



# Maintenance Enforcement Act 1991

## 1991 CHAPTER 17

### *Magistrates' courts*

#### **2 Orders for periodical payment in magistrates' courts: means of payment.**

For section 59 of the <sup>M1</sup>Magistrates' Courts Act 1980 (periodical payments through justices' clerk) there shall be substituted the following section—

#### **“59 Orders for periodical payment: means of payment.**

- (1) In any case where a magistrates' court orders money to be paid periodically by one person (in this section referred to as “the debtor”) to another (in this section referred to as “the creditor”), then—
  - (a) if the order is a qualifying maintenance order, the court shall at the same time exercise one of its powers under paragraphs (a) to (d) of subsection (3) below;
  - (b) if the order is not a maintenance order, the court shall at the same time exercise one of its powers under paragraphs (a) and (b) of that subsection.
- (2) For the purposes of this section a maintenance order is a “qualifying maintenance order” if, at the time it is made, the debtor is ordinarily resident in England and Wales.
- (3) The powers of the court are—
  - (a) the power to order that payments under the order be made directly by the debtor to the creditor;
  - (b) the power to order that payments under the order be made to the clerk of the court or to the clerk of any other magistrates' court;
  - (c) the power to order that payments under the order be made by the debtor to the creditor by such method of payment falling within subsection (6) below as may be specified;

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(d) the power to make an attachment of earnings order under the <sup>M2</sup>Attachment of Earnings Act 1971 to secure payments under the order.

(4) In any case where—

- (a) the court proposes to exercise its power under paragraph (c) of subsection (3) above, and
- (b) having given the debtor an opportunity of opening an account from which payments under the order may be made in accordance with the method of payment proposed to be ordered under that paragraph, the court is satisfied that the debtor has failed, without reasonable excuse, to open such an account,

the court in exercising its power under that paragraph may order that the debtor open such an account.

(5) In deciding, in the case of a maintenance order, which of the powers under paragraphs (a) to (d) of subsection (3) above it is to exercise, the court having (if practicable) given them an opportunity to make representations shall have regard to any representations made—

- (a) by the debtor,
- (b) by the creditor, and
- (c) if the person who applied for the maintenance order is a person other than the creditor, by that other person.

(6) The methods of payment referred to in subsection (3)(c) above are the following, that is to say—

- (a) payment by standing order; or
- (b) payment by any other method which requires one person to give his authority for payments of a specific amount to be made from an account of his to an account of another's on specific dates during the period for which the authority is in force and without the need for any further authority from him.

(7) Where the maintenance order is an order—

- (a) under the Guardianship of Minors Acts 1971 and 1973,
- (b) under Part I of the <sup>M3</sup>Domestic Proceedings and Magistrates' Courts Act 1978, or
- (c) under, or having effect as if made under, Schedule 1 to the <sup>M4</sup>Children Act 1989,

and the court does not propose to exercise its power under paragraph (c) or (d) of subsection (3) above, the court shall, unless upon representations expressly made in that behalf by the person who applied for the maintenance order it is satisfied that it is undesirable to do so, exercise its power under paragraph (b) of that subsection.

(8) The Secretary of State may by regulations confer on magistrates' courts, in addition to their powers under paragraphs (a) to (d) of subsection (3) above, the power (the "additional power") to order that payments under a qualifying maintenance order be made by the debtor to the creditor or the clerk of a magistrates' court (as the regulations may provide) by such method of payment as may be specified in the regulations.

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- (9) Any reference in any enactment to paragraphs (a) to (d) of subsection (3) above (but not a reference to any specific paragraph of that subsection) shall be taken to include a reference to the additional power, and the reference in subsection (10) below to the additional power shall be construed accordingly.
- (10) Regulations under subsection (8) above may make provision for any enactment concerning, or connected with, payments under maintenance orders to apply, with or without modifications, in relation to the additional power.
- (11) The power of the Secretary of State to make regulations under subsection (8) above shall be exercisable by statutory instrument and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) For the purposes of this section the reference in subsection (1) above to money paid periodically by one person to another includes, in the case of a maintenance order, a reference to a lump sum paid by instalments by one person to another.”

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**Commencement Information**

**II** S. 2 wholly in force at 1.4.1992 see s. 12(2) and S.I. 1992/455, art. 2

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**Marginal Citations**

**M1** 1980 c. 43.  
**M2** 1971 c. 32.  
**M3** 1978 c. 22.  
**M4** 1989 c. 41.

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