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STATUTORY INSTRUMENTS

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**1992 No. 457 (L.2)**

**MAGISTRATES' COURTS**

**The Magistrates' Courts (Maintenance Enforcement Act 1991) (Miscellaneous Amendments) Rules 1992**

<i>Made</i>	- - - -	<i>3rd March 1992</i>
<i>Laid before Parliament</i>		<i>11th March 1992</i>
<i>Coming into force</i>	- -	<i>1st April 1992</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 144 of the Magistrates' Courts Act 1980<sup>(1)</sup> after consultation with the Rule Committee appointed under that section, hereby makes the following Rules:

1. These Rules may be cited as the Magistrates' Courts (Maintenance Enforcement Act 1991) (Miscellaneous Amendments) Rules 1992 and shall come into force on 1st April 1992.

2. The following Rules—

The Maintenance Orders (Facilities for Enforcement) Rules 1922<sup>(2)</sup>

The Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950<sup>(3)</sup>

The Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959<sup>(4)</sup>

The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974<sup>(5)</sup>

The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975<sup>(6)</sup>

The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980<sup>(7)</sup>

The Magistrates' Courts Rules 1981<sup>(8)</sup>

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(1) 1980 c. 43, as extended by section 145 of that Act; by section 16(1) of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18) and section 16(1) as applied by the Reciprocal Enforcement of Maintenance Orders (Republic of Ireland) Order 1974 (S.I. 1974/2140), and the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979 (S.I. 1979/1317 amended by S.I. 1981/837, 1545 and 1674, 1983/885 and 1523 and 1987/1282); and by section 48 of the Civil Jurisdiction and Judgments Act 1982 (c. 27).

(2) S.R. & O. 1922/1355, amended by S.I. 1970/762 and 1989/384.

(3) S.I. 1950/2035, amended by S.I. 1980/1895.

(4) S.I. 1959/3, amended by S.I. 1971/809, 1977/1890, 1980/1896, 1986/1962 and 1989/384.

(5) S.I. 1974/668, amended by S.I. 1975/2236, 1979/170, 1983/1148 and 1986/1762.

(6) S.I. 1975/286.

(7) S.I. 1980/108, amended by S.I. 1986/190.

(8) S.I. 1981/552, amended by S.I. 1982/245, 1983/523, 1984/1552, 1985/1695 and 1944, 1986/1332, 1988/2132, 1989/300 and 384, 1990/336, 1190 and 2260 and 1991/1991.

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The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986(9) shall have effect subject to the amendments set out in the Schedule to these Rules.

Dated 3rd March 1992

*Mackay of Clashfern, C.*

SCHEDULE

Rule 2

AMENDMENTS TO RULES

**The Maintenance Orders (Facilities for Enforcement) Rules 1922**

1. For rule 5 of the Maintenance Orders (Facilities for Enforcement) Rules 1922 there shall be substituted:

“5. When an order is registered in a Court of Summary Jurisdiction under section 1 of the Act, the court shall order that payments due thereunder shall be made to the clerk of the court.”.

2. After rule 5 of those Rules, there shall be inserted the following rule:

“5A.—(1) This rule applies in respect of an order which is being or has been registered by a Court of Summary Jurisdiction under section 1 of the Act or in respect of a Provisional Order which is being or has been confirmed by a Court of Summary Jurisdiction under section 4 of the Act.

(2) Where, in the exercise of the duty imposed under rule 5 above, or in the exercise of the powers conferred by virtue of section 4(5A) or (6A) or section 6 of the Act, a Court of Summary Jurisdiction orders that payments under the order are to be made by a particular means, the clerk of the court shall record on the copy of the order the means of payment which the court has ordered and notify in writing, as soon as practicable, the person liable to make payments under the order of how payments are to be made.

(3) Where, in the exercise of any of the aforesaid powers, the court orders payment to the clerk of the court, or to the clerk of any other magistrates' court, by a method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), the clerk of the court to whom payments are to be made shall notify the person liable to make the payments under the order of the number and location of the account into which the payments should be made.

(4) Where, under section 60(4) of the Magistrates' Courts Act 1980, as modified by section 4(6A) of the Act, the clerk of the court receives an application from an interested party for the method of payment to be varied, the clerk shall notify in writing, as soon as practicable, that party and, where practicable, any other interested party, of the result of the application, including any decision to refer the matter to the court; where the clerk grants the application, he shall record the variation on the copy of the order.”.

3. In rule 6 of those Rules, for the words “The person through whom the payments are ordered to be made” there shall be substituted “Where an Order has been registered in a Court of Summary Jurisdiction under section 1 of the Act, or a Provisional Order has been confirmed by a Court of Summary Jurisdiction under section 4 of the Act, the clerk to whom the payments are ordered to be made”.

**The Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950**

4. After rule 9A of the Maintenance Orders Act 1950 (Summary Jurisdiction) Rules 1950 there shall be inserted the following rule:

“9B.—(1) Where, in the exercise of the duty imposed by section 19(2) of the Act or in the exercise of the powers conferred by virtue of section 18(2ZA) or section 22(1A) or (1E) of the Act, a court of summary jurisdiction orders that payments under a registered order are to be made by a particular means, the clerk of the court shall record on the copy of the order the means of payment which the court has ordered and notify in writing, as

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soon as practicable, the person liable to make payments under the order of how payments are to be made.

(2) Where, in the exercise of any of the aforesaid powers, the court orders payment to the clerk of the court, or to the clerk of any other magistrates' court, by a method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), the clerk of the court to whom payments are to be made shall notify the person liable to make the payments under the order of the number and location of the account into which the payments should be made.

(3) Where, under section 60(4) of the Magistrates' Courts Act 1980, as modified by section 22(1E) of the Act, the clerk of the court receives an application from an interested party for the method of payment to be varied, the clerk shall notify in writing, as soon as practicable, that party and, where practicable, any other interested party, of the result of the application, including any decision to refer the matter to the court; where the clerk grants the application, he shall record the variation on the copy of the order.”.

5. In rule 15 of those Rules, after the words “subsection (5)” there shall be inserted the words “or subsection (5A)”.

6. In the form number 4 in the Schedule to those Rules, after the words “through the clerk of [this court] [the magistrates' court at ]” there shall be added “[by the following method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) namely, ], [by an attachment of earnings order].”.

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

7. In rule 5 of the Magistrates' Courts (Maintenance Orders Act 1958) Rules 1959–

- (a) in paragraph (1), for the words “A notice under subsection (4) of section nineteen of the Maintenance Orders Act 1950, as applied by subsection (6) of section two of the Act,” there shall be substituted “A notice under subsection (6ZC) of section 2 of the Act”;
- (b) in paragraph (2), for the words “A notice under the said subsection (4), as so applied,” there shall be substituted “A notice under subsection (6ZC) of section 2 of the Act”; and
- (c) in paragraph (3), for the words “A notice under subsection (5) of section five of the Act” there shall be substituted “A notice under subsection (5)(b) of section 5 of the Act”.

8. After rule 5 of those Rules, there shall be inserted the following rule:

“**5A.**—(1) Where, in the exercise of the duty imposed by section 2(6ZA)(b) of the Act, or in the exercise of the powers conferred by section 3(2A) or (2B) or section 4(2A), (5A) or (5B) of the Act, a magistrates' court orders that payments under a registered order are to be made by a particular means, the clerk of the court shall record on the copy of the order the means of payment which the court has ordered and notify in writing, as soon as practicable, the person liable to make payments under the order of how payments are to be made.

(2) Where, in the exercise of any of the aforesaid powers, the court orders that payments be made by the debtor to the creditor or by the debtor to the clerk of the court or to the clerk of any other magistrates' court by a method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), the clerk of the court which makes the order to whom payments are to be made shall notify the person liable to make the payments under the order of the number and location of the account into which the payments should be made.

(3) Where, under section 60(4) of the Magistrates' Courts Act 1980, as applied by section 4(5A) of the Act or as modified by section 4(5B) of the Act, the clerk of the court receives an application from an interested party for the method of payment to be varied,

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the clerk shall notify in writing, as soon as practicable, that party and, where practicable, any other interested party, of the result of the application, including any decision to refer the matter to the court; where the clerk grants the application he shall record the variation on the copy of the order.”.

9. In the form numbered 10 in the Schedule to those Rules, for the words “through (state clerk of the magistrates' court through whom payments have hitherto been required to be made)” there shall be substituted “[through the clerk of [this court] [the magistrates' court at           ]], [by the following method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) namely,           ], [by an attachment of earnings order] [by direct payment to           ]”.

### **The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974**

10. In rule 9 of the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) Rules 1974—

(a) for paragraph (1) there shall be substituted the following two paragraphs:

“(1) When an order is registered under section 6(3) of the Act, the court shall order that payment of sums due thereunder shall be made to the clerk of the registering court during such hours and at such place as that clerk may direct.

(1A) A justices' clerk to whom payments are ordered to be made (whether by virtue of an order under paragraph (1) above or by virtue of an order of the court under the Act) shall send those payments by post to the court which made the order or to such other person or authority as that court or the Secretary of State may from time to time direct;

Provided that if the court which made the order is in one of the countries or territories specified in Schedule 2 to these Rules, the justices' clerk shall, unless the Secretary of State otherwise directs, send any such sums to the Crown Agents for Overseas Governments and Administrations for transmission to the person to whom they are due.”;

(b) in paragraph (2), the words “by virtue of paragraph (1) above” shall be omitted.

11. After rule 9A of those Rules, there shall be inserted the following rule:

“9B.—(1) Where, in the exercise of the duty imposed under rule 9(1) above, or in the exercise of the powers conferred by virtue of section 7(5A), section 8(4A) or section 9(1ZA) of the Act, the court orders that payments under the order are to be made by a particular means, the clerk of the court shall record on the copy of the order the means of payment which the court has ordered and notify in writing, as soon as practicable, the person liable to make payments under the order of how payments are to be made.

(2) Where, in the exercise of the aforesaid powers, the court orders payment to the clerk of the court, or to the clerk of any other magistrates' court, by a method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), the clerk of the court to whom payments are to be made shall notify the person liable to make the payments under the order of the number and location of the account into which the payments are to be made.

(3) Where, under section 60(4) of the Magistrates' Courts Act 1980, as modified by section 9(1ZA) of the Act, the clerk of the court receives an application from an interested party for the method of payment to be varied, the clerk shall notify in writing, as soon as practicable, that party and, where practicable, any other interested party, of the result of the application, including any decision to refer the matter to the court; where the clerk grants the application, he shall record the variation on the copy of the order.”.

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### **The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975**

**12.** In rule 10 of the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Republic of Ireland) Rules 1975—

(a) for paragraph (1) there shall be substituted the following two paragraphs:

“(1) When an order is registered under section 6(3) of the Act, the court shall order that payment of sums due thereunder shall be made to the clerk of the registering court during such hours and at such place as that clerk may direct.

(1A) A justices' clerk to whom payments are ordered to be made (whether by virtue of an order under paragraph (1) above or by virtue of an order of the court under the Act) shall send those payments by post to the payee under the order, or where a public authority has been authorised by the payee to receive the payments, to that public authority.”;

(b) in paragraph (2), the words “by virtue of paragraph (1) above” shall be omitted.

**13.** After rule 10 of those Rules, there shall be inserted the following rule:

“**10A.**—(1) Where, in the exercise of the duty imposed under rule 10(1) above, or in the exercise of the powers conferred by virtue of section 8(4A) of the Act, the court orders that payments under the order are to be made by a particular means, the clerk of the court shall record on the copy of the order the means of payment which the court has ordered and notify in writing, as soon as practicable, the person liable to make payments under the order of how payments are to be made.

(2) Where, in the exercise of the aforesaid powers, the court orders payment to the clerk of the court, or to the clerk of any other magistrates' court, by a method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), the clerk of the court to whom payments are to be made shall notify the person liable to make the payments under the order of the number and location of the account into which the payments are to be made.”.

### **The Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980**

**14.** In rule 8 of the Magistrates' Courts (Reciprocal Enforcement of Maintenance Orders) (Hague Convention Countries) Rules 1980—

(a) for paragraph (1) there shall be substituted the following two paragraphs—

“**1.** When an order is registered under section 6(3) of the Act, the court shall order that payment of sums due thereunder shall be made to the clerk of the registering court during such hours and at such place as that clerk may direct.

(1A) A justices' clerk to whom payments are ordered to be made (whether by virtue of an order under paragraph (1) above or by virtue of an order of the court under the Act) shall send those payments by post to the payee under the order.”;

(b) in paragraph (2), the words “by virtue of paragraph (1) above” shall be omitted.

**15.** After rule 8A of those Rules, there shall be inserted the following rule:

“**8B.**—(1) Where, in the exercise of the duty imposed under rule 8(1) above, or in the exercise of the powers conferred by virtue of section 8(4A) or section 9(1ZA) of the Act, the court orders that payments under the order are to be made by a particular means, the clerk of the court shall record on the copy of the order the means of payment which the

court has ordered and notify in writing, as soon as practicable, the person liable to make payments under the order of how payments are to be made.

(2) Where, in the exercise of any of the aforesaid powers, the court orders payment to the clerk of the court, or to the clerk of any other magistrates' court, by a method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), the clerk of the court to whom payments are to be made shall notify the person liable to make the payments under the order of the number and location of the account into which the payments are to be made.

(3) Where, under section 60(4) of the Magistrates' Courts Act 1980, as modified by section 9(1ZA) of the Act, the clerk of the court receives an application from an interested party for the method of payment to be varied, the clerk shall notify in writing, as soon as practicable, that party and, where practicable, any other interested party, of the result of the application, including any decision to refer the matter to the court; where the clerk then grants the application, he shall record the variation on the copy of the order.”.

### **The Magistrates' Courts Rules 1981**

16. For rule 39 of the Magistrates' Courts Rules 1981 there shall be substituted the following rule:

#### **“Method of making periodical payments**

**39.—**(1) Where a magistrates' court makes a means of payment order, the clerk of the court shall record on the order for periodical payments to which the means of payment order relates, the means of payment which the court has ordered and notify in writing, as soon as practicable, the person liable to make payments under the order of how payments are to be made.

(2) Where the court orders that payments by the debtor to the creditor are to be made to the clerk of the court or to the clerk of any other magistrates' court under section 59(3) (b) of the Act of 1980, the clerk to whom the payments are ordered to be made shall notify the person liable to make the payments of the hours during which, and the place at which, payments are to be made.

(3) The clerk of the court to whom any periodical payments are made shall send them by post to—

- (a) the person entitled to them; or
- (b) if the person entitled to them is a child, to the child or to the person with whom the child has his home:

Provided that the clerk may—

- (a) at the request of the person entitled to the payments; or
- (b) if the person entitled to them is a child, at the request of the child or the person with whom the child has his home,

make other arrangements for making the payments.

(4) If a person makes any periodical payments to the clerk of a magistrates' court otherwise than in person at the clerk's office, he shall do so at his own risk and expense.

(5) Where the court orders that payments by the debtor to the creditor be made by a method of payment falling within section 59(6) of the Act of 1980 (standing order, etc.), the clerk of the court shall notify the person liable to make payments under the order of the number and location of the account into which the payments should be made.

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(6) Where the clerk of a magistrates' court receives an application from an interested party under section 20ZA(2) of the Act of 1978, section 60(4) of the Act of 1980 or paragraph 6A(2) of Schedule 1 to the Children Act 1989 for the method of payment to be varied, the clerk shall notify in writing, as soon as practicable, that party and, where practicable, any other interested party, of the result of the application, including any decision to refer the matter to the court; where the clerk grants the application, he shall record the variation on the order for periodical payments to which the variation relates.

(7) In this rule "means of payment order" means an order of a magistrates' court under paragraphs (a) to (d) of section 59(3) of the Act of 1980."

17. For paragraph (1) of rule 48 of those Rules there shall be substituted the following paragraph:

"(1) A person adjudged by the conviction of a magistrates' court to pay any sum shall, unless the court otherwise directs, pay that sum, or any instalment of that sum, to the clerk of the court."

18. Rule 50 of those Rules shall be revoked.

#### **The Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986**

19. In rule 6 of the Magistrates' Courts (Civil Jurisdiction and Judgments Act 1982) Rules 1986—

(a) for paragraph (1) there shall be substituted the following two paragraphs:

"(1) When an order is registered under section 5(3) of the 1982 Act, the court shall order that payment of sums due thereunder shall be made to the clerk of the registering court during such hours and at such place as that clerk may direct.

(1A) The justices' clerk to whom payments are ordered to be made (whether by virtue of an order under paragraph (1) above or by virtue of an order of the court under the 1982 Act) shall send those payments by post to the court which made the order or to such other person or authority as that court or the Secretary of State may from time to time direct.";

(b) in paragraph (2), the words "by virtue of paragraph (1) above" shall be omitted.

20. After rule 6 of those Rules, there shall be inserted the following rule:

"**6A.**—(1) Where, in the exercise of the duty imposed under rule 9(1) above, or in the exercise of the powers conferred by virtue of section 5(6B) of the Act of 1982, the court orders that payments under the order are to be made by a particular means, the clerk of the court shall record on the order the means of payment which the court has ordered and notify in writing, as soon as practicable, the person liable to make payments under the order of how payments are to be made.

(2) Where, in the exercise of the aforesaid powers, the court orders payment to the clerk of the court, or to the clerk of any other magistrates' court, by a method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), the clerk of the court to whom payments are to be made shall notify the person liable to make the payments under the order of the number and location of the account into which the payments are to be made."



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## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Maintenance Enforcement Act 1991 makes provision for courts to direct the methods by which payment may be made in the enforcement of a maintenance order.

In consequence of the 1991 Act, these Rules amend various rules which govern domestic and international procedures for effecting the reciprocal enforcement of maintenance orders and claims for maintenance.

The main effect of these Rules is to require the clerk to the justices in a magistrates' court to notify the payer of maintenance of the method by which he should pay and, if payment is to be made by standing order or a similar method, the number and location of the account into which payment should be made.

The Rules also require the clerk to the justices, where he has received an application for the method of payment to be varied, to notify the parties of the result of the application and record any variation on the copy of the order.