

## SCHEDULES

### SCHEDULE 1

Section 10.

#### AMENDMENT OF CERTAIN ENACTMENTS RELATING TO MAINTENANCE ORDERS REGISTERED IN OR CONFIRMED BY MAGISTRATES' COURTS OR REGISTERED IN THE HIGH COURT

##### *The Maintenance Orders (Facilities for Enforcement) Act 1920 (c. 33)*

- 1 (1) In section 4 of the Maintenance Orders (Facilities for Enforcement) Act 1920 (power of court of summary jurisdiction to confirm maintenance order made out of UK), after subsection (5) there shall be inserted the following subsections—
- “(5A) Where a magistrates' court confirms a provisional order under this section, it shall at the same time exercise one of its powers under subsection (5B).
- (5B) The powers of the court 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) of the Magistrates' Courts Act 1980 (standing order, etc.) 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.
- (5C) In deciding which of the powers under subsection (5B) it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.
- (5D) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (5B) 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 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920, and”.
- (2) For subsection (6) of that section (which provides that where a provisional order is confirmed it may be varied or rescinded as if it had been made by the confirming court and includes power to remit the order to the court which made it) there shall be substituted the following subsections—
- “(6) Subject to subsection (6A), where a provisional order has been confirmed under this section, it may be varied or revoked in like manner as if it had originally been made by the confirming court.

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*Status: This is the original version (as it was originally enacted).*

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(6A) Where the confirming court is a magistrates' court, section 60 of the Magistrates' Courts Act 1980 (revocation, variation etc. of orders for periodical payment) shall have effect in relation to a provisional order confirmed under this section—

(a) as if in subsection (3) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920”;

(b) as if in subsection (4) for paragraph (b) there were substituted—

“(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court, by any method of payment falling within section 59(6) above (standing order, etc.)”; and as if after the words “the court” there were inserted “which made the order”;

(c) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920”;

(d) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;

(e) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920”;

(f) as if for subsections (9) and (10) there were substituted the following subsections—

“(9) In deciding, for the purposes of subsections (3) and (8) above, which of the powers under section 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920 it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsections (3) and (8) 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 4(5B) of the Maintenance Orders (Facilities for Enforcement) Act 1920, and”.

(6B) Where on an application for variation or revocation the confirming court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.”

In section 6 of that Act (mode of enforcing orders registered in or confirmed by courts under Act), in subsection (2) (which provides that if the order is of such a nature that if made by the court it would be enforceable as a magistrates' court maintenance order it shall be so enforceable), for the words “the order shall be so enforceable” there shall be substituted “the order shall, subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980 (enforcement of sums

adjudged to be paid and complaint for arrears) specified in subsections (2ZA) and (2ZB) of section 18 of the Maintenance Orders Act 1950 (enforcement of registered orders), be so enforceable”.

*The Maintenance Orders Act 1950 (c. 37)*

- 3 (1) In section 18 of the Maintenance Orders Act 1950 (enforcement of registered orders), in subsection (2) (orders registered in magistrates' courts to be enforceable as magistrates' courts maintenance orders) for the words “shall be enforceable” there shall be substituted “shall, subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980 specified in subsections (2ZA) and (2ZB) of this section, be enforceable”.
- (2) After that subsection there shall be inserted the following subsections—
- “(2ZA) Section 76 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—
- “(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 subsection (5) below.
- (5) The powers of the court 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 (standing order, etc.) 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.
- (6) In deciding which of the powers under subsection (5) 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) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (5) 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 76(5) below, and”.”
- (2ZB) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as if for paragraph (b) there were substituted—
- “(b) if the court is of the opinion that it is appropriate—
- (i) to make an attachment of earnings order; or
- (ii) to exercise its power under paragraph (b) of section 76(5) above.””

- 4 (1) In section 19 of that Act (functions of collecting officers, etc.), in subsection (2) (court to order that payments under maintenance order registered in court of summary jurisdiction in England or Northern Ireland be made to collecting officer, unless court satisfied it is undesirable to do so) for the words “unless it is satisfied that it is undesirable to do so” there shall be substituted “unless, in the case of a court of summary jurisdiction in Northern Ireland, it is satisfied that it is undesirable to do so”.
- (2) For subsection (3) of that section (order under subsection (2) may be varied or revoked) there shall be substituted the following subsection—
- “(3) An order made under subsection (2) of this section—
- (a) by a court of summary jurisdiction in England may be varied or revoked by an exercise of the powers conferred by virtue of section 18(2ZA) or section 22(1A) or (1E) of this Act;
- (b) by a court of summary jurisdiction in Northern Ireland may be varied or revoked by a subsequent order.”
- 5 In section 22 of that Act (discharge and variation of maintenance orders registered in summary or sheriff courts), after subsection (1) (power of registering court to vary rate of payments under order) there shall be inserted the following subsections—
- “(1A) The power of a magistrates' court in England and Wales to vary a maintenance order under subsection (1) of this section shall include power, if the court is satisfied that payment has not been made in accordance with the order, to vary the order by exercising one of its powers under subsection (1B) of this section.
- (1B) The powers of the court 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 in England and Wales;
- (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 in England and Wales, by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) 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.
- (1C) In deciding which of the powers under subsection (1B) of this section it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.
- (1D) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (1B) of this section 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 22(1B) of the Maintenance Orders Act 1950, and”.
- (1E) Subsections (4) to (11) of section 60 of the Magistrates' Courts Act 1980 (power of clerk and court to vary maintenance order) shall apply in relation to a maintenance order for the time being registered under this Part of this

Act in a magistrates' court in England and Wales as they apply in relation to a maintenance order made by a magistrates' court in England and Wales but—

- (a) as if in subsection (4) for paragraph (b) there were substituted—
  - “(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court, by any method of payment falling within section 59(6) above (standing order, etc.)”; and as if after the words “the court” there were inserted “which made the order”;
- (b) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of section 22(1B) of the Maintenance Orders Act 1950”;
- (c) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;
- (d) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “section 22(1B) of the Maintenance Orders Act 1950”;
- (e) as if for subsections (9) and (10) there were substituted the following subsections—

“(9) In deciding which of the powers under section 22(1B) of the Maintenance Orders Act 1950 it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (8) 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 22(1B) of the Maintenance Orders Act 1950, and”. ””

- 6 In section 24 of that Act (cancellation of registration), after subsection (5) (effect of cancellation of order registered in court of summary jurisdiction) there shall be inserted the following subsection—

“(5A) On the cancellation of the registration of a maintenance order registered in a magistrates' court in England and Wales, any order—

- (a) made in relation thereto by virtue of the powers conferred by section 18(2ZA) or section 22(1A) or (1E) of this Act, and
- (b) requiring payment to the clerk of a magistrates' court in England and Wales (whether or not by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980),

shall cease to have effect; but until the person liable to make payments under the maintenance order receives the prescribed notice of the cancellation, he shall be deemed to comply with the maintenance order if he makes payments in accordance with any such order which was in force immediately before the cancellation.”

*The Maintenance Orders Act 1958 (c. 39)*

- 7 In section 2 of the Maintenance Orders Act 1958 (registration of orders), for subsection (6) (section 19(1) to (4) of Maintenance Orders Act 1950 to have effect for the purposes of Part I) there shall be substituted the following subsections—

“(6) Where a magistrates' court order is registered under this Part of this Act in the High Court, then—

- (a) if payments under the magistrates' court order are required to be made (otherwise than to the clerk of a magistrates' court) by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), any order requiring payment by that method shall continue to have effect after registration;
- (b) any order by virtue of which sums payable under the magistrates' court order are required to be paid to the clerk of a magistrates' court (whether or not by any method of payment falling within section 59(6) of that Act) on behalf of the person entitled thereto shall cease to have effect.

(6ZA) Where a High Court or county court order is registered under this Part of this Act in a magistrates' court, then—

- (a) if a means of payment order (within the meaning of section 1(7) of the Maintenance Enforcement Act 1991) has effect in relation to the order in question, it shall continue to have effect after registration; and
- (b) in any other case, the magistrates' court shall order that all payments to be made under the order in question (including any arrears accrued before registration) shall be made to the clerk of the court or the clerk of any other magistrates' court.

(6ZB) Any such order as to payment—

- (a) as is referred to in paragraph (a) of subsection (6) of this section may be revoked, suspended, revived or varied by an exercise of the powers conferred by section 4A of this Act; and
- (b) as is referred to in paragraph (a) or (b) of subsection (6ZA) of this section may be varied or revoked by an exercise of the powers conferred by section 3(2A) or (2B) or section 4(2A), (5A) or (5B) of this Act.

(6ZC) Where by virtue of the provisions of this section or any order under subsection (6ZA)(b) of this section payments under an order cease to be or become payable to the clerk of a magistrates' court, the person liable to make the payments shall, until he is given the prescribed notice to that effect, be deemed to comply with the order if he makes payments in accordance with the order and any order under subsection (6ZA)(b) of this section of which he has received such notice.”

- 8 (1) In section 3 of that Act (enforcement of registered orders), in subsection (2) (order registered in magistrates' court to be enforceable as magistrates' court maintenance order) for the words “Subject to the provisions of the next following subsection” there shall be substituted “Subject to the provisions of subsections (2A) to (3) of this section”.

(2) After that subsection there shall be inserted the following subsections—

“(2A) Where an order registered in a magistrates' court is an order other than one deemed to be made by the High Court by virtue of section 1(2) of this Act, section 76 of the Magistrates' Courts Act 1980 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—

“(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) In deciding which of the powers under paragraphs (a) to (d) of section 59(3) above it is to exercise, the court shall have regard to any representations made by the debtor and the creditor (which expressions have the same meaning as they have in section 59 above).

(6) Subsection (4) of section 59 above shall apply for the purposes of subsection (4) above as it applies for the purposes of that section.”

(2B) Where an order registered in a magistrates' court is an order deemed to be made by the High Court by virtue of section 1(2) of this Act, sections 76 and 93 of the Magistrates' Courts Act 1980 (enforcement of sums adjudged to be paid and complaint for arrears) shall have effect subject to the modifications specified in subsections (2ZA) and (2ZB) of section 18 of the Maintenance Orders Act 1950 (enforcement of registered orders).”

9 (1) In section 4 of that Act (variation of orders registered in magistrates' courts), after subsection (2) (power of court to vary rate of payments under order) there shall be inserted the following subsections—

“(2A) The power of a magistrates' court to vary a registered order under subsection (2) of this section shall include power, if the court is satisfied that payment has not been made in accordance with the order, to vary the order by exercising one of its powers under paragraphs (a) to (d) of section 59(3) of the Magistrates' Courts Act 1980.

(2B) Subsection (4) of section 59 of that Act shall apply for the purposes of subsection (2A) of this section as it applies for the purposes of that section.

(2C) In deciding which of the powers under paragraphs (a) to (d) of section 59(3) of that Act it is to exercise, the court shall have regard to any representations made by the debtor and the creditor (which expressions have the same meaning as they have in section 59 of that Act).”

(2) After subsection (5) of that section there shall be inserted the following subsections—

“(5A) Subject to the following provisions of this section, subsections (4) to (11) of section 60 of the Magistrates' Courts Act 1980 (power of clerk and court to vary maintenance orders) shall apply in relation to a registered order (other than one deemed to be made by the High Court by virtue of section 1(2) of this Act) as they apply in relation to a maintenance order made by a magistrates' court (disregarding section 23(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 and section 15(2) of the Children Act 1989) but—

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*Status: This is the original version (as it was originally enacted).*

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- (a) as if in subsection (8) after the words “the court which may” there were inserted “subject to subsection (10) below”; and
  - (b) as if for subsections (9) and (10) there were substituted the following subsections—
    - “(9) Subsection (4) of section 59 above shall apply for the purposes of subsection (8) above as it applies for the purposes of that section.
    - (10) In deciding which of the powers under paragraphs (a) to (d) of section 59(3) above it is to exercise, the court shall have regard to any representations made by the debtor and the creditor.”
- (5B) Subject to the following provisions of this section, subsections (4) to (11) of section 60 of the Magistrates' Courts Act 1980 (power of clerk and court to vary maintenance orders) shall apply in relation to a registered order deemed to be made by the High Court by virtue of section 1(2) of this Act as they apply in relation to a maintenance order made by a magistrates' court (disregarding section 23(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 and section 15(2) of the Children Act 1989) but—
- (a) as if in subsection (4) for paragraph (b) there were substituted—
    - “(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court, by any method of payment falling within section 59(6) above (standing order, etc.)”; and as if after the words “the court” there were inserted “which made the order”;
  - (b) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of subsection (9) below”;
  - (c) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;
  - (d) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (9) below”;
  - (e) as if for subsections (9) and (10) there were substituted the following subsections—
    - “(9) The powers of the court 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 (standing order, etc.) 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.



- (10) In deciding which of the powers under subsection (9) above it is to exercise, the court shall have regard to any representations made by the debtor.
- (10A) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (9) 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 60(9) below”.’”
- (3) At the beginning of subsection (6A) of that section (no application for variation in respect of order deemed to be made by High Court by virtue of section 1(2) of Act) there shall be inserted the words “Except as provided by subsection (5B) of this section”.
- 10 After section 4 of that Act (variation of orders registered in magistrates' courts) there shall be inserted the following section—
- “4A Variation etc. of orders registered in the High Court**
- (1) The provisions of this section shall have effect with respect to orders registered in the High Court other than maintenance orders deemed to be made by a magistrates' court by virtue of section 1(4) of this Act, and the reference in subsection (2) of this section to a registered order shall be construed accordingly.
- (2) The High Court may exercise the same powers in relation to a registered order as are exercisable by the High Court under section 1 of the Maintenance Enforcement Act 1991 in relation to a qualifying periodical maintenance order (within the meaning of that section) which has been made by the High Court, including the power under subsection (7) of that section to revoke, suspend, revive or vary—
- (a) any such order as is referred to in paragraph (a) of section 2(6) of this Act which continues to have effect by virtue of that paragraph; and
- (b) any means of payment order (within the meaning of section 1(7) of that Act of 1991) made by virtue of the provisions of this section.”
- 11 In section 5 of that Act (cancellation of registration), for subsection (5) (effect of cancellation on order registered in magistrates' court) there shall be substituted the following subsections—
- “(5) On the cancellation of the registration of a High Court or county court order—
- (a) any order which requires payments under the order in question to be made (otherwise than to the clerk of a magistrates' court) by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 or section 1(5) of the Maintenance Enforcement Act 1991 (standing order, etc.) shall continue to have effect; and
- (b) any order made under section 2(6ZA)(b) of this Act or by virtue of the powers conferred by section 3(2A) or (2B) or section 4(2A), (5A) or (5B) of this Act and which requires payments under the order in question to be made to the clerk of a magistrates' court (whether or

not by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980) shall cease to have effect;

but, in a case falling within paragraph (b) of this subsection, until the defendant receives the prescribed notice of the cancellation he shall be deemed to comply with the High Court or county court order if he makes payment in accordance with any such order as is referred to in paragraph (b) of this subsection which was in force immediately before the cancellation and of which he has notice.

- (6) On the cancellation of the registration of a magistrates' court order—
- (a) any order which requires payments under the magistrates' court order to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 or section 1(5) of the Maintenance Enforcement Act 1991 (standing order, etc.) shall continue to have effect; and
  - (b) in any other case, payments shall become payable to the clerk of the original court;

but, in a case falling within paragraph (b) of this subsection, until the defendant receives the prescribed notice of the cancellation he shall be deemed to comply with the magistrates' court order if he makes payments in accordance with any order which was in force immediately before the cancellation and of which he has notice.

- (7) In subsections (5) and (6) of this section “High Court order” and “magistrates' court order” shall be construed in accordance with section 2(6A) of this Act.”

*The Maintenance Orders (Reciprocal Enforcement) Act 1972 (c. 18)*

12 In section 7 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 (confirmation by UK court of provisional maintenance order made in reciprocating country), after subsection (5) (registration etc. of order) there shall be inserted the following subsections—

“(5A) Where a magistrates' court in England and Wales confirms a provisional order under this section, it shall at the same time exercise one of its powers under subsection (5B) below.

- (5B) The powers of the court 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 in England and Wales;
  - (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 in England and Wales, by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) 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.

- (5C) In deciding which of the powers under subsection (5B) above it is to exercise, the court shall have regard to any representations made by the payer under the order.
- (5D) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (5B) 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 7(5B) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.
- 13 (1) In section 8 of that Act (enforcement of maintenance order registered in UK court), in subsection (4) (orders enforceable as magistrates' court maintenance orders) after the words “An order which by virtue of this section is enforceable by a magistrates' court shall” there shall be inserted “subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980 specified in subsections (4A) and (4B) below”.
- (2) After that subsection there shall be inserted the following subsections—
- “(4A) Section 76 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—
- “(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 subsection (5) below.
- (5) The powers of the court 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 (standing order, etc.) 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.
- (6) In deciding which of the powers under subsection (5) 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) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (5) 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 76(5) below, and”.
- (4B) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as if for paragraph (b) there were substituted—

- “(b) if the court is of the opinion that it is appropriate—
- (i) to make an attachment of earnings order; or
  - (ii) to exercise its power under paragraph (b) of section 76(5) above.”

14 In section 9 of that Act (variation and revocation of maintenance order registered in UK court), after subsection (1) (registering court to have same power to revoke or vary order as if order had been made by court, including power to revoke or vary order by way of provisional order) there shall be inserted the following subsection—

“(1ZA) Where the registering court is a magistrates' court in England and Wales, section 60 of the Magistrates' Courts Act 1980 (revocation, variation etc. of orders for periodical payment) shall have effect in relation to the registered order—

- (a) as if in subsection (3) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (3A) below” and after that subsection there were inserted—

“(3A) The powers of the court 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 (standing order, etc.) 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.”;
- (b) as if in subsection (4) for paragraph (b) there were substituted—
    - “(b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court, by any method of payment falling within section 59(6) above (standing order, etc.)”; and as if after the words “the court” there were inserted “which made the order”;
  - (c) as if in subsection (5) for the words “to the clerk” there were substituted “in accordance with paragraph (a) of subsection (3A) above”;
  - (d) as if in subsection (7), paragraph (c) and the word “and” immediately preceding it were omitted;
  - (e) as if in subsection (8) for the words “paragraphs (a) to (d) of section 59(3) above” there were substituted “subsection (3A) above”;
  - (f) as if for subsections (9) and (10) there were substituted the following subsections—

“(9) In deciding, for the purposes of subsections (3) and (8) above, which of the powers under subsection (3A) above

it is to exercise, the court shall have regard to any representations made by the debtor.

(10) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (3A) 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 60(3A) below, and”.”

15 (1) In section 27 of that Act (general provisions relating to application for recovery of maintenance in England, etc.), after subsection (7) there shall be inserted the following subsections—

“(7A) Where a magistrates' court in England and Wales makes an order on the complaint, section 59 of the Magistrates' Courts Act 1980 (orders for periodical payment: means of payment) and subsection (2) of section 32 of the Domestic Proceedings and Magistrates' Courts Act 1978 (extension of section 59) shall not apply, but the court shall, at the same time that it makes the order, exercise one of its powers under subsection (7B) below.

(7B) The powers of the court 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 in England and Wales;
- (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 in England and Wales, by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) 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.

(7C) In deciding which of the powers under subsection (7B) above it is to exercise, the court shall have regard to any representations made by the person liable to make payments under the order.

(7D) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (7B) 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 27(7B) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.”

(2) Subsection (9) of that section (payment to be in such manner and to such person as may be prescribed and certain enactments not to apply) shall cease to have effect.

16 In section 28 of that Act (complaint by spouse in convention country for recovery in England and Wales of maintenance from other spouse), after the word “18” there shall be inserted “20ZA”.

- 17 In section 28A of that Act (complaint by former spouse in convention country for recovery in England and Wales of maintenance from other spouse), in subsection (3) (modifications of 1978 Act), in paragraph (e) after the word “18” there shall be inserted “20ZA”.
- 18 (1) In section 33 of that Act (enforcement of orders), in subsection (3) (order registered in magistrates' court other than court by which order made enforceable as magistrates' court maintenance order), for the words “shall be enforceable” there shall be substituted “shall, subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980 (enforcement of sums adjudged to be paid and complaint for arrears) specified in subsections (4A) and (4B) of section 8 of this Act, be enforceable”.
- (2) After that subsection there shall be inserted the following subsection—
- “(3A) Where, by virtue of being registered in the magistrates' court in which it was made, a registered order is enforceable as a magistrates' court maintenance order, sections 76 and 93 of the Magistrates' Courts Act 1980 shall have effect subject to the modifications specified in subsections (4A) and (4B) of section 8 of this Act.”
- 19 (1) In section 34 of that Act (variation and enforcement of orders), at the beginning of subsection (1) (order registered in court other than court which made it variable as if made by registering court) there shall be inserted the words “Subject to section 34A of this Act”.
- (2) After that section there shall be inserted the following section—

**“34A Variation of orders by magistrates' courts in England and Wales**

- (1) The provisions of this section shall have effect in relation to a registered order which is registered in a magistrates' court in England and Wales (whether or not the court made the order) in place of the following enactments, that is to say—
- (a) subsections (3) to (11) of section 60 of the Magistrates' Courts Act 1980;
  - (b) section 20ZA of the Domestic Proceedings and Magistrates' Courts Act 1978; and
  - (c) paragraph 6A of Schedule 1 to the Children Act 1989.
- (2) The power of a magistrates' court in England and Wales to vary a registered 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 subsection (3) below.
- (3) The powers of the court 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 in England and Wales;
  - (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 in England and Wales, by such method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.) 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) In any case where—
- (a) a registered order is registered in a magistrates' court in England and Wales, and
  - (b) payments under the order are required to be made to the clerk of the court, or to the clerk of any other magistrates' court in England and Wales, by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.),
- an interested party may apply in writing to the clerk of the court in which the order is registered 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 in accordance with paragraph (a) of subsection (3) above.
- (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 an order, means the debtor or the creditor.
- (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 subsection (3) above.
- (9) In deciding, for the purposes of subsections (2) and (8) above, which of the powers under subsection (3) above it is to exercise, the court shall have regard to any representations made by the debtor.
- (10) Subsection (4) of section 59 of the Magistrates' Courts Act 1980 (power of court to require debtor to open account) shall apply for the purposes of subsection (3) 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 34A(3) of the Maintenance Orders (Reciprocal Enforcement) Act 1972, and”.
- (11) In this section “creditor” and “debtor” have the same meaning as they have in section 59 of the Magistrates' Courts Act 1980.”

20

In section 35 of that Act (further provisions with respect to variation etc. of orders by magistrates' courts), at the end of subsection (1) (court to have jurisdiction to hear application for variation or revocation notwithstanding one of the parties is outside England and Wales) there shall be inserted the words “but none of the powers of

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the court, or of the clerk of the court, conferred by section 34A of this Act shall be exercisable in relation to such an application”.

*The Civil Jurisdiction and Judgments Act 1982 (c. 27)*

21 (1) In section 5 of the Civil Jurisdiction and Judgments Act 1982 (recognition and enforcement of maintenance orders), in subsection (5A) (registered order enforceable as magistrates' court maintenance order), for the words “shall be enforceable” there shall be substituted “shall, subject to the modifications of sections 76 and 93 of the Magistrates' Courts Act 1980 specified in subsections (5B) and (5C) below, be enforceable”.

(2) After that subsection there shall be inserted the following subsections—

“(5B) Section 76 (enforcement of sums adjudged to be paid) shall have effect as if for subsections (4) to (6) there were substituted the following subsections—

“(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 subsection (5) below.

(5) The powers of the court 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 (standing order, etc.) 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.

(6) In deciding which of the powers under subsection (5) 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) Subsection (4) of section 59 above (power of court to require debtor to open account) shall apply for the purposes of subsection (5) 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 76(5) below, and”.

(5C) In section 93 (complaint for arrears), subsection (6) (court not to impose imprisonment in certain circumstances) shall have effect as if for paragraph (b) there were substituted—

- “(b) if the court is of the opinion that it is appropriate—
- (i) to make an attachment of earnings order; or
  - (ii) to exercise its power under paragraph (b) of section 76(5) above.”



SCHEDULE 2

Section 11(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Attachment of Earnings Act 1971 (c. 32)*

- 1
- (1) In section 3 of the Attachment of Earnings Act 1971 (application for attachment of earnings order and conditions of court's power to make it), in subsection (1) (persons who may apply for order), in paragraph (c) for the words "section 59(1)" there shall be substituted "section 59".
  - (2) Subsection (2) of that section (application, other than by debtor, for attachment of earnings order to secure maintenance payments not to be made unless at least 15 days have elapsed since maintenance order made) shall cease to have effect.
  - (3) At the beginning of subsection (3) of that section (attachment of earnings order not to be made, other than on application of debtor, unless one or more payments have not been made) there shall be inserted the words "Subject to subsection (3A) below".
  - (4) After that subsection there shall be inserted the following subsection—
    - "(3A) Subsection (3) above shall not apply where the relevant adjudication is a maintenance order."
  - (5) In subsection (4) of that section (power of court to make attachment of earnings order where certain enforcement proceedings brought), the words "subject to subsection (5) below" shall cease to have effect.
  - (6) Subsection (5) of that section (attachment of earnings order not to be made, other than on application of debtor, if debtor's failure to make payments is not due to his wilful refusal or culpable neglect) shall cease to have effect.

*The Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22)*

- 2
- In section 23 of the Domestic Proceedings and Magistrates' Courts Act 1978 (supplementary provisions with respect to variation and revocation of orders), in subsection (2) (power of magistrates' court under section 60 of 1980 Act to vary etc. order not to apply to order under Part I of Act)—
- (a) after the word "money" there shall be inserted "and the power of the clerk of a magistrates' court to vary such an order"; and
  - (b) after the word "and" there shall be inserted "the power of a magistrates' court".
- 3
- In section 32 of that Act (enforcement etc. of orders for payment of money), in subsection (2) (which applies section 59 of 1980 Act with modifications to orders under Part I of Act)—
- (a) for the words "subsection (2)" there shall be substituted "subsection (7)"; and
  - (b) for the words "the applicant for the order" there shall be substituted "the person who applied for the maintenance order".

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*Status: This is the original version (as it was originally enacted).*

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*The Justices of the Peace Act 1979 (c. 55)*

- 4 In section 29 of the Justices of the Peace Act 1979 (functions of justices' clerk as collecting officer), in subsection (3) (powers under section without prejudice to provisions of section 59 of 1980 Act)—
- (a) for the words “section 59” there shall be substituted “sections 59 and 59A”; and
  - (b) after the words “justices' clerk” there shall be inserted “and proceedings by the clerk, etc.”.

*The Magistrates' Courts Act 1980 (c. 43)*

- 5 In section 62 of the Magistrates' Courts Act 1980 (provisions as to payments required to be made to a child, etc), in subsection (1) (which permits payments to be made to person with whom child has his home and permits that person to request clerk of court, under section 59(3) of 1980 Act, to proceed for recovery of arrears), in sub-paragraph (ii) for the words “request the clerk to the magistrates' court, under subsection (3) of section 59 above” there shall be substituted “request or authorise the clerk of the magistrates' court under subsection (1) or subsection (2) respectively of section 59A above”.
- 6 In section 75 of that Act (power to dispense with immediate payment), after subsection (2) (power to order payment by instalments) there shall be inserted the following subsections—
- “(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.
- (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.”
- 7 In section 93 of that Act (complaint for arrears), in subsection (6) (court not to impose imprisonment in certain circumstances) for paragraphs (a) and (b) there shall be substituted—
- “(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

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- (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.”

8 For section 95 of that Act (power to remit arrears) there shall be substituted the following section—

**“95 Remission of arrears and manner in which arrears to be paid**

- (1) On the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a magistrates' court maintenance order, a magistrates' court may remit the whole or any part of the sum due under the order.
- (2) If, on the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a magistrates' court maintenance order, a magistrates' court orders that the whole or any part of the sum due under the order be paid by instalments (an “instalments order”), then—
  - (a) if the maintenance order is an English maintenance order, the court shall at the same time exercise one of its powers under paragraphs (a) to (d) of section 59(3) above in relation to the instalments order;
  - (b) if the maintenance order is a non-English maintenance order, the court shall at the same time exercise one of its powers under subsection (3) below in relation to the instalments order.
- (3) The powers of the court referred to in subsection (2)(b) above are—
  - (a) the power to order that payments under the order be made directly to 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) above as they apply for the purposes of that section.
- (6) In respect of a non-English maintenance order—

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- (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;”;
- (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.”

9 In section 143 of that Act (power to alter sums specified in certain provisions), in subsection (2) (which lists those provisions) after paragraph (d) there shall be inserted the following paragraph—

“(dd) section 59B(3) above;”.

*The Children Act 1989 (c. 41)*

10 In section 15 of the Children Act 1989 (orders for financial relief with respect to children), in subsection (2) (power of magistrates' court under section 60 of 1980 Act to vary etc. order not to apply to order under Schedule 1) after the word “money” there shall be inserted “and the power of the clerk of a magistrates' court to vary such an order”.

*The Courts and Legal Services Act 1990 (c. 41)*

11 (1) In section 10 of the Courts and Legal Services Act 1990 (family proceedings in magistrates' courts and related matters), for subsection (1) (meaning of “family proceedings”) there shall be substituted the following subsection—

“(1) In subsection (2) “family proceedings” means proceedings under Part I of the Domestic Proceedings and Magistrates' Courts Act 1978.”

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- (2) In subsection (2) of that section (which allows the same provision to be made by rules under section 144 of the 1980 Act in relation to family proceedings as may be made under section 93 of the Children Act 1989 in relation to relevant proceedings under that section) for the words from the beginning to “section 144 of that Act” there shall be substituted “Rules made under section 144 of the Magistrates' Courts Act 1980”.

### SCHEDULE 3

Section 11(2).

#### ENACTMENTS REPEALED

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1971 c. 32.	The Attachment of Earnings Act 1971.	In section 3, subsection (2), in subsection (4) the words “subject to subsection (5) below”, and subsection (5).
1972 c. 18.	The Maintenance Orders (Reciprocal Enforcement) Act 1972.	Section 27(9).
1980 c. 43.	The Magistrates' Courts Act 1980.	In Schedule 7, paragraph 97(b).
1989 c. 41.	The Children Act 1989.	In Schedule 13, paragraph 44(1).