cancelled the warrant of commitment but fixed a further term of imprisonment (*insert term*) and postponed issue of the further warrant of commitment (*insert terms of postponement*):]

And whereas under the said terms of postponement the said warrant fell to be issued and the Clerk of the Court gave notice to the defendant that he might make an application to the Court requesting that the warrant should not be issued.

[And whereas no such application was received by the Clerk within the prescribed period.]

[And whereas such an application was made and considered by [me] [the Court].]

[And whereas by reason of part payment the said sums remaining due from the defendant as aforesaid are reduced in amount to .]

It is ordered that the defendant be committed to prison [*or detained in police custody*] for (*state period*) unless he sooner pays the said sums [remaining] due from him as aforesaid [together with the costs of enforcement] as set out below.

You the said constables are hereby required to take the defendant and convey him to the Governor of Her Majesty's prison [*or the Police Officer in charge of*] and you the said Governor [*or Police Officer*] to receive the defendant into your custody and keep him for (*state period*) from his arrest under this order or until he be sooner discharged in due course of law.

Dated the day of , 19 .
J.P.,

Justice of the Peace for the [county] first above mentioned.

	£	s.	d.
Amount found due			
Deductions in respect of Income Tax... ..			
Net amount			
Paid			
Net amount remaining due			
Enforcement costs payable			
Total sum payable by defendant			

(*Endorsement of payments*)

Date of Receipt	£	s.	d.	Signature

Warrant of commitment for enforcement of maintenance order other than affiliation order or order enforceable as an affiliation order where issue has been postponed
(M.C. Act, 1952, ss. 64, 65, 73; M.O. Act, 1958, s. 18.)

In the [county of _____] . Petty Sessional Division of _____].

To each and all of the constables of _____ and to the Governor
of Her Majesty's prison at _____ [or the Police Officer in
charge of _____].

Whereas on a complaint made by C.D. of _____
that A.B. of _____ (hereinafter called the debtor) had made
default in payment of the sums ordered to be paid under (*insert details of maintenance
order*) it was proved to the Magistrates' Court sitting at _____
that the debtor did owe to the said C.D. the sum of _____ under the
order and the sum of _____ for costs thereunder:

And whereas the debtor was summoned for an examination as to his means:

And whereas it was proved to the satisfaction of the Court that the debtor had [or
had had, since the date of the said order] the means to pay the sum then due and
payable and refused or neglected [or had refused or neglected] to pay the said sum:

And whereas the Court on the _____ day of _____, 19 _____, fixed a
term of imprisonment (*insert term unless a further term has been fixed*) and postponed
issue of the warrant of commitment (*insert terms of postponement unless there has
been a further postponement*):

[And whereas on the application of the debtor, the Court on the _____ day of _____,
19 _____, further postponed the issue of the warrant (*insert
terms of further postponement*):]

[And whereas, on the application of the debtor, the warrant having been executed,
the Court cancelled the warrant of commitment but fixed a further term of imprison-
ment (*insert term*) and postponed issue of the further warrant of commitment (*insert
terms of postponement*):]

And whereas under the said terms of postponement the said warrant fell to be
issued and the Clerk of the Court gave notice to the debtor that he might make an
application to the Court requesting that the warrant should not be issued:

[And whereas no such application was received by the Clerk within the prescribed
period:]

[And whereas such an application was made and considered by [me] [the Court]:]

[And whereas by reason of part payment the said sums remaining due from the
debtor as aforesaid are reduced in amount to _____.]

It is ordered that the debtor be committed to prison [or detained in police custody]
for (*state period*), unless he sooner pays the said sums [remaining] due from him as
aforesaid [, together with the costs of enforcement], as set out below:

You, the said constables, are hereby required to take the debtor and convey him
to the Governor of Her Majesty's prison [or the Police Officer in charge of _____]
at _____; and you, the said Governor [or Police Officer], to receive
the debtor into your custody and keep him for (*state period*) from his arrest under
this order, or until he be sooner discharged in due course of law.

Dated the _____ day of _____, 19 _____.

J.P.,

Justice of the Peace for the [county] first above mentioned.

	£	s.	d.
Amount found due			
Paid			
Amount remaining due			
Enforcement costs payable			
Total sum payable by debtor			

(Endorsement of payments)

Date of Receipt	£	s.	d.	Signature

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

The Maintenance Orders Act, 1958, makes provision for the registration, enforcement and variation of High Court and county court maintenance orders in magistrates' courts and for the registration and enforcement of magistrates' court maintenance orders in the High Court. As regards the enforcement of maintenance orders, the Act makes changes as respects committal to prison by magistrates' courts and authorises the making of attachment of earnings orders.

These Rules prescribe the procedure to be followed and the forms to be used in magistrates' courts in connection with the matters dealt with by the Act of 1958. Part I relates to maintenance orders registered under the Act, Part II to attachment of earnings orders and Part III to miscellaneous and supplemental matters, including the new provisions as to committal to prison.

1959 No. 1507

The Welsh Courts (Interpreters) Rules, 1959

For the text of these Rules see Pt. II, p. 2575, of this vol.