



# Maintenance Orders Act 1958

## 1958 CHAPTER 39

### PART III

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

#### 16 Amendment of 15 and 16 Geo. 6. and 1 Eliz. 2. c. 55, s. 74

- (1) Section seventy-four of the Magistrates' Courts Act, 1952 (which relates to the enforcement of payments under affiliation orders and orders enforceable as affiliation orders) shall have effect, in relation to complaints under that section made on or after the date on which this section comes into operation and to proceedings in pursuance of such complaints, as if for subsections (3) to (7) thereof there were substituted the following subsections, that is to say—

“(3) In relation to complaints under this section, section forty-seven of this Act shall not apply and section forty-eight thereof shall have effect as if the words " if evidence has been received on a previous occasion " were omitted.

- (4) Where at the time and place appointed for the hearing or adjourned hearing of a complaint under this section the complainant appears but the defendant does not, the court may proceed in his absence:

Provided that the court shall not begin to hear the complaint in the absence of the defendant unless either it is proved to the satisfaction of the court, on oath, or in such other manner as may be prescribed, that the summons was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer the complaint.

- (5) If a complaint under this section is substantiated on oath, any justice of the peace acting for the same petty sessions area as a court having jurisdiction to hear the complaint may issue a warrant for the defendant's arrest, whether or not a summons has been previously issued.

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- (6) A magistrates' court shall not impose imprisonment in respect of a default to which a complaint under this section relates unless the court has inquired in the presence of the defendant whether the default was due to the defendant's wilful refusal or culpable neglect, and shall not impose imprisonment as aforesaid if it is of opinion that the default was not so due; and, without prejudice to the foregoing provisions of this subsection, a magistrates' court shall not impose imprisonment as aforesaid—
    - (a) in a case in which the court has power to make an attachment of earnings order under the Maintenance Orders Act, 1958, unless the court is of opinion that it is inappropriate to make such an order;
    - (b) in any case, in the absence of the defendant.
  - (7) Notwithstanding anything in subsection (3) of section sixty-four of this Act, the period for which a defendant may be committed to prison under a warrant of commitment issued in pursuance of a complaint under this section shall not exceed six weeks.
  - (8) The imprisonment or other detention of a defendant under a warrant of commitment issued as aforesaid shall not operate to discharge the defendant from his liability to pay the sum in respect of which the warrant was issued.”
- (2) Subsections (7) and (8) of the said section seventy-four as amended by the foregoing subsection shall have effect in relation to a warrant of commitment issued on or after the date on which this section comes into operation in pursuance of a complaint under that section made before that date (not being a warrant of which the issue was postponed before that date by virtue of section sixty-five of the said Act of 1952) as those subsections have effect in relation to a warrant of commitment issued in pursuance of such a complaint made after that date.

## **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.

## **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 subsection (2) of section sixty-five of the Magistrates' Courts Act, 1952, 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 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—

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- (i) fix a term of imprisonment in respect of the sum afore said 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, section sixty-seven of the Magistrates' Courts Act, 1952 (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.

**19      Revocation and variation of Orders in Council under 10 and 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 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.

*Supplemental*

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

- (1) Notwithstanding anything in this Act, the clerk of a magistrates' court 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; or

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- (b) apply for an attachment of earnings order, or (except as required by subsection (5) of section nine of this Act) an order discharging or varying an attachment of earnings order, in respect of those payments, 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;
- and for the purposes of paragraph (ii) of this subsection any application made by the clerk as required by the said subsection (5) shall be deemed to be made on the request of the person in whose favour the attachment of earnings order in question was made.
- (2) An application to a magistrates' court by virtue of subsection (2) of section four of this Act for the variation of a maintenance order and an application to a magistrates' court for an attachment of earnings order, or an order discharging or varying an attachment of earnings order, 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—
- (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) if the said person resides outside the United Kingdom and does not appear at the time and place appointed for the hearing of the complaint but it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the complainant has taken such steps as may be prescribed to give to the said person notice of the complaint and of the time and place aforesaid, the court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the said person had then appeared.
- (4) For the purposes of section forty-three of the Magistrates' Courts Act, 1952 (which provides for the issue of a summons directed to the person against whom an order may be made in pursuance of a complaint)—
- (a) the power to make an order in pursuance of a complaint by the defendant for the discharge or variation of an attachment of earnings order shall be deemed to be a power to make an order against the person in whose favour the attachment of earnings order was made; and
  - (b) the power to make an attachment of earnings order, or an order discharging or varying an attachment of earnings order, in pursuance of a complaint by any other person (including a complaint in proceedings to which paragraph (b) of section seven of this Act applies) shall be deemed to be a power to make an order against the defendant.
- (5) Where the court referred to in subsection (1) of section twelve of this Act is a magistrates' court—

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- (a) the power conferred by subsection (2) of section one hundred and twenty-two of the Magistrates' Courts Act, 1952, to provide by rules for jurisdiction expressly conferred on a magistrates' court to hear a complaint to be extended to any other magistrates' court shall be exercisable, and
- (b) subsection (1) of section seventy-seven of that Act (which relates to the attendance of witnesses) shall apply,

as if subsection (1) of the said section twelve required an application thereunder to be made by complaint; and on making a determination under that subsection the court may in its discretion make such order as it thinks just and reasonable as to the payment by any of the persons mentioned in that subsection of the whole or any part of the costs of the determination, and costs ordered to be paid under this subsection shall—

- (i) in the case of costs to be paid by the defendant to the person in whose favour the attachment of earnings order in question is made, be deemed to be a sum due under the related maintenance order ; and
  - (ii) in any other case, be enforceable as a civil debt.
- (6) In subsection (3) of section fifty-two of the Magistrates' Courts Act, 1952 (which provides for the clerk through whom payments under a magistrates' court order are required to be made to proceed in his own name for the recovery of arrears under the order) for the words " Where an order under subsection (1) of this section requires the payments to be made weekly " there shall be substituted the words " Where periodical payments under an order of any court are required to be paid to or through the clerk of a magistrates' court "; and in subsection (4) of that section (which provides that nothing in that section shall affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under any order under subsection (1) of that section) for the words " any order under subsection (1) of this section " there shall be substituted the words " an order of any court. ",
- (7) A complaint for an attachment of earnings order may be heard notwithstanding that the complaint was not made within the six months allowed by section one hundred and four of the Magistrates' Courts Act, 1952.
- (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.

## **21 Interpretation, etc.**

- (1) In this Act, unless the context otherwise requires, the following expressions have the following meanings—
- " affiliation order ", " magistrates' court " and " petty sessions area " have the meanings assigned to them by the Magistrates' Courts Act, 1952, and for the purposes of the definition of a magistrates' court the reference to that Act in subsection (2) of section one hundred and twenty-four thereof shall be construed as including a reference to this Act;
  - " attachment of earnings order " has the meaning assigned to it by subsection (1) of section six of this Act;
  - " 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;

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" earnings ", in relation to a defendant, means any sums (other than excepted sums) payable to him—

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service);
- (b) by way of pension (including an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment);

" employer " means a person by whom, as a principal and not as a servant or agent, earnings fall to be paid to a defendant, and references to payment of earnings shall be construed accordingly ;

" England " includes Wales ;

" excepted sums " means—

- (a) sums payable by any public department of the government of any territory outside the United Kingdom or of Northern Ireland ;
- (b) pay or allowances payable to the defendant as a member of Her Majesty's forces;
- (c) pension, allowances or benefit payable by the Minister of Pensions and National Insurance, other than such part of any pension as is so payable to the defendant in respect of his service in Her Majesty's forces or in respect of any employment of his;
- (d) pension or allowances payable to the defendant in respect of his disablement or disability ; and
- (e) wages payable to the defendant as a seaman or apprentice, other than wages payable to him as a seaman or apprentice of a fishing boat;

and in paragraph (e) of this definition expressions used in the Merchant Shipping Act, 1894, have the same meanings as in that Act;

" maintenance order " means—

- (a) an order for alimony, maintenance or other payments made or deemed to be made by a court in England under any of the following enactments, that is to say—
  - (i) sections nineteen to twenty-seven of the Matrimonial Causes Act, 1950;
  - (ii) the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949 ;
  - (iii) subsection (2) of section three, subsection (4) of section five or section six of the Guardianship of Infants Act, 1925 ;
  - (iv) section four of the Affiliation Proceedings Act, 1957, section forty-four of the National Assistance Act, 1948, or section twenty-six of the Children Act, 1948 ;
  - (v) section eighty-seven of the Children and Young Persons Act, 1933, or section forty-three of the National Assistance Act, 1948 ; or
- (b) an order registered in a court in England under Part II of the Maintenance Orders Act, 1950, or the Maintenance Orders (Facilities

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for Enforcement) Act, 1920, or an order confirmed by such a court under the last-mentioned Act,

and includes any such order which has been discharged if any arrears are recoverable thereunder; and includes any such order which has been discharged if any arrears are recoverable thereunder; "prescribed" means prescribed by rules of court;

"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 Justices of the 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) Any earnings which, in pursuance of a scheme under the Dock Workers (Regulation of Employment) Act, 1946, fall to be paid to a defendant by a body responsible for the local administration of the scheme acting as agent for the defendant's employer or as delegate of the body responsible for the general administration of the scheme shall be treated for the purposes of this Act as falling to be paid to the defendant by the last-mentioned body acting as a principal.
- (6) Any reference in this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment.

## **22 Legislative powers of Parliament of Northern Ireland**

No limitation on the powers of the Parliament of Northern Ireland imposed by the Government of Ireland Act, 1920, shall preclude that Parliament from making laws for purposes similar to the purposes of this Act.

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

- (1) This Act may be cited as the Maintenance Orders Act, 1958.
- (2) This Act, except paragraph (a) of subsection (3) of section twenty, shall not extend to Scotland or, except section nineteen, the said paragraph (a) and the last foregoing section, to Northern Ireland.
- (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 Guardianship of Infants Act, 1925, and section ten of the Affiliation Proceedings Act, 1957, are hereby repealed; but nothing in this



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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.