



Maintenance Orders Act 1958

1958 CHAPTER 39 6 and 7 Eliz 2

PART III

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

16^{F1}

Textual Amendments

F1 S. 16 repealed by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 9](#)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)

C1 S. 17 extended by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), ss. 24, 30, [Sch. 3 Pt. 1 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 [^{F2}subsection (2) of section 77 of the Magistrates' Courts

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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 [^{F3}justices' chief executive for] 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 [^{F3}justices' chief executive for] 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 ^{F4}[justices' chief executive for] the court shall give to the defendant 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.
- (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 [^{F3}justices' chief executive for] 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—

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- (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 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, [^{F5}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 [^{F3}justices' chief executive for] 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

- F2** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 23\(a\)](#)
- F3** Words in s. 18 substituted (1.4.2001) by [1999 c. 22, s. 90](#), [Sch. 13 para. 30](#) (with s. 107, Sch. 14 para. 7(2)); [S.I. 2001/916, art. 2\(a\)\(ii\)](#) (with transitional provision in Sch. 2 para. 2)
- F4** Words in s. 18 substituted (1.4.2001) by [1999 c. 22, s. 90](#), [Sch. 13 para. 30](#) (with s. 107, Sch. 14 para. 7(2)); [S.I. 2001/916, art. 2\(a\)\(ii\)](#) (with transitional provision in Sch. 2 para. 2)
- F5** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 24](#)

Modifications etc. (not altering text)

- C2** S. 18 extended by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), ss. 24, 30, [Sch. 3 Pt. 1 para. 2\(2\)](#)

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[^{F6}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 ^{M1}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

F6 S. 19 repealed (prosp.) by Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18), s. 22(2)

Marginal Citations

M1 1920 c. 33.

Supplemental

20 Special provisions as to magistrates’ courts.

(1) Notwithstanding anything in this Act, . . . ^{F7}[^{F8}a justices’ chief executive]who is entitled to receive payments under a maintenance order for transmission to another person shall not—

(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; . . . ^{F7}

(b) ^{F9}

unless he is requested in writing to do so by a person entitled to receive the payments through him; and where [^{F10}a justices’ chief executive 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;

. . . ^{F7}

(2) . . . ^{F7}An application to a magistrates’ court by virtue of subsection (2) of section four of this Act for the variation of a maintenance order . . . ^{F7} 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—

[^{F11}(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) ^{F12}

(4),(5)

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- F12
(6) F13
(7) F14

(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

- F7 Words repealed by [Attachment of Earnings Act 1971 \(c. 32\)](#), [Sch. 6](#)
F8 Words in [s. 20\(1\)](#) substituted (1.4.2001) by [1999 c. 22, s. 90, Sch. 13 para. 25, 31\(a\)](#) (with [s. 107, Sch. 14 para. 7\(2\)](#)); [S.I. 2001/916, art. 2\(a\)\(ii\)](#) (with transitional provision in [Sch. 2 para. 2](#))
F9 [S. 20\(1\)\(b\)\(c\)](#) repealed by [Attachment of Earnings Act 1971 \(c. 32\)](#), [Sch. 6](#)
F10 Words in [s. 20\(1\)](#) substituted (1.4.2001) by [1999 c. 22, s. 90, Sch. 13 para. 25, 31\(b\)](#) (with [s. 107, Sch. 14 para. 7\(2\)](#)); [S.I. 2001/916, art. 2\(a\)\(ii\)](#) (with transitional provision in [Sch. 2 para. 2](#))
F11 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](#)
F12 [S. 20\(3\)\(b\)\(4\)\(5\)](#) repealed by [Attachment of Earnings Act 1971 \(c. 32\)](#), [Sch. 6](#)
F13 [S. 20\(6\)](#) repealed by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 9](#)
F14 [S. 20\(7\)](#) repealed by [Attachment of Earnings Act 1971 \(c. 32\)](#), [Sch. 6](#)

Modifications etc. (not altering text)

- C3 [S. 20](#) set out as amended (E.W.) by [Attachment of Earnings Act 1971 \(c. 32\)](#) in [Sch. 5](#) to that Act
C4 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—

.....^{F15}, “magistrates’ court” and “petty sessions area” have the meanings assigned to them by the ^{M2}Magistrates’ Courts Act 1980 and for the purposes of the definition of a magistrates’ court the reference to that Act in [^{F16}subsection (2) of section 148 thereof] shall be construed as including a reference to this Act;

.....^{F17}
“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;

.....^{F17}
“England” includes Wales;

.....^{F17}
“prescribed” means prescribed by rules of court;
[^{F18}“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 Justices of the ^{M3}Peace Act, 1949.

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- (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) F19
- (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

F15 Words repealed by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), s. 33(4), [Sch. 4](#)

F16 Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), [Sch. 7 para. 24](#)

F17 Definitions of “attachment of earnings order”, “earnings”, “employer”, “excepted sums”, and “maintenance order” repealed by [Administration of Justice Act 1970 \(c. 31\)](#), [Sch. 11](#)

F18 Definition of “proper officer” in s. 21(1) repealed (1.4.2001) by 1999 c. 22, s. 106, [Sch. 15 Pt. V\(7\)](#) (with s. 107, [Sch. 14 para. 7\(2\), 36\(9\)](#)); S.I. 2001/916, [art. 2\(c\)\(ii\)](#) (with transitional provision in [Sch. 2 para. 2](#))

F19 S. 21(5) repealed by [Administration of Justice Act 1970 \(c. 31\)](#), [Sch. 11](#)

Modifications etc. (not altering text)

C5 S. 21 applied (14.10.1991) by [S.I. 1991/1247](#), [rule 7.22](#)

Marginal Citations

M2 [1980 c.43.](#)

M3 [1949 c. 101.](#)

22 F20

Textual Amendments

F20 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.
- [^{F21}2] The following provisions of this Act, namely—
 - section 2 [^{F22}section 2A];
 - section 5(2), (3), (4) and (4A);
 - extend to Scotland and Northern Ireland.

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- (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 ^{M4}Guardianship of Infants Act, 1925, and section ten of the ^{M5}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

F21 [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.

F22 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

M4 [1925 c. 45](#).

M5 [1957 c. 55](#).

Status:

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Changes to legislation:

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