



Maintenance Orders Act 1958

1958 CHAPTER 39

PART I

REGISTRATION, ENFORCEMENT AND VARIATION OF CERTAIN MAINTENANCE ORDERS

1 Application of Part I

- (1) The provisions of this Part of this Act shall have effect for the purpose of enabling maintenance orders to which this Part of this Act applies to be registered—
 - (a) in the case of an order made by the High Court or a county court, in a magistrates' court; and
 - (b) in the case of an order made by a magistrates' court, in the High Court, and, subject to those provisions, while so registered—
 - (i) to be enforced in like manner as an order made by the court of registration; and
 - (ii) in the case of an order registered in a magistrates' court, to be varied by a magistrates' court.
- (2) This Part of this Act applies to maintenance orders made by the High Court, a county court or a magistrates' court, other than orders registered under Part II of the Maintenance Orders Act, 1950.
- (3) Without prejudice to the provisions of section twenty-one of this Act, in this Part of this Act, unless the context otherwise requires, the following expressions have the following meanings—
 - " High Court order ", " county court order " and " magistrates' court order " mean an order made by the High Court, a county court or a magistrates' court, as the case may be;
 - " order " means a maintenance order to which this Part of this Act applies;
 - " original court " and " court of registration ", in relation to an order, mean the court by which the order was made or, as the case may be, the court in which the order is registered;
 - " registered " means registered in accordance with the provisions of this Part of this Act, and " registration " shall be construed accordingly;

and for the purposes of this Part of this Act an order for the payment by the defendant of any costs incurred in proceedings relating to a maintenance order, being an order for the payment of costs made while the maintenance order is not registered, shall be deemed to form part of that maintenance order.

2 Registration of orders

- (1) A person entitled to receive payments under a High Court or county court order may apply for the registration of the order to the original court, and the court may, if it thinks fit, grant the application.
- (2) Where an application for the registration of such an order is granted—
 - (a) no proceedings shall be begun, and no writ, warrant or other process shall be issued, for the enforcement of the order before the registration of the order or the expiration of the prescribed period from the grant of the application, whichever first occurs; and
 - (b) the original court shall, on being satisfied within the period aforesaid by the person who made the application that no such proceedings or process begun or issued before the grant of the application remain pending or in force, cause a certified copy of the order to be sent to the clerk of the magistrates' court acting for the petty sessions area in which the defendant appears to be;but if at the expiration of the period aforesaid the original court has not been so satisfied, the grant of the application shall become void.
- (3) A person entitled to receive payments under a magistrates' court order who considers that the order could be more effectively enforced if it were registered may apply for the registration of the order to the original court, and the court shall grant the application on being satisfied in the prescribed manner that, at the time when the application was made, an amount equal to not less, in the case of an order for weekly payments, than four or, in any other case, than two of the payments required by the order was due thereunder and unpaid.
- (4) Where an application for the registration of a magistrates' court order is granted—
 - (a) no proceedings for the enforcement of the order shall be begun before the registration takes place and no warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the grant of the application ;
 - (b) any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the grant of the application, unless the defendant has then already been detained in pursuance of the warrant; and
 - (c) the original court shall, on being satisfied in the prescribed manner that no process for the enforcement of the order issued before the grant of the application remains in force, cause a certified copy of the order to be sent to the prescribed officer of the High Court.
- (5) The officer or clerk of a court who receives a certified copy of an order sent to him under this section shall cause the order to be registered in that court.
- (6) Subsections (1) to (4) of section nineteen of the Maintenance Orders Act, 1950 (which provide for the suspension, while a magistrates' court order is registered under Part II of that Act, of any provision of the order requiring payments to be made through a third party, for ordering payments under an order so registered in a magistrates' court

to be paid through a collecting officer, and for authorising a person to make payments otherwise than in accordance with the requirements of that section until he has notice of those requirements) shall have effect for the purposes of this Part of this Act as if for any reference in that section to the said Part II and a maintenance order there were substituted a reference to this Part of this Act and a maintenance order to which this Part of this Act applies.

- (7) In this section "certified copy" in relation to an order of a court means a copy certified by the proper officer of the court to be a true copy of the order or of the official record thereof.

3 Enforcement of registered orders

- (1) Subject to the provisions of this section, a registered order shall be enforceable in all respects as if it had been made by the court of registration and as if that court had had jurisdiction to make it; and proceedings for or with respect to the enforcement of a registered order may be taken accordingly.
- (2) Subject to the provisions of the next following subsection, an order registered in a magistrates' court shall be enforceable as if it were an affiliation order; and the provisions of any enactment with respect to the enforcement of affiliation orders (including enactments relating to the accrual of arrears and the remission of sums due) shall apply accordingly.

In this subsection "enactment" includes any order, rule or regulation made in pursuance of any Act.

- (3) Where an order remains or becomes registered after the discharge of the order, no proceedings shall be taken by virtue of that registration except in respect of arrears which were due under the order at the time of the discharge and have not been remitted.
- (4) Except as provided by this section, no proceedings shall be taken for or with respect to the enforcement of a registered order.

4 Variation of orders registered in magistrates' courts

- (1) The provisions of this section shall have effect with respect to the variation of orders registered in magistrates' courts, and references in this section to registered orders shall be construed accordingly.
- (2) Subject to the following provisions of this section—
- (a) the court of registration may exercise the same jurisdiction to vary any rate of payments specified by a registered order (other than jurisdiction in a case where a party to the order is not present in England when the application for variation is made) as is exercisable, apart from this subsection, by the original court; and
 - (b) a rate of payments specified by a registered order shall not be varied except by the court of registration or any other magistrates' court to which the jurisdiction conferred by the foregoing paragraph is extended by rules of court.
- (3) A rate of payments specified by a registered order shall not be varied by virtue of the last foregoing subsection so as to exceed whichever of the following rates is the greater, that is to say—

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

- (a) the rate of payments specified by the order as made or last varied by the original court; or
 - (b) in the case of payments for the maintenance of a person as a party to a marriage (including a marriage which has been dissolved or annulled), five pounds a week and, in the case of payments for the maintenance of a child or children, thirty shillings a week in respect of each child.
- (4) If it appears to the court to which an application is made by virtue of subsection (2) of this section for the variation of a rate of payments specified by a registered order that, by reason of the limitations imposed on the court's jurisdiction by the last foregoing subsection or for any other reason, it is appropriate to remit the application to the original court, the first-mentioned court shall so remit the application, and the original court shall thereupon deal with the application as if the order were not registered.
- (5) Nothing in subsection (2) of this section shall affect the jurisdiction of the original court to vary a rate of payments specified by a registered order if an application for the variation of that rate is made to that court—
- (a) in proceedings for a variation of provisions of the order which do not specify a rate of payments; or
 - (b) at a time when a party to the order is not present in England.
- (6) No application for any variation of a registered order shall be made to any court while proceedings for any variation of the order are pending in any other court.
- (7) Where a magistrates' court, in exercise of the jurisdiction conferred by subsection (2) of this section, varies or refuses to vary a registered order, an appeal from the variation or refusal shall lie to the High Court; and so much of subsection (1) of section sixty-three of the Supreme Court of Judicature (Consolidation) Act, 1925, as requires an appeal from any court to the High Court to be heard and determined by a divisional court shall not apply to appeals under this subsection.

5 Cancellation of registration

- (1) If a person entitled to receive payments under a registered order desires the registration to be cancelled, he may give notice under this section.
- (2) Where the original court varies or discharges an order registered in a magistrates' court, the original court may, if it thinks fit, give notice under this section.
- (3) Where a magistrates' court discharges an order registered in the High Court and it appears to the magistrates' court, whether by reason of the remission of arrears by that court or otherwise, that no arrears under the order remain to be recovered, the magistrates' court shall give notice under this section.
- (4) Notice under this section shall be given to the court of registration ; and where such notice is given—
- (a) no proceedings for the enforcement of the registered order shall be begun before the cancellation of the registration and no writ, warrant or other process for the enforcement thereof shall be issued in consequence of any such proceedings begun before the giving of the notice;
 - (b) where the order is registered in a magistrates' court, any warrant of commitment issued for the enforcement of the order shall cease to have effect when the person in possession of the warrant is informed of the giving of the

- notice, unless the defendant has then already been detained in pursuance of the warrant; and
- (c) the court of registration shall cancel the registration on being satisfied in the prescribed manner—
 - (i) that no process for the enforcement of the registered order issued before the giving of the notice remains in force ; and
 - (ii) in the case of an order registered in a magistrates' court, that no proceedings for the variation of the order are pending in a magistrates' court.
- (5) On the cancellation of the registration of a High Court or county court order, any order made in relation thereto under subsection (2) of section nineteen of the Maintenance Orders Act, 1950, as applied by subsection (6) of section two of this Act, shall cease to have effect, but 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 payments in accordance with any order under the said subsection (2) as so applied which was in force immediately before the cancellation and of which he has notice.