



Maintenance Enforcement Act 1991

1991 CHAPTER 17

Magistrates' courts

3 Orders for periodical payment in magistrates' courts: proceedings by clerk and penalty for breach.

After section 59 of the ^{M1}Magistrates' Courts Act 1980 (orders for periodical payment: means of payment), as substituted by section 2 above, there shall be inserted the following sections—

“59A Orders for periodical payment: proceedings by clerk.

- (1) Where payments under a relevant UK order are required to be made periodically—
 - (a) to or through the clerk of a magistrates' court, or
 - (b) by any method of payment falling within section 59(6) above,and any sums payable under the order are in arrear, the clerk of the relevant court shall, if the person for whose benefit the payments are required to be made so requests in writing, and unless it appears to the clerk that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of those sums.
- (2) Where payments under a relevant UK order are required to be made periodically to or through the clerk of a magistrates' court, the person for whose benefit the payments are required to be made may, at any time during the period in which the payments are required to be so made, give authority in writing to the clerk of the relevant court for the clerk to proceed as mentioned in subsection (3) below.
- (3) Where authority under subsection (2) above is given to the clerk of the relevant court, the clerk shall, unless it appears to him that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of any sums payable to or through him under the order in question which, on or after the date of the giving of the authority, fall into arrear.
- (4) In any case where—

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- (a) authority under subsection (2) above has been given to the clerk of a relevant court, and
 - (b) the person for whose benefit the payments are required to be made gives notice in writing to the clerk cancelling the authority,
- the authority shall cease to have effect and, accordingly, the clerk shall not continue any proceedings already commenced by virtue of the authority.
- (5) The person for whose benefit the payments are required to be made shall have the same liability for all the costs properly incurred in or about proceedings taken under subsection (1) above at his request or under subsection (3) above by virtue of his authority (including any costs incurred as a result of any proceedings commenced not being continued) as if the proceedings had been taken by him.
- (6) Nothing in subsection (1) or (3) above shall affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under an order of any court.
- (7) In this section—
- “the relevant court”, in relation to an order, means—
- (a) in a case where payments under the order are required to be made to or through the clerk of a magistrates’ court, that magistrates’ court; and
 - (b) in a case where such payments are required to be made by any method of payment falling within section 59(6) above, the magistrates’ court which made the order or, if the order was not made by a magistrates’ court, the magistrates’ court in which the order is registered;
- “relevant UK order” means—
- (a) an order made by a magistrates’ court, other than an order made by virtue of Part II of the ^{M2}Maintenance Orders (Reciprocal Enforcement) Act 1972;
 - (b) an order made by the High Court or a county court (including an order deemed to be made by the High Court by virtue of section 1(2) of the ^{M3}Maintenance Orders Act 1958) and registered under Part I of that Act of 1958 in a magistrates’ court; or
 - (c) an order made by a court in Scotland or Northern Ireland and registered under Part II of the ^{M4}Maintenance Orders Act 1950 in a magistrates’ court;

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

59B Maintenance orders: penalty for breach.

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

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

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

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

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

“relevant English maintenance order” means—

- (a) a maintenance order made by a magistrates' court, other than an order made by virtue of Part II of the ^{M5}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 ^{M6}Maintenance Orders Act 1958) and registered under Part I of that Act of 1958 in a magistrates' court;

“relevant justice”, in relation to a relevant court, means a justice of the peace for the petty sessions area for which the relevant court is acting;

and any reference to payments required to be made periodically includes a reference to instalments required to be paid in respect of a lump sum payable by instalments.”

Commencement Information

II S. 3 wholly in force at 1.4.1992 see s. 12(2) and S.I. 1992/455, art. 2

Marginal Citations

M1 1980 c. 43.
M2 1972 c. 18.
M3 1958 c. 39.
M4 1950 c. 37.
M5 1972 c. 18.
M6 1958 c. 39.

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