



# Magistrates' Courts Act 1980

## 1980 CHAPTER 43

### PART III

#### SATISFACTION AND ENFORCEMENT

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

- C1** Part III (ss. 75–96) modified: (E.W.) by Drug Trafficking Offences Act 1986 (c. 32, SIF 39:1), s. 6(4) (6); by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 75(5)(6), 123(6), Sch. 8 para. 16; (3.2.1995) by 1994 c. 37, ss. 9(4)(6), 69(2) (with s. 66(2))  
Part III (ss. 75–96) extended (1.9.1994) by 1994 c. 22, ss. 32(3)(a), 41(3)(a), 66(1)  
Part III (ss. 75–96) applied (with modifications) (24.3.2003) (E.W.) by 2002 c. 29, ss. 35(3), 458(1)(3); S.I. 2003/333, art. 2 Sch.
- C2** Pt. III applied (1.10.2009) by Criminal Justice and Immigration Act 2008 (c. 4), ss. 85, 153; S.I. 2009/2606, art. 2(f)
- C3** Pt. III restricted (prosp.) by Education and Skills Act 2008 (c. 25), ss. 56, 57, 58, 173

#### *General provisions*

#### **75 Power to dispense with immediate payment.**

- (1) A magistrates' court by whose conviction or order a sum is adjudged to be paid may, instead of requiring immediate payment, allow time for payment, or order payment by instalments.
- (2) Where a magistrates' court has allowed time for payment, the court may, on application by or on behalf of the person liable to make the payment, allow further time or order payment by instalments.

[<sup>F1</sup>(2A) An order under this section that a lump sum required to be paid under a maintenance order shall be paid by instalments (a “maintenance instalments order”) shall be treated for the purposes of sections 59, 59B and 60 above as a maintenance order.

*Status: Point in time view as at 01/04/1996.*

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- (2B) Subsections (5) and (7) of section 59 above (including those subsections as they apply for the purposes of section 60 above) shall have effect in relation to a maintenance instalments order—
- (a) as if in subsection (5), paragraph (c) and the word “and” immediately preceding it were omitted; and
  - (b) as if in subsection (7)—
    - (i) the reference to the maintenance order were a reference to the maintenance order in respect of which the maintenance instalments order in question is made;
    - (ii) for the words “the person who applied for the maintenance order” there were substituted “the debtor”.
- (2C) Section 60 above shall have effect in relation to a maintenance instalments order as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted.]
- (3) Where a court has ordered payment by instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid.

#### Textual Amendments

- F1** S. 75(2A)-(2C) inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), s. 11(1), [Sch. 2 para.6](#); [S.I. 1992/455](#), [art.2](#).

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

- C4** S. 75 extended (with modifications) by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), ss. 24(6), 30, [Sch. 3 Pt. I para. 2\(3\)](#)

## 76 Enforcement of sums adjudged to be paid.

- (1) Subject to the following provisions of this Part of this Act, and to section 132 below <sup>F2</sup>, where default is made in paying a sum adjudged to be paid by a conviction or order of a magistrates' court, the court may issue a warrant of distress for the purpose of levying the sum or issue a warrant committing the defaulter to prison.
- (2) A warrant of commitment may be issued as aforesaid either—
  - (a) where it appears on the return to a warrant of distress that the money and goods of the defaulter are insufficient to satisfy the sum with the costs and charges of levying the sum; or
  - (b) instead of a warrant of distress.
- (3) The period for which a person may be committed to prison under such a warrant as aforesaid shall not, subject to the provisions of any enactment passed after 31st December 1879, exceed the period applicable to the case under Schedule 4 to this Act.
- <sup>F3</sup>(4) Where proceedings are brought for the enforcement of a magistrates' court maintenance order under this section, the court may vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) above.
- (5) Subsections (4), (5) and (7) of section 59 above shall apply for the purposes of subsection (4) above as they apply for the purposes of that section.

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- (6) Subsections (4) and (5) above shall not have effect in relation to a maintenance order which is not a qualifying maintenance order (within the meaning of section 59 above).]

#### Textual Amendments

- F2** Words repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 78, [Sch. 16](#)  
**F3** [S. 76\(4\)-\(6\)](#) inserted (1.4.1992) by [Maintenance Enforcement Act 1991 \(c. 17, SIF 49:3\)](#), [s.7](#); S.I. 1992/455, [art.2](#).

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

- C5** [S. 76](#) modified (1.4.1992) by [Civil Jurisdiction and Judgments Act 1982 \(c. 27, SIF 49:3\)](#), [s. 5\(5B\)](#) (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](#)).

## 77 Postponement of issue of warrant.

- (1) Where a magistrates' court has power to issue a warrant of distress under this Part of this Act, it may, if it thinks it expedient to do so, postpone the issue of the warrant until such time and on such conditions, if any, as the court thinks just.
- (2) Where a magistrates' court has power to issue a warrant of commitment under this Part of this Act, it may, if it thinks it expedient to do so, fix a term of imprisonment [<sup>F4</sup>or detention under section 9 of the Criminal Justice Act 1982 (detention of persons aged 17 to 20 for default)]and postpone the issue of the warrant until such time and on such conditions, if any, as the court thinks just.
- [<sup>F5</sup>(3) A magistrates' court shall have power at any time to do either or both of the following—
- (a) to direct that the issue of the warrant of commitment shall be postponed until a time different from that to which it was previously postponed;
  - (b) to vary any of the conditions on which its issue is postponed,
- but only if it thinks it just to do so having regard to a change of circumstances since the relevant time.
- (4) In this section "the relevant time" means—
- (a) where neither of the powers conferred by subsection (3) above has been exercised previously, the date when the issue of the warrant was postponed under subsection (2) above; and
  - (b) in any other case, the date of the exercise or latest exercise of either or both of the powers.
- (5) Without prejudice to the generality of subsection (3) above, if on an application by a person in respect of whom issue of a warrant has been postponed it appears to a justice of the peace acting for the petty sessions area in which the warrant has been or would have been issued that since the relevant time there has been a change of circumstances which would make it just for the court to exercise one or other or both of the powers conferred by that subsection, he shall refer the application to the court.
- (6) Where such an application is referred to the court, it shall be the duty of the clerk of the court—
- (a) to fix a time and place for the application to be heard; and

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- (b) to give the applicant notice of the time and place which he fixes.
- (7) Where such a notice has been given but the applicant does not appear at the time and place specified in the notice, the court may proceed with the consideration of the application in his absence.
- (8) If a warrant of commitment in respect of the sum adjudged to be paid has been issued before the hearing of the application, the court shall have power to order that the warrant shall cease to have effect and, if the applicant has been arrested in pursuance of it, to order that he shall be released, but it shall only make an order under this subsection if it is satisfied that the change of circumstances on which the applicant relies was not put before the court when it was determining whether to issue the warrant.]

#### Textual Amendments

- F4** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, [Sch. 14 para. 50](#)
- F5** [S. 77\(3\)–\(8\)](#) added (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 61(1)(2), 123(6), [Sch. 8 para. 16](#)

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

- C6** [S. 77\(1\)](#) extended by [S.I. 1985/215](#), [art. 4\(3\)](#), 1985/313, art. 4(3), 1985/487, art. 5(3), 1986/110, art. 4(3), 1986/250, art. 5(3), 1986/779, art. 3(3), 1986/2090, art. 5(3), 1987/213, art. 4(3), 1987/292, art. 3(3)
- C7** [S. 77\(1\)](#) applied: by [S.I. 1990/137](#), [art. 5\(3\)](#); by [S.I. 1991/138](#), [art. 5\(3\)](#); by [S.I. 1991/139](#), [reg. 7\(3\)](#); by [S.I. 1991/522](#), [art. 3\(3\)](#); (31.1.1992) by [S.I. 1992/130](#), [reg. 8\(3\)](#); (8.2.1992) by [S.I. 1992/190](#), [art. 5\(3\)](#); (27.2.1993) by [S.I. 1993/387](#), [art. 5\(3\)](#); (5.5.1993) by [S.I. 1993/1197](#), [art. 3\(3\)](#); (1.9.1993) by [S.I. 1993/2015](#), [art. 6\(3\)](#) and [S.I. 1993/2016](#), [art. 5\(3\)](#); (22.3.1994) by [S.I. 1994/451](#), [art. 5\(3\)](#); (15.7.1994) by [S.I. 1994/1679](#), [art. 5\(3\)](#) and [S.I. 1994/1681](#), [art. 4\(3\)](#); (18.4.1995) by [S.I. 1995/907](#), [art. 4\(3\)](#) and [S.I. 1995/908](#), [art. 5\(3\)](#); (29.2.1996) by [S.I. 1996/247](#), [art. 5\(3\)](#); (24.4.1996) by [S.I. 1996/1036](#), [art. 5\(3\)](#); (9.4.1997) by [S.I. 1997/883](#), [art. 5\(3\)](#); (12.8.1997) by [S.I. 1997/1949](#), [art. 5\(3\)](#); (14.3.1998) by [S.I. 1998/268](#), [art. 5\(3\)](#); (18.3.1999) by [S.I. 1999/424](#), [art. 5\(3\)](#); (8.2.2000) by [S.I. 2000/51](#), [art. 5\(2\)](#); (21.2.2000) by [S.I. 2000/181](#), [art. 5\(2\)](#); (25.2.2000) by [S.I. 2000/435](#), [art. 5\(2\)](#); (W.)(18.3.2000) by [S.I. 2000/976](#), [art. 5\(2\)](#); (W.)(1.4.2000) by [S.I. 2000/1075](#), [art. 5\(2\)](#); (W.)(7.4.2000) by [S.I. 2000/1078](#), [art. 6\(2\)](#); (11.4.2000) by [S.I. 2000/827](#), [art. 5\(2\)](#); (W.)(11.4.2000) by [S.I. 2000/1096](#), [art. 5\(2\)](#); (15.4.2000) by [S.I. 2000/1081](#), [art. 5\(2\)](#); (24.7.2000) by [S.I. 2000/1843](#), [art. 6\(2\)](#)

## 78 Defect in distress warrant and irregularity in its execution.

- (1) A warrant of distress issued for the purpose of levying a sum adjudged to be paid by the conviction or order of a magistrates' court shall not, if it states that the sum has been so adjudged to be paid, be held void by reason of any defect in the warrant.
- (2) A person acting under a warrant of distress shall not be deemed to be a trespasser from the beginning by reason only of any irregularity in the execution of the warrant.
- (3) Nothing in this section shall prejudice the claim of any person for special damages in respect of any loss caused by a defect in the warrant or irregularity in its execution.
- (4) If any person removes any goods marked in accordance with the rules as articles impounded in the execution of a warrant of distress, or defaces or removes any such

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mark, he shall be liable on summary conviction to a fine not exceeding [<sup>F6</sup>level 1 on the standard scale].

- (5) If any person charged with the execution of a warrant of distress wilfully retains from the proceeds of a sale of the goods on which distress is levied, or otherwise exacts, any greater costs and charges than those properly payable, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding [<sup>F6</sup>level 1 on the standard scale].

#### Textual Amendments

- F6** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [s. 46](#)

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

- C8** S. 78 extended by [S.I. 1985/215, art. 4\(3\)](#), [1985/313, art. 4\(3\)](#), [1985/487, art. 5\(3\)](#), [1986/110, art. 4\(3\)](#), [1986/250, art. 5\(3\)](#), [1986/779, art. 3\(3\)](#), [1986/2090, art. 5\(3\)](#), [1987/213, art. 4\(3\)](#), [1987/292, art. 3\(3\)](#)
- C9** S. 78 applied: by [S.I. 1990/137, art. 5\(3\)](#); by [S.I. 1991/138, art. 5\(3\)](#); by [S.I. 1991/139, reg. 7\(3\)](#); by [S.I. 1991/522, art. 3\(3\)](#); (31.1.1992) by [S.I. 1992/130, reg. 8\(3\)](#); (8.2.1992) by [S.I. 1992/190, art. 5\(3\)](#); (27.2.1993) by [S.I. 1993/387, art. 5\(3\)](#); (5.5.1993) by [S.I. 1993/1197, art. 3\(3\)](#); (1.9.1993) by [S.I. 1993/2015, art. 6\(3\)](#) and [S.I. 1993/2016, art. 5\(3\)](#); (22.3.1994) by [S.I. 1994/451, art. 5\(3\)](#); (15.7.1994) by [S.I. 1994/1679, art. 5\(3\)](#) and [S.I. 1994/1681, art. 4\(3\)](#); (18.4.1995) by [S.I. 1995/907, art. 4\(3\)](#) and [S.I. 1995/908, art. 5\(3\)](#); (29.2.1996) by [S.I. 1996/247, art. 5\(3\)](#); (24.4.1996) by [S.I. 1996/1036, art. 5\(3\)](#); (9.4.1997) by [S.I. 1997/883, art. 5\(3\)](#); (12.8.1997) by [S.I. 1997/1949, art. 5\(3\)](#); (14.3.1998) by [S.I. 1998/268, art. 5\(3\)](#); (W.) (18.3.1999) by [S.I. 1999/424, art. 5\(3\)](#); (8.2.2000) by [S.I. 2000/51, art. 5\(2\)](#); (21.2.2000) by [S.I. 2000/181, art. 5\(2\)](#); (25.2.2000) by [S.I. 2000/435, art. 5\(2\)](#); (W.) (18.3.2000) by [S.I. 2000/976, art. 5\(2\)](#); (W.) (1.4.2000) by [S.I. 2000/1075, art. 5\(2\)](#); (W.) (7.4.2000) by [S.I. 2000/1078, art. 6\(2\)](#); (11.4.2000) by [S.I. 2000/827, art. 5\(2\)](#); (W.) (11.4.2000) by [S.I. 2000/1096, art. 5\(2\)](#); (15.4.2000) by [S.I. 2000/1081, art. 5\(2\)](#); (24.7.2000) by [S.I. 2000/1843, art. 6\(2\)](#); (W.) (24.7.2000) by [S.I. 2000/2230, art. 5\(2\)](#); S. 78 applied (29.5.2001) by [S.I. 2001/1631, art. 5\(2\)](#) (which was revoked (8.3.2002) by [S.I. 2002/272, art. 13](#)); s. 78 applied (8.2.2002) by [S.I. 2002/272, art. 5\(2\)](#)
- C10** S. 78 applied (8.2.2003) by [The Sea Fishing \(Restriction on Days at Sea\) Order 2003 \(S.I. 2003/229\), art. 13\(2\)](#)
- S. 78 applied (7.7.2003) by [The Sea Fishing \(Restriction on Days at Sea\)\(No. 2\) Order 2003 \(S.I. 2003/1535\)](#), {art. 13(2)}
- S. 78 applied (with modifications) (temp.) (23.2.2004 and 29.3.2004 for certain purposes, otherwise 5.4.2004 until 31.3.2006) by [The Fines Collection Regulations 2004 \(S.I. 2004/176\)](#), [regs. 1\(3\), 10](#) (with [reg. 3](#)) (as amended (30.3.2005) by [S.I. 2005/484](#), [regs. 1\(1\)\(a\)\(2\), 2](#))
- S. 78 applied (E.) (26.5.2004) by [The Sea Fishing \(Enforcement of Community Quota and Third Country Fishing Measures\) \(England\) Order 2004 \(S.I. 2004/1237\)](#), [art. 6\(2\)](#)

## 79 Release from custody and reduction of detention on payment.

- (1) Where imprisonment or other detention has been imposed on any person by the order of a magistrates' court in default of payment of any sum adjudged to be paid by the conviction or order of a magistrates' court or for want of sufficient distress to satisfy such a sum, then, on the payment of the sum, together with the costs and charges, if any, of the commitment and distress, the order shall cease to have effect; and if the person has been committed to custody he shall be released unless he is in custody for some other cause.

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- (2) Where, after a period of imprisonment or other detention has been imposed on any person in default of payment of any sum adjudged to be paid by the conviction or order of a magistrates' court or for want of sufficient distress to satisfy such a sum, payment is made in accordance with the rules of part of the sum, the period of detention shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid bears to so much of the said sum, and the costs and charges of any distress levied to satisfy that sum, as was due at the time the period of detention was imposed.
- (3) In calculating the reduction required under subsection (2) above any fraction of a day shall be left out of account.

## 80 Application of money found on defaulter to satisfy sum adjudged.

- (1) Where a magistrates' court has adjudged a person to pay a sum by a conviction or has ordered the enforcement of a sum due from a person under [<sup>F7</sup>a magistrates' court maintenance order], the court may order him to be searched.
- (2) Any money found on the arrest of a person adjudged to pay such a sum as aforesaid, or on a search as aforesaid, or on his being taken to a prison or other place of detention in default of payment of such a sum or for want of sufficient distress to satisfy such a sum, may, unless the court otherwise directs, be applied towards payment of the said sum; and the balance, if any, shall be returned to him.
- (3) A magistrates' court shall not allow the application as aforesaid of any money found on a person if it is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention.

### Textual Amendments

**F7** Words substituted by Family Law Reform Act 1987 (c. 42, SIF 49:7), s. 33(1), **Sch. 2 para. 83**

### Modifications etc. (not altering text)

**C11** S. 80 applied by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 24(6), 30, **Sch. 3 Pt. I para. 2(4)**  
S. 80 applied (2.4.2001) by 1991 c. 48, s. 40B(10) (as inserted (2.4.2001) by 2000 c. 19, s. 16(3), (with s. 86(3); S.I. 2000/3354, art. 2(3))

*Sums adjudged to be paid by a conviction*

## 81 Enforcement of fines imposed on young offenders.

- (1) Where a magistrates' court would, but for [<sup>F8</sup>section 1 of the Criminal Justice Act 1982], have power to commit to prison a person under [<sup>F9</sup>the age of 18] for a default consisting in failure to pay, or want of sufficient distress to satisfy, a sum adjudged to be paid by a conviction, the court may, subject to the following provisions of this section, make—
  - (a) an order requiring the defaulter's parent or guardian to enter into a recognizance to ensure that the defaulter pays so much of that sum as remains unpaid; or
  - (b) an order directing so much of that sum as remains unpaid to be paid by the defaulter's parent or guardian instead of by the defaulter.



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- (2) An order under subsection (1) above shall not be made in respect of a defaulter—
- (a) in pursuance of paragraph (a) of that subsection, unless the parent or guardian in question consents;
  - (b) in pursuance of paragraph (b) of that subsection, unless the court is satisfied in all the circumstances that it is reasonable to make the order.
- (3) None of the following orders, namely—
- (a) an order under [F10 section 17(1) of the M1 Criminal Justice Act 1982] for attendance at an attendance centre; or
  - (b) any order under subsection (1) above,
- shall be made by a magistrates' court in consequence of a default of a person under [F9the age of 18] years consisting in failure to pay, or want of sufficient distress to satisfy, a sum adjudged to be paid by a conviction unless the court has since the conviction inquired into the defaulter's means in his presence on at least one occasion.
- (4) An order under subsection (1) above shall not be made by a magistrates' court unless the court is satisfied that the defaulter has, or has had since the date on which the sum in question 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.
- (5) An order under subsection (1) above may be made in pursuance of paragraph (b) of that subsection against a parent or guardian who, having been required to attend, has failed to do so; but, save as aforesaid, an order under that subsection shall not be made in pursuance of that paragraph without giving the parent or guardian an opportunity of being heard.
- (6) A parent or guardian may appeal to the Crown Court against an order under subsection (1) above made in pursuance of paragraph (b) of that subsection.
- (7) Any sum ordered under subsection (1)(b) above to be paid by a parent or guardian may be recovered from him in like manner as if the order had been made on the conviction of the parent or guardian of an offence.
- (8) In this section—
- “guardian”, in relation to a person under [F9the age of 18], means a person appointed, according to law, to be his guardian F11, or by order of a court of competent jurisdiction;
- ..... F12
- “sum adjudged to be paid by a conviction” means any fine, costs, compensation or other sum adjudged to be paid by an order made on a finding of guilt, including an order made under section 35 of the M2Powers of Criminal Courts Act 1973 (compensation orders) F11.

#### Textual Amendments

- F8** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, [Sch. 14 para. 51](#)
- F9** Words in s. 81(1)(3)(8) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), ss. 68, 101(1), [Sch. 8 para. 6\(2\)](#), [Sch. 12 para. 22\(1\)](#); S.I. 1992/333, art. 2(2), [Sch.2](#)
- F10** Words in s. 81(3)(a) substituted (1.10.1992) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), s. 100, [Sch. 11 para.26](#); S.I. 1992/333, art. 2(2), [Sch.2](#)

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**F11** Words in s. 81(8) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108(6)(7), **Sch. 15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**

**F12** Definition of "the statutory restrictions upon the imprisonment of young offenders" repealed by Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 78, **Sch. 16**

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

**C12** S. 81 restricted (3.2.1995) by 1994 c. 37, **ss. 9(4)(a)**, 69(2) (with s. 66(2))  
S. 81 modified (1.1.1998) by 1997 c. 43, **s. 35(2)**; S.I. 1997/2200, **art. 3(a)**  
S. 81 amended (1.1.1998) by 1997 c. 43, **s. 40(2)**; S.I. 1997/2200, art., 3(c)

**Marginal Citations**

**M1** 1982 c.48

**M2** 1973 c. 62.

**82 Restriction on power to impose imprisonment for default.**

- (1) A magistrates' court shall not on the occasion of convicting an offender of an offence issue a warrant of commitment for a default in paying any sum adjudged to be paid by the conviction unless—
- (a) in the case of an offence punishable with imprisonment, he appears to the court to have sufficient means to pay the sum forthwith;
  - (b) it appears to the court that he is unlikely to remain long enough at a place of abode in the United Kingdom to enable payment of the sum to be enforced by other methods; or
  - (c) on the occasion of that conviction the court sentences him to immediate imprisonment [<sup>F13</sup>, youth custody] or detention in a detention centre for that or another offence or he is already serving [<sup>F14</sup> a sentence of custody for life, or a term of imprisonment, youth custody, detention under section 9 of the Criminal Justice Act 1982] or detention in a detention centre.
- (2) A magistrates' court shall not in advance of the issue of a warrant of commitment fix a term of imprisonment which is to be served by an offender in the event of a default in paying a sum adjudged to be paid by a conviction, except where it has power to issue a warrant of commitment forthwith, but postpones issuing the warrant under section 77(2) above.
- (3) Where on the occasion of the offender's conviction a magistrates' court does not issue a warrant of commitment for a default in paying any such sum as aforesaid or fix a term of imprisonment under the said section 77(2) which is to be served by him in the event of any such default, it shall not thereafter issue a warrant of commitment for any such default or for want of sufficient distress to satisfy such a sum unless—
- (a) he is already serving [<sup>F14</sup> a sentence of custody for life, or a term of imprisonment, youth custody, detention under section 9 of the Criminal Justice Act 1982] or detention in a detention centre; or
  - (b) the court has since the conviction inquired into his means in his presence on at least one occasion.
- (4) Where a magistrates' court is required by subsection (3) above to inquire into a person's means, the court may not on the occasion of the inquiry or at any time thereafter issue a warrant of commitment for a default in paying any such sum unless—
- (a) in the case of an offence punishable with imprisonment, the offender appears to the court to have sufficient means to pay the sum forthwith; or



*Status: Point in time view as at 01/04/1996.*

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- (b) the court—
  - (i) is satisfied that the default is due to the offender's wilful refusal or culpable neglect; and
  - (ii) has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful.

[<sup>F15</sup>(4A) The methods of enforcing payment mentioned in subsection (4)(b)(ii) above are—

- (a) a warrant of distress under section 76 above;
- (b) an application to the High Court or county court for enforcement under section 87 below;
- (c) an order under section 88 below;
- (d) an attachment of earnings order; and
- (e) if the offender is under the age of 21, an order under section 17 of the Criminal Justice Act 1982 (attendance centre orders).]

(5) After the occasion of an offender's conviction by a magistrates' court, the court shall not, unless—

- (a) the court has previously fixed a term of imprisonment under section 77(2) above which is to be served by the offender in the event of a default in paying a sum adjudged to be paid by the conviction; or
- (b) the offender is serving [<sup>F14</sup>a sentence of custody for life, or a term of imprisonment, youth custody, detention under section 9 of the Criminal Justice Act 1982]or detention in a detention centre,

issue a warrant of commitment for a default in paying the sum or fix such a term except at a hearing at which the offender is present.

[<sup>F16</sup>(5A) A magistrates' court may not issue a warrant of commitment under subsection (5) above at a hearing at which the offender is not present unless the clerk of the court has first served on the offender a notice in writing stating that the court intends to hold a hearing to consider whether to issue such a warrant and giving the reason why the court so intends.

(5B) Where after the occasion of an offender's conviction by a magistrates' court the court holds a hearing for the purpose of considering whether to issue a warrant of commitment for default in paying a sum adjudged to be paid by the conviction, it shall consider such information about the offender's means as is available to it unless it has previously—

- (a) inquired into the offender's means; and
- (b) postponed the issue of the warrant of commitment under section 77(2) above.

(5C) A notice under subsection (5A) above—

- (a) shall state the time and place appointed for the hearing; and
- (b) shall inform the offender that, if he considers that there are grounds why the warrant should not be issued, he may make representations to the court in person or in writing,

but the court may exercise its powers in relation to the issue of a warrant whether or not he makes representations.

(5D) Except as mentioned in subsection (5E) below, the time stated in a notice under subsection (5A) above shall not be earlier than 21 days after the issue of the notice.

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- (5E) Where a magistrates' court exercises in relation to an offender the power conferred by section 77(2) above and at the same hearing issues a notice under subsection (5A) above in relation to him, the time stated in the notice may be a time on any day following the end of the period for which the issue of the warrant of commitment has been postponed.
- (5F) A notice under subsection (5A) above to be served on any person shall be deemed to be served on that person if it is sent by registered post or the recorded delivery service 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.]
- (6) Where a magistrates' court issues a warrant of commitment on the ground that one of the conditions mentioned in subsection (1) or (4) above is satisfied, it shall state that fact, specifying the ground, in the warrant.

#### Textual Amendments

- F13** Words inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, **Sch. 14 para. 52(a)**
- F14** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, **Sch. 14 para. 52(b)**
- F15** [S. 82\(4A\)](#) added (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 61(3), 123(6), **Sch. 8 para. 16**
- F16** [S. 82\(5A\)–\(5F\)](#) added (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 61(4), 123(6), **Sch. 8 para. 16**

### 83 Process for securing attendance of offender for purposes of section 82.

- (1) A magistrates' court may, for the purpose of enabling inquiry to be made under section 82 above or for securing the attendance of an offender at a hearing required to be held by subsection (5) of that section—
- issue a summons requiring the offender to appear before the court at the time and place appointed in the summons; or
  - issue a warrant to arrest him and bring him before the court.
- (2) On the failure of the offender to appear before the court in answer to a summons under this section the court may issue a warrant to arrest him and bring him before the court.
- (3) A warrant issued under this section may be executed in like manner, and the like proceedings may be taken with a view to its execution, in any part of the United Kingdom, as if it had been issued under section 13 above.
- (4) Notwithstanding anything in section 125 below, a warrant under this section shall cease to have effect when the sum in respect of which the warrant is issued is paid to the police officer holding the warrant.

### 84 Power to require statement of means.

- (1) A magistrates' court may, either before or on inquiring into a person's means under section 82 above, and a justice of the peace acting for the same petty sessions area as that court may before any such inquiry, order him to furnish to the court within a period specified in the order such a statement of his means as the court may require.
- (2) A person who fails to comply with an order under subsection (1) above shall be liable on summary conviction to a fine not exceeding [<sup>F17</sup>level 3 on the standard scale].

*Status: Point in time view as at 01/04/1996.*

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- (3) If a person in furnishing any statement in pursuance of an order under subsection (1) above makes a statement which he knows to be false in a material particular or recklessly furnishes a statement which is false in a material particular, or knowingly fails to disclose any material fact, he shall be liable on summary conviction to imprisonment for a term not exceeding 4 months or a fine not exceeding [<sup>F17</sup>level 3 on the standard scale]or both.
- (4) Proceedings in respect of an offence under subsection (3) above may, notwithstanding anything in section 127(1) below, be commenced at any time within 2 years from the date of the commission of the offence or within 6 months from its first discovery by the prosecutor, whichever period expires the earlier.

#### Textual Amendments

**F17** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**

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

**C13** S. 84(2)-(4) applied (21.9.2004) by [Courts Act 2003 \(c. 39\)](#), **ss. 97(2), 110, Sch. 6 para. 2(4)**; [S.I. 2004/2195, art. 2](#)

**C14** S. 84(2)-(4) applied (21.9.2004) by [Courts Act 2003 \(c. 39\)](#), **ss. 97(2), 110, Sch. 6 para. 2(4)**; [S.I. 2004/2195, art. 2](#)

**C15** S. 84(2)-(4) applied (21.9.2004) by [Courts Act 2003 \(c. 39\)](#), **ss. 97(2), 110, Sch. 6 para. 2(4)**; [S.I. 2004/2195, art. 2](#)

#### [<sup>F18</sup>85] Power to remit fine.

- (1) Where a fine has been imposed on conviction of an offender by a magistrates' court, the court may at any time remit the whole or any part of the fine, but only if it thinks it just to do so having regard to a change of circumstances which has occurred—
  - (a) where the court is considering whether to issue a warrant of commitment after the issue of such a warrant in respect of the fine has been postponed under subsection (2) of section 77 above, since the relevant time as defined in subsection (4) of that section; and
  - (b) in any other case, since the date of the conviction.
- (2) Where the court remits the whole or part of the fine after a term of imprisonment has been fixed, it shall also reduce the term by an amount which bears the same proportion to the whole term as the amount remitted bears to the whole or, as the case may be, shall remit the whole term.
- (3) In calculating the reduction in a term of imprisonment required by subsection (2) above any fraction of a day shall be left out of account.
- (4) Notwithstanding the definition of “fine” in section 150(1) below, references in this section to a fine do not include any other sum adjudged to be paid on conviction, whether as a pecuniary penalty, forfeiture, compensation or otherwise.]

#### Textual Amendments

**F18** S. 85 substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), **ss. 61(5), 123(6), Sch. 8 para. 16**

*Status: Point in time view as at 01/04/1996.*

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

- C16** S. 85 modified by Road Traffic Offenders Act 1988 (c. 53, SIF 107:1), **ss. 71(8), 92**  
S. 85 restricted (3.2.1995) by 1994 c. 37, **ss. 9(4)(a), 69(2)** (with s. 66(2))

#### [<sup>F19</sup>85A Variation of instalments of sum adjudged to be paid by conviction.

Where under section 75 above a magistrates' court orders that a sum adjudged to be paid by a conviction shall be paid by instalments, the court, on an application made by the person liable to pay that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable, and the date on which any instalment becomes payable.]

#### Textual Amendments

- F19** S. 85A inserted by Criminal Justice Act 1982 (c. 48, SIF 39:1), **s. 51(1)**

#### 86 Power of magistrates' court to fix day for appearance of offender at means inquiry etc.

[<sup>F20</sup>(1) A magistrates' court which has exercised in relation to a sum adjudged to be paid by a conviction either of the powers conferred by section 75(1) above shall have power, either then or later, to fix a day on which, if the relevant condition is satisfied, the offender must appear in person before the court for either or both of the following purposes, namely—

- (a) to enable an inquiry into his means to be made under section 82 above;
- (b) to enable a hearing required by subsection (5) of the said section 82 to be held.

(1A) Where the power which the court has exercised is the power to allow time for payment of a sum ("the adjudged sum"), the relevant condition is satisfied if any part of that sum remains unpaid on the day fixed by the court.

(1B) Where the power which the court has exercised is the power to order payment by instalments, the relevant condition is satisfied if an instalment which has fallen due remains unpaid on the day fixed by the court.]

(2) Except as provided in subsection (3) below, the power to fix a day under this section shall be exercisable only in the presence of the offender.

(3) Where a day has been fixed under this section, the court may fix a later day in substitution for the day previously fixed, and may do so—

- (a) when composed of a single justice; and
- (b) whether the offender is present or not.

(4) Subject to subsection (5) below, if on the day fixed under this section—

- [<sup>F21</sup>(a) the relevant condition is satisfied; and]  
(b) the offender fails to appear in person before the court,

the court may issue a warrant to arrest him and bring him before the court; and subsection (3) and (4) of section 83 above shall apply in relation to a warrant issued under this section.

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- (5) Where under subsection (3) above a later day has in the absence of the offender been fixed in substitution for a day previously fixed under this section, the court shall not issue a warrant under this section unless it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that notice in writing of the substituted day was served on the offender not less than what appears to the court to be a reasonable time before that day.

**Textual Amendments**

- F20** S. 86(1)(1A)(1B) substituted for subsection (1) by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. [51\(2\)\(a\)](#)  
**F21** S. 86(4)(a) substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. [51\(2\)\(b\)](#)

**87 Enforcement of payment of fines by High Court and county court.**

- (1) Subject to the provisions of subsection (2) below, payment of a sum adjudged to be paid by a conviction of a magistrates' court may be enforced by the High Court or a county court (otherwise than by issue of a writ of fieri facias or other process against goods or by imprisonment or attachment of earnings) as if the sum were due to the clerk of the magistrates' court in pursuance of a judgment or order of the High Court or county court, as the case may be.

<sup>F22</sup>(2) .....

<sup>F23</sup>(2A) .....

- (3) The clerk of the magistrates' court shall not take proceedings by virtue of subsection (1) above to recover any sum adjudged to be paid by a conviction of the court from any person unless authorised to do so by the court after an inquiry under section 82 above into that person's means.
- (4) Any expenses incurred by the clerk of a magistrates' court in recovering any such sum shall be treated for the purposes of Part VI of the Justices of the <sup>M3</sup>Peace Act 1979 as expenses of the magistrates' courts committee.

**Textual Amendments**

- F22** S. 87(2) omitted (1.7.1991) by virtue of [S.I. 1991/724, art. 2\(8\)](#), [Sch. Pt.I](#) (with art. 12)  
**F23** S. 87(2A) omitted (1.7.1991) by virtue of [S.I. 1991/724, art. 2\(8\)](#), [Sch. Pt.I](#) (with art. 12)

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

- C17** S. 87 extended (1.7.1991) by [S.I. 1991/724, art. 2\(1\)\(j\)](#) (with art. 12)  
S. 87 modified (3.2.1995) by [1994 c. 37, ss. 9\(4\)\(b\)\(6\)](#), [69\(2\)](#) (with s. 66(2))

**Marginal Citations**

- M3** 1979 c. 55.

<sup>F24</sup>**87A Fines imposed on companies.**

- (1) Where—

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- (a) a magistrates' court has, or is treated by any enactment as having, adjudged a company by a conviction to pay a sum; and
- (b) the court has issued a warrant of distress under section 76(1) above for the purpose of levying the sum; and
- (c) it appears on the return to the warrant that the money and goods of the company are insufficient to satisfy the sum with the costs and charges of levying the same,

the clerk of the court may make an application in relation to the company under section 9 or 124 of the <sup>M4</sup>Insolvency Act 1986 (administration or winding up).

- (2) Any expenses incurred under subsection (1) above by the clerk of a magistrates' court shall be treated for the purposes of Part VI of the <sup>M5</sup>Justices of the Peace Act 1979 as expenses of the magistrates' courts committee.]

#### Textual Amendments

**F24** S. 87A inserted (E.W.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 62(1), 123(6), Sch. 8 para. 16

#### Marginal Citations

**M4** 1986 c. 45 (66).

**M5** 1979 c. 55 (82).

## 88 Supervision pending payment.

- (1) Where any person is adjudged to pay a sum by a summary conviction and the convicting court does not commit him to prison forthwith in default of payment, the court may, either on the occasion of the conviction or on a subsequent occasion, order him to be placed under the supervision of such person as the court may from time to time appoint.
- (2) An order placing a person under supervision in respect of any sum shall remain in force so long as he remains liable to pay the sum or any part of it unless the order ceases to have effect or is discharged under subsection (3) below.
- (3) An order under this section shall cease to have effect on the making of a transfer of fine order under section 89 below with respect to the sum adjudged to be paid and may be discharged by the court that made it, without prejudice in either case to the making of a new order.
- (4) Where a person under 21 years old has been adjudged to pay a sum by a summary conviction and the convicting court does not commit him to [<sup>F25</sup>detention under section 9 of the Criminal Justice Act 1982]forthwith in default of payment, the court shall not commit him to [<sup>F26</sup>to such detention]in default of payment of the sum, or for want of sufficient distress to satisfy the sum, unless he has been placed under supervision in respect of the sum or the court is satisfied that it is undesirable or impracticable to place him under supervision.
- (5) Where a court, being satisfied as aforesaid, commits a person under 21 years old to [<sup>F27</sup>such detention]without an order under this section having been made, the court shall state the grounds on which it is so satisfied in the warrant of commitment.



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- (6) Where an order placing a person under supervision with respect to a sum is in force, a magistrates' court shall not commit him to prison in default of payment of the sum, or for want of sufficient distress to satisfy the sum, unless the court has before committing him taken such steps as may be reasonably practicable to obtain from the person appointed for his supervision an oral or written report on the offender's conduct and means and has considered any report so obtained, in addition, in a case where an inquiry is required by section 82 above, to that inquiry.

#### Textual Amendments

- F25** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, [Sch. 14 para. 53\(a\)\(i\)](#)  
**F26** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, [Sch. 14 para. 53\(a\)\(ii\)](#)  
**F27** Words substituted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, [Sch. 14 para. 53\(b\)](#)

## 89 Transfer of fine order.

- (1) Where a magistrates' court has, or is treated by any enactment as having, adjudged a person by a conviction to pay a sum and it appears to the court that the person is residing in any petty sessions area other than that for which the court acted, the court may make a transfer of fine order, that is to say, an order making payments enforceable in the petty sessions area in which it appears to the court that he is residing; and that area shall be specified in the order.
- (2) As from the date on which a transfer of fine order is made with respect to any sum, all functions under this Part of this Act relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order, or the clerk of that court, shall be exercisable by a court acting for the petty sessions area specified in the order, or the clerk of that court, as the case may be, and not otherwise.
- [<sup>F28</sup>(2A) The functions of the court to which subsection (2) above relates shall be deemed to include the court's power to apply to the Secretary of State under any regulations made by him under section 24(1)(a) of the <sup>M6</sup>Criminal Justice Act 1991 (power to deduct fines etc. from income support).]
- (3) Where it appears to a court by which functions in relation to any sum are for the time being exercisable by virtue of a transfer of fine order that the person liable to pay the sum is residing in a petty sessions area other than that for which the court is acting, the court may make a further transfer of fine order with respect to that sum.
- (4) In this section and sections 90 and 91 below, references to this Part of this Act do not include references to section 81(1) above.

#### Textual Amendments

- F28** [S. 89\(2A\)](#) inserted (3.2.1995) by [1994 c. 33, s. 47\(1\)](#); [S.I. 1995/127, art. 2\(1\)](#), [Sch.1](#)

#### Marginal Citations

- M6** [1991 c. 53.](#)

*Status: Point in time view as at 01/04/1996.*

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## 90 Transfer of fines to Scotland or Northern Ireland.

- (1) Where a magistrates' court has, or is treated by any enactment as having, adjudged a person by a conviction to pay a sum, and it appears to the court that he is residing—
  - (a) within the jurisdiction of a court of summary jurisdiction in Scotland, or
  - (b) in any petty sessions district in Northern Ireland,
 the court may order that payment of the sum shall be enforceable by that court of summary jurisdiction or, as the case may be, in that petty sessions district.
- (2) An order under this section shall specify the court of summary jurisdiction by which or petty sessions district in which payment of the sum in question is to be enforceable; and if—
  - (a) that sum is more than £100 or is a fine originally imposed by the Crown Court or the sheriff court, and
  - (b) payment is to be enforceable in Scotland,
 the court to be so specified shall be the sheriff court.
- (3) Where an order is made under this section with respect to any sum, any functions under this Part of this Act relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or by the clerk of that court shall cease to be so exercisable.

[<sup>F29</sup>(3A) The functions of the court which shall cease to be exercisable by virtue of subsection (3) above shall be deemed to include the court's power to apply to the Secretary of State under regulations made by him under section 24(1)(a) of the Criminal Justice Act 1991 (power to deduct fines from income support).]

### Textual Amendments

**F29** S. 90(3A) inserted (E.W.) (3.2.1995) by 1994 c. 33, s. 47(2); S.I. 1995/127, art. 2(1), Sch.1

## 91 Transfer of fines from Scotland or Northern Ireland.

- (1) Where a transfer of fine order under section 403 of the <sup>M7</sup>Criminal Procedure (Scotland) Act 1975 or [<sup>F30</sup>Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981] provides that payment of a sum shall be enforceable in a specified petty sessions area in England and Wales, a magistrates' court acting for that area, and the clerk of that court, shall, subject to the provisions of this section, have all the like functions under this Part of this Act in respect of the sum (including power to make an order under section 89 or section 90 above) as if the sum were a sum adjudged to be paid by a conviction of that court and as if any order made under the said Act of 1975 or, as the case may be, [<sup>F31</sup>the said Order of 1981] in respect of the sum before the making of the transfer of fine order had been made by that court.
- (2) For the purpose of determining the period of imprisonment which may be imposed under this Act in default of payment of a fine originally imposed by a court in Scotland, Schedule 4 to this Act shall have effect as if for the Table set out in paragraph 1 there were substituted the Table set out in section 407 of the <sup>M8</sup>Criminal Procedure (Scotland) Act 1975.
- (3) Where a transfer of fine order under section 403 of the <sup>M9</sup>Criminal Procedure (Scotland) Act 1975 or [<sup>F32</sup>Article 95 of the Magistrates' Courts (Northern Ireland) Order 1981] provides for the enforcement in a petty sessions area in England and Wales

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of a fine originally imposed by the Crown Court, a magistrates' court acting for that area shall have all the like functions under this Part of this Act, exercisable subject to the like restrictions, as if it were the magistrates' court by which payment of the fine fell to be enforced by virtue of section 32(1) of the <sup>M10</sup>Powers of Criminal Courts Act 1973, and as if any order made under the said Act of 1975 or, as the case may be, [<sup>F33</sup>the said Order of 1981] in respect of the fine before the making of the transfer of fine order had been made by that court.

#### Textual Amendments

- F30** Words substituted by S.I. 1981/1675 (N.I. 26), art. 170(2), **Sch. 6 Pt. I para. 59(a)(i)**  
**F31** Words substituted by S.I. 1981/1675 (N.I. 26), art. 170(2), **Sch. 6 Pt. I para. 59(a)(ii)**  
**F32** Words substituted by S.I. 1981/1675 (N.I. 26), art. 170(2), **Sch. 6 para. 59(b)(i)**  
**F33** Words substituted by S.I. 1981/1675 (N.I. 26), art. 170(2), **Sch. 6 Pt. I para. 56(b)(ii)**

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

- C18** S. 91 amended by Criminal Justice (Scotland) Act 1980 (c. 62, SIF 39:1), s. 66  
S. 91 modified (S.) (1.4.1996) by 1995 c. 43, ss. 14(1), 50(2) and by 1995 c. 46, ss. 252(1), 309(2) (with s. 24(2))  
S. 91 amended (S.) (*prosp.*) by 1995 c. 20, ss. 70(2), 80(1) (with s. 113(1)) (which amending Act was repealed (S.) (1.4.1996) by 1995 c. 40, ss. 3(1), 6(1), 7(2), Sch. 3 para. 16(3), **Sch. 5**)

#### Marginal Citations

- M7** 1975 c. 21.  
**M8** 1975 c. 21.  
**M9** 1975 c. 21.  
**M10** 1973 c. 62.

*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 magistrates' court maintenance order;
  - an order under [<sup>F34</sup>section 23 of the Legal Aid Act 1988](contribution by legally assisted person to cost of his defence in a criminal case); or
  - an order for the payment of any of the taxes, contributions, premiums or liabilities specified in Schedule 4 to the <sup>M11</sup>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) . . . . . <sup>F35</sup>

*Status: Point in time view as at 01/04/1996.*

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#### Textual Amendments

- F34** Words substituted by virtue of [Legal Aid Act 1982 \(c. 44, SIF 77:1\)](#), [s. 14\(3\)](#) and [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), ss. 45(1), 47(2), [Sch. 5 para. 9](#)
- F35** [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](#)

#### Marginal Citations

- M11** [1970 c. 31](#).

### 93 Complaint for arrears.

- (1) Where default is made in paying a sum ordered to be paid by [<sup>F36</sup>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 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.
- (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—
  - [<sup>F37</sup>(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.]

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Magistrates' Courts Act 1980, Part III is up to date with all changes known to be in force on or before 26 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)*

- (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.

#### Textual Amendments

- F36** 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
- F37** 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)

- C19** S. 93 applied by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 24(6), 30, **Sch. 3 Pt. I para. 2(4)**
- C20** 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 [<sup>F38</sup>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

- F38** 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)

- C21** S. 94 applied by Legal Aid Act 1988 (c. 34, SIF 77:1), ss. 24(6), 30, **Sch. 3 Pt. I para. 2(4)**

## [<sup>F39</sup>94A Interest on arrears.

- (1) The [<sup>F40</sup>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 [<sup>F40</sup>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.

*Status: Point in time view as at 01/04/1996.*

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- (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.
- (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 [<sup>F40</sup>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

**F39** S. 94A inserted (1.4.1992) by Maintenance Enforcement Act 1991 (c. 17, SIF 49:3), s. 8; S.I. 1992/455, art.2

**F40** 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)

**C22** 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

#### [<sup>F41</sup>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.



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- (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 the clerk of the court or the clerk of any other magistrates' court;
  - (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, by such method of payment falling within section 59(6) above as may be specified;
  - (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; or
    - (iv) under Part I of the Civil Jurisdiction and Judgments Act 1982;
  - (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.]

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#### Textual Amendments

**F41** 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](#).

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

**C23** 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.

### [<sup>F42</sup>96A Application of Part III to persons aged 17 to 20.

This Part of this Act shall have effect in relation to a person [<sup>F43</sup>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 section 9 of the <sup>M12</sup>Criminal Justice Act 1982; and any reference to warrants of commitment, or to periods of imprisonment imposed for default, shall be construed accordingly.]

#### Textual Amendments

**F42** S. 96A inserted by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 77, [Sch. 14 para. 54](#)

**F43** 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](#)

#### Marginal Citations

**M12** 1982 c. 48 (39:1).

**Status:**

Point in time view as at 01/04/1996.

**Changes to legislation:**

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