



Magistrates' Courts Act 1980

1980 CHAPTER 43

PART III

SATISFACTION AND ENFORCEMENT

Sums adjudged to be paid by an order

92 Restriction on power to impose imprisonment for default.

- (1) A magistrates' court shall not exercise its power under section 76 above to issue a warrant to commit to prison a person who makes default in paying a sum adjudged to be paid by an order of such a court except where the default is under—
 - (a) a magistrates' court maintenance order;
 - (b) an order under [^{F1}section 17(2) of the Access to Justice Act 1999 (payment by individual in respect of] cost of his defence in a criminal case); or
 - (c) an order for the payment of any of the taxes, contributions, premiums or liabilities specified in Schedule 4 to the ^{M1}Administration of Justice Act 1970.
- (2) This section does not affect the power of a magistrates' court to issue such a warrant as aforesaid in the case of default in paying a sum adjudged to be paid by a conviction, or treated (by any enactment relating to the collection or enforcement of fines, costs, compensation or forfeited recognizances) as so adjudged to be paid.
- (3)

F2

Textual Amendments

- F1** Words in s. 92(1)(b) substituted (2.4.2001) by 1999 c. 22, s. 24, Sch. 4 paras. 15, 17 (with s. 107, Sch. 14 para. 7(2)); S.I. 2001/916, art. 3(a)(ii) (with Sch. 2 para. 2)
- F2** S. 92(3) repealed by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(2)(4), Sch. 3 paras. 1, 6, Sch. 4

Status: Point in time view as at 01/04/2005.

Changes to legislation: Magistrates' Courts Act 1980, Cross Heading: Sums adjudged to be paid by an order is up to date with all changes known to be in force on or before 20 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Marginal Citations

M1 1970 c. 31.

93 Complaint for arrears.

- (1) Where default is made in paying a sum ordered to be paid by [^{F3}a magistrates' court maintenance order], the court shall not enforce payment of the sum under section 76 above except by an order made on complaint.
- (2) A complaint under this section shall be made not earlier than the fifteenth day after the making of the order for the enforcement of which it is made; but subject to this such a complaint may be made at any time notwithstanding anything in this or any other Act.
- (3) In relation to complaints under this section, section 55 above shall not apply and section 56 above 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; but 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 [^{F4}in the same local justice] 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.
- (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 preceding provisions of this subsection, a magistrates' court shall not impose imprisonment as aforesaid—
 - [^{F5}(a) in the absence of the defendant; or
 - (b) in a case where the court has power to do so, if it is of the opinion that it is appropriate—
 - (i) to make an attachment of earnings order; or
 - (ii) to order that payments under the order be made by any method of payment falling within section 59(6) above; or
 - (c) where the sum to which the default relates comprises only interest which the defendant has been ordered to pay by virtue of section 94A(1) below.]
- (7) Notwithstanding anything in section 76(3) above, 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 6 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.

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Textual Amendments

- F3** Words substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1)(2), Sch. 2 para. 84, Sch. 3 paras. 1, 6
- F4** Words in s. 93(5) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, Sch. 8 para. 228; S.I. 2005/910, art. 3(y)
- F5** S. 93(6)(a)-(c) substituted (1.4.1992) for s. 93(6)(a)(b) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 11(1), Sch. 2 para.7; S.I. 1992/455, art.2.

Modifications etc. (not altering text)

- C1** S. 93 applied by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 24(6), 30, Sch. 3 Pt. I para. 2(4)
- C2** S. 93(6) modified (1.4.1992) by Civil Jurisdiction and Judgments Act 1982 (c. 27, SIF 49:3), s. 5(5C) (which was inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3) s. 10, Sch. 1 para. 21(2); S.I. 1992/455, art.2).

94 Effect of committal on arrears.

Where a person is committed to custody under this Part of this Act for failure to pay a sum due under [^{F6}a magistrates' court maintenance order], then, unless the court that commits him otherwise directs, no arrears shall accrue under the order while he is in custody.

Textual Amendments

- F6** Words substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1)(2), Sch. 2 para. 85, Sch. 3 paras. 1, 6

Modifications etc. (not altering text)

- C3** S. 94 applied by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 24(6), 30, Sch. 3 Pt. I para. 2(4)

[^{F7}94A Interest on arrears.

- (1) The [^{F8}Lord Chancellor] may by order provide that a magistrates' court, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of an English maintenance order, may order that interest of an amount calculated at the prescribed rate shall be paid on so much of the sum due under the order as they may determine.
- (2) In subsection (1) above "the prescribed rate" means such rate of interest as the [^{F8}Lord Chancellor] may by order prescribe.
- (3) An order under this section may make provision for the manner in which and the periods by reference to which interest is to be calculated.
- (4) Where, by virtue of subsection (1) above, a magistrates' court orders the payment of interest on any sum due under a maintenance order—
 - (a) then if it orders that the whole or any part of the interest be paid by instalments that order shall be regarded as an instalments order for the purposes of section 95 below and that section shall accordingly apply in relation to it; and
 - (b) the whole of the interest shall be enforceable as a sum adjudged to be paid by the maintenance order.

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(5) In this section—

“English maintenance order” means—

- (a) a qualifying maintenance order made by a magistrates' court, other than an order made by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972; or
- (b) an order made by the High Court or a county court (other than an order deemed to be made by the High Court by virtue of section 1(2) of the Maintenance Orders Act 1958) and registered under Part I of that Act of 1958 in a magistrates' court;

“qualifying maintenance order” has the same meaning as it has in section 59 above.

(6) The power of the [^{F8}Lord Chancellor] to make an order under this section shall be exercisable by statutory instrument made with the concurrence of the Treasury and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F7 S. 94A inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 8; S.I. 1992/455, art.2

F8 Words in s. 94A(1)(2)(6) substituted (1.4.1992) by S.I. 1992/709, art. 3(2), Sch.2

Modifications etc. (not altering text)

C4 S. 94A(1)(2)(6) functions of the Secretary of State transferred (1.4.1992) to the Lord Chancellor by S.I. 1992/709, art. 3(1), Sch.2

[^{F9}95] **Remission of arrears and manner in which arrears to be paid.**

- (1) On the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a magistrates' court maintenance order, a magistrates' court may remit the whole or any part of the sum due under the order.
- (2) If, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a magistrates' court maintenance order, a magistrates' court orders that the whole or any part of the sum due under the order be paid by instalments (an “instalments order”), then—
 - (a) if the maintenance order is an English maintenance order, the court shall at the same time exercise one of its powers under paragraphs (a) to (d) of section 59(3) above in relation to the instalments order;
 - (b) if the maintenance order is a non-English maintenance order, the court shall at the same time exercise one of its powers under subsection (3) below in relation to the instalments order.
- (3) The powers of the court referred to in subsection (2)(b) above are—
 - (a) the power to order that payments under the order be made directly to [^{F10}the designated officer for the court or for any other magistrates' court];
 - (b) the power to order that payments under the order be made to [^{F11}the designated officer for the court or for any other magistrates' court] by such method of payment falling within section 59(6) above as may be specified;

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- (c) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.
- (4) The court may in the course of any proceedings concerning an instalments order or the magistrates' court maintenance order to which it relates vary the instalments order by exercising—
 - (a) in respect of an English maintenance order, one of the powers referred to in subsection (2)(a) above;
 - (b) in respect of a non-English maintenance order, one of its powers under subsection (3) above.
- (5) In respect of an English maintenance order, subsections (4), (5) and (7) of section 59 above shall apply for the purposes of subsections (2)(a) and (4)(a) above as they apply for the purposes of that section.
- (6) In respect of a non-English maintenance order—
 - (a) subsection (4) of section 59 above shall apply for the purposes of subsections (2)(b) and (4)(b) above as it applies for the purposes of that section but as if for paragraph (a) there were substituted—
 - “(a) the court proposes to exercise its power under paragraph (b) of section 95(3) below;”;and
 - (b) in deciding which of the powers under subsection (3) above it is to exercise the court shall have regard to any representations made by the debtor (within the meaning of section 59 above).
- (7) In this section—
 - “English maintenance order” has the same meaning as it has in section 94A above;
 - “non-English maintenance order” means—
 - (a) a maintenance order registered in, or confirmed by, a magistrates' court—
 - (i) under the Maintenance Orders (Facilities for Enforcement) Act 1920;
 - (ii) under Part II of the Maintenance Orders Act 1950;
 - (iii) under Part I of the Maintenance Orders (Reciprocal Enforcement) Act 1972;^{F12} . . .
 - (iv) under Part I of the Civil Jurisdiction and Judgments Act 1982;^{F13} or
 - (v) [^{F14}under Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;]
 - (b) an order deemed to be made by the High Court by virtue of section 1(2) of the Maintenance Orders Act 1958 and registered under Part I of that Act in a magistrates' court; or
 - (c) a maintenance order made by a magistrates' court by virtue of Part II of the Maintenance Orders (Reciprocal Enforcement) Act 1972.]

Textual Amendments

- F9** S. 95 substituted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 11(1), [Sch. 2 para. 8](#); [S.I. 1992/455, art. 2](#).

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- F10** Words in s. 95(3) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 229**; S.I. 2005/910, **art. 3(y)**
- F11** Words in s. 95(3) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 229**; S.I. 2005/910, **art. 3(y)**
- F12** Word in s. 95(7) omitted (1.3.2002) by virtue of S.I. 2001/3929, arts. 1(b), 5, **Sch. 3 para. 12(a)**
- F13** Word in s. 95(7)(iv) added (1.3.2002) by S.I. 2001/3929, arts. 1(b), 5, **Sch. 3 para. 12(b)**
- F14** S. 95(7)(v) inserted (1.3.2002) by S.I. 2001/3929, arts. 1(b), 5, **Sch. 3 para. 12(c)**

Modifications etc. (not altering text)

- C5** S. 95 applied by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 24(6), 30, **Sch. 3 Pt. I**, para. 2(4)

96 Civil debt: complaint for non-payment.

- (1) A magistrates' court shall not commit any person to prison or other detention in default of payment of a sum enforceable as a civil debt or for want of sufficient distress to satisfy such a sum except by an order made on complaint and on proof to the satisfaction of the court that that person has, or has had since the date on which the sum was adjudged to be paid, the means to pay the sum or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected to pay it.
- (2) A complaint under this section may be made at any time notwithstanding anything in this or any other Act.
- (3) Where on any such complaint the defendant is committed to custody, such costs incurred by the complainant in proceedings for the enforcement of the sum as the court may direct shall be included in the sum on payment of which the defendant may be released from custody.

[^{F15}96A Application of Part III to persons aged 17 to 20.

This Part of this Act shall have effect in relation to a person [^{F16}aged 18] or over but less than 21 as if any reference to committing a person to prison, or fixing a term of imprisonment for a default, were a reference to committing the person to, or, as the case may be, to fixing a term of, detention under [^{F17}section 108 of the ^{M2}Powers of Criminal Courts (Sentencing) Act 2000]; and any reference to warrants of commitment, or to periods of imprisonment imposed for default, shall be construed accordingly.]

Textual Amendments

- F15** S. 96A inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 77, **Sch. 14 para. 54**
- F16** Words in s. 96A substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 68, 101(1), **Sch. 8 para. 6(3), Sch. 12 para. 22(1)**; S.I. 1992/333, art. 2(2), **Sch. 2**
- F17** Words in s. 96A substituted (28.5.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 70** (which Sch. 9 para. 70 of the amending Act is repealed (*prosp.*) by 2000 c. 43, ss. 74, 75, 80(1), Sch. 7 Pt. II para. 203(2), **Sch. 8**)

Marginal Citations

- M2** 2000 c. 6.

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