



# Magistrates' Courts Act 1980

## 1980 CHAPTER 43

### PART II

#### CIVIL JURISDICTION AND PROCEDURE

##### *Orders for periodical payment*

#### [<sup>F1</sup>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;

[ the power to order that payments under the order be made in accordance with <sup>F2</sup>(cc) arrangements made by the Secretary of State for their collection;]

- (d) the power to make an attachment of earnings order under the Attachment of Earnings Act 1971 to secure payments under the order.

*Status: Point in time view as at 11/04/1994.*

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[ No order made by a magistrates' court under paragraphs (a) to (d) of subsection (3)<sup>F3</sup>(3A) above (other than one made under paragraph (cc)) shall have effect at any time when the Secretary of State is arranging for the collection of payments under the qualifying maintenance order concerned.]

(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 [<sup>F4</sup>(other than paragraph (cc))] 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 Domestic Proceedings and Magistrates' Courts Act 1978, or
  - (c) under, or having effect as if made under, Schedule 1 to the Children Act 1989,
- and the court does not propose to exercise its power under [<sup>F5</sup>paragraph (c), (cc) 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 [<sup>F6</sup>Lord Chancellor] 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.

(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.

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(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 [<sup>F6</sup>Lord Chancellor] 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.

[ For the purposes of this section—

- <sup>F7</sup>(12) (a) 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; and
- (b) references to arrangements made by the Secretary of State for the collection of payments are to arrangements made by him under section 30 of the Child Support Act 1991 and regulations made under that section.]]

#### Textual Amendments

- F1** S. 59 substituted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 2; S.I. 1992/455, art. 2
- F2** S. 59(3)(cc) inserted (11.4.1994) by S.I. 1994/731, art. 3(2)
- F3** S. 59(3A) inserted (11.4.1994) by S.I. 1994/731, art. 3(3)
- F4** Words in s. 59(5) inserted (11.4.1994) by S.I. 1994/731, art. 3(4)
- F5** Words in s. 59(7) substituted (11.4.1994) by S.I. 1994/731, art. 3(5)
- F6** Words in s. 59(8)(11) substituted (1.4.1992) by S.I. 1992/709, art. 3(2), Sch. 2
- F7** S. 59(12) substituted (11.4.1994) by S.I. 1994/731, art. 3(6)

#### Modifications etc. (not altering text)

- C1** S. 59 excluded (5.11.1993) by Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18), s. 27C(2) (as substituted (5.11.1993) by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, Sch. 1 Pt. II para. 13); S.I. 1993/618, art. 2
- C2** S. 59(4) applied (1.4.1992) by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 20ZA(6) (inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 5; S.I. 1992/455, art. 2)
- S. 59(4) applied (with modifications) (1.4.1992) by Maintenance Orders (Facilities for Enforcement) Act 1920 (c. 33, SIF 49:3), s. 4(5D) (inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 10, Sch. 1 para. 1(1); S.I. 1992/455, art. 2)
- S. 59(4) applied (with modifications) (1.4.1992) by Maintenance Orders Act 1950 (c. 37, SIF 49:3), s. 22(1D) (inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 10, Sch. 1 para. 5; S.I. 1992/455, art. 2)
- C3** S. 59(4) applied (with modifications) (5.11.1993) by Maintenance Order (Reciprocal Enforcement) Act 1972 (c. 18), s. 27C(6) (as substituted (5.11.1993) by Maintenance Orders (Reciprocal Enforcement) Act 1992 (c. 56), s. 1, Sch. 1 Pt. II para. 13); S.I. 1993/618, art. 2
- C4** S. 59(8)(10)(11) functions of the Secretary of State transferred to the Lord Chancellor (1.4.1992) by S.I. 1992/709, art. 3(1), Sch. 2

#### [<sup>F8</sup>59A Orders for periodical payment: proceedings by clerk.

- (1) Where payments under a relevant UK order are required to be made periodically—
- (a) to or through the clerk of a magistrates' court, or
- (b) by any method of payment falling within section 59(6) above,

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and any sums payable under the order are in arrear, the clerk of the relevant court shall, if the person for whose benefit the payments are required to be made so requests in writing, and unless it appears to the clerk that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of those sums.

- (2) Where payments under a relevant UK order are required to be made periodically to or through the clerk of a magistrates' court, the person for whose benefit the payments are required to be made may, at any time during the period in which the payments are required to be so made, give authority in writing to the clerk of the relevant court for the clerk to proceed as mentioned in subsection (3) below.
- (3) Where authority under subsection (2) above is given to the clerk of the relevant court, the clerk shall, unless it appears to him that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of any sums payable to or through him under the order in question which, on or after the date of the giving of the authority, fall into arrear.
- (4) In any case where—
  - (a) authority under subsection (2) above has been given to the clerk of a relevant court, and
  - (b) the person for whose benefit the payments are required to be made gives notice in writing to the clerk cancelling the authority,
 the authority shall cease to have effect and, accordingly, the clerk shall not continue any proceedings already commenced by virtue of the authority.
- (5) The person for whose benefit the payments are required to be made shall have the same liability for all the costs properly incurred in or about proceedings taken under subsection (1) above at his request or under subsection (3) above by virtue of his authority (including any costs incurred as a result of any proceedings commenced not being continued) as if the proceedings had been taken by him.
- (6) Nothing in subsection (1) or (3) above shall affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under an order of any court.
- (7) In this section—
 

“the relevant court”, in relation to an order, means—

  - (a) in a case where payments under the order are required to be made to or through the clerk of a magistrates' court, that magistrates' court; and
  - (b) in a case where such payments are required to be made by any method of payment falling within section 59(6) above, the magistrates' court which made the order or, if the order was not made by a magistrates' court, the magistrates' court in which the order is registered;

“relevant UK order” means—

  - (a) an order made by a magistrates' court, other than an order made by virtue of Part II of the <sup>M1</sup>Maintenance Orders (Reciprocal Enforcement) Act 1972;
  - (b) an order made by the High Court or a county court (including an order deemed to be made by the High Court by virtue of section 1(2) of the <sup>M2</sup>Maintenance Orders Act 1958) and registered under Part I of that Act of 1958 in a magistrates' court; or

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- (c) an order made by a court in Scotland or Northern Ireland and registered under Part II of the <sup>M3</sup>Maintenance Orders Act 1950 in a magistrates' court;

and any reference to payments required to be made periodically includes, in the case of a maintenance order, a reference to instalments required to be paid in respect of a lump sum payable by instalments.]

#### Textual Amendments

**F8** S. 59A inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s.2; S.I. 1992/455, art.2

#### Marginal Citations

**M1** 1972 c. 18

**M2** 1958 c. 39

**M3** 1950 c. 37

### [<sup>F9</sup>59B Maintenance orders: penalty for breach.

- (1) In any case where—
- payments under a relevant English maintenance order are required to be made periodically in the manner mentioned in paragraph (a) or (b) of section 59A(1) above, and
  - the debtor fails, on or after the date of commencement of this section, to comply with the order in so far as the order relates to the manner of payment concerned,

the person for whose benefit the payments are required to be made may make a complaint to a relevant justice giving details of the failure to comply.

- (2) If the relevant justice is satisfied that the nature of the alleged failure to comply may be such as to justify the relevant court in exercising its power under subsection (3) below, he shall issue a summons directed to the debtor requiring him to appear before the relevant court to answer the complaint.
- (3) On the hearing of the complaint, the relevant court may order the debtor to pay a sum not exceeding £1000.
- (4) Any sum ordered to be paid under subsection (3) above shall for the purposes of this Act be treated as adjudged to be paid by a conviction of a magistrates' court.

- (5) In this section—

“debtor” has the same meaning as it has in section 59 above;

“the relevant court” has the same meaning as it has in section 59A above;

“relevant English maintenance order” means—

- a maintenance order made by a magistrates' court, other than an order made by virtue of Part II of the <sup>M4</sup>Maintenance Orders (Reciprocal Enforcement) Act 1972; or
- 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 <sup>M5</sup>Maintenance Orders Act 1958) and registered under Part I of that Act of 1958 in a magistrates' court;

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“relevant justice”, in relation to a relevant court, means a justice of the peace for the petty sessions area for which the relevant court is acting; and any reference to payments required to be made periodically includes a reference to instalments required to be paid in respect of a lump sum payable by instalments.]

#### Textual Amendments

**F9** S. 59B inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s.3; S.I. 1992/455, art.2

#### Marginal Citations

**M4** 1972 c. 18

**M5** 1958 c. 39

### [<sup>F10</sup>60 Revocation, variation, etc. of orders for periodical payment.

- (1) Where a magistrates' court has made an order for money to be paid periodically by one person to another, the court may, by order on complaint, revoke, revive or vary the order.
- (2) The power under subsection (1) above to vary an order shall include power to suspend the operation of any provision of the order temporarily and to revive the operation of any provision so suspended.
- (3) Where the order mentioned in subsection (1) above is a maintenance order, the power under that subsection to vary the order shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under paragraphs (a) to (d) of section 59(3) above.
- (4) In any case where—
  - (a) a magistrates' court has made a maintenance order, and
  - (b) payments under the order are required to be made by any method of payment falling within section 59(6) above,
 an interested party may apply in writing to the clerk of the court for the order to be varied as mentioned in subsection (5) below.
- (5) Subject to subsection (8) below, where an application has been made under subsection (4) above, the clerk, after giving written notice (by post or otherwise) of the application to any other interested party and allowing that party, within the period of 14 days beginning with the date of the giving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the clerk.
- (6) The clerk may proceed with an application under subsection (4) above notwithstanding that any such interested party as is referred to in subsection (5) above has not received written notice of the application.
- (7) In subsections (4) to (6) above “interested party”, in relation to a maintenance order, means—
  - (a) the debtor;
  - (b) the creditor; and

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- (c) if the person who applied for the maintenance order is a person other than the creditor, that other person.
- (8) Where an application has been made under subsection (4) above, the clerk may, if he considers it inappropriate to exercise his power under subsection (5) above, refer the matter to the court which may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) above.
- (9) Subsections (4), (5) and (7) of section 59 above shall apply for the purposes of subsections (3) and (8) above as they apply for the purposes of that section.
- (10) None of the powers of the court, or of the clerk of the court, conferred by subsections (3) to (9) above shall be exercisable in relation to a maintenance order which is not a qualifying maintenance order (within the meaning of section 59 above).
- (11) For the purposes of this section—
- (a) “creditor” and “debtor” have the same meaning as they have in section 59 above; and
- (b) 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.]

#### Textual Amendments

- F10** S. 60 substituted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), [s.4](#); S.I. 1992/455, [art.2](#)

#### Modifications etc. (not altering text)

- C5** S. 60 excluded (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), [s. 15\(2\)](#) (with s. 108(6), Sch. 14 para. 1(1)); S.I. 1991/828, [art. 3\(2\)](#)  
S. 60 modified (1.4.1992) by [Maintenance Orders \(Facilities for Enforcement\) Act 1920 \(c. 33, SIF 49:3\)](#), [s. 4\(6A\)](#) (as substituted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 10, [Sch. 1 para. 1\(2\)](#); S.I. 1992/455, [art.2](#))  
S. 60 modified (1.4.1992) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18, SIF 49:3\)](#), [s. 9\(1ZA\)](#) (as inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 10, [Sch. 1 para.14](#); S.I. 1992/455, [art.2](#))
- C6** S. 60(1) modified (5.11.1993) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1972 \(c. 18\)](#), [s. 5\(3A\)](#) (as inserted (5.11.1993) by [Maintenance Orders \(Reciprocal Enforcement\) Act 1992 \(c. 56\)](#), s. 1, [Sch. 1 Pt. II para. 7](#)); S.I. 1993/618, [art.2](#)
- C7** S. 60(3)-(11) excluded by [1972 c. 18, s. 34A\(1\)](#) (as inserted (1.4.1992) by [1991 c. 17, Sch. 1 para. 19\(2\)](#); S.I. 1992/455, [art. 2](#))
- C8** S. 60(4)-(11) applied (with modifications) (1.4.1992) by [Maintenance Orders Act 1950 \(c. 37, SIF 49:3\)](#), [s. 22\(1E\)](#) (as inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 10, [Sch. 1 para.5](#); S.I. 1992/455, [art. 2](#))  
S. 60(4)-(11) applied (with modifications) (1.4.1992) by [Maintenance Orders Act 1958 \(c. 39, SIF 49:3\)](#), [s. 4\(5A\)](#) (as inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 10, [Sch. 1 para. 9\(2\)](#); S.I. 1992/455, [art.2](#))

## 61 Periodical payments payable by one person under more than one order.

- (1) The power to make rules conferred by section 144 below shall, without prejudice to the generality of subsection (1) of that section, include power to make provision—

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- (a) for enabling a person to make one complaint for the recovery of payments required to be made to him by another person under more than one periodical payments order; and
- (b) for apportioning between two or more periodical payments orders, in such manner as may be prescribed by the rules, any sum paid to a clerk to a magistrates' court on any date by the person liable to make payments under the orders which is less than the total sum required to be paid on that date to that clerk by that person in respect of those orders (being orders one of which requires payments to be made for the benefit of a child to the person with whom the child has his home and one or more of which requires payments to be made to that person either for his own benefit or for the benefit of another child who has his home with him) [<sup>F11</sup>and sums paid into court in pursuance of orders under section 35 of the Powers of Criminal Courts Act 1973 (compensation orders)].

(2) In this section—

“child” means a person who has not attained the age of 18;

“periodical payments order” means an order made by a magistrates' court, or registered in a magistrates' court under Part II of the <sup>M6</sup>Maintenance Orders Act 1950 or Part I of the <sup>M7</sup>Maintenance Orders Act 1958, which requires the making of periodical payments,

and any payments required under a periodical payments order to be made to a child shall for the purposes of subsection (1) above be treated as if they were required to be made to the person with whom the child has his home.

#### Textual Amendments

**F11** Words added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 123(6), 170(1), Sch. 8 para. 16, **Sch. 15 para. 63**

#### Modifications etc. (not altering text)

**C9** S. 61 amended by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 81(8), 123(6), **Sch. 8 para. 16**

#### Marginal Citations

**M6** 1950 c. 37.

**M7** 1958 c. 39.



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