
STATUTORY INSTRUMENTS

1959 No. 3

The Magistrates' Courts (Maintenance Orders Act, 1958) Rules 1959

PART II

PROCEDURE UNDER PART II OF THE ACT

Attachment of earnings order

10. An attachment of earnings order shall be in the form numbered 13 in the Schedule to these Rules.

Orders and notices to be served on and given to employer

11.—(1) Where a magistrates' court makes an attachment of earnings order or an order varying or discharging such an order, the clerk of the court shall cause a copy of the order to be served on the person to whom the order is directed and shall send a copy of the order to the defendant.

(2) Where an attachment of earnings order made by a magistrates' court ceases to have effect as provided in subsection (2) of section nine of the Act, the clerk of the administering court shall give notice in writing of the cessation to the person to whom the attachment of earnings order was directed.

Particulars of defendant

12. The particulars of the defendant for the purposes of enabling him to be identified which, so far as they are known, are to be included in an attachment of earnings order under subsection (3) of section six of the Act and which the defendant may be ordered to give to the court under subsection (1) of section eleven of the Act shall be—

- (a) full name and address;
- (b) age;
- (c) national insurance number;
- (d) place of work;
- (e) nature of work and works number, if any.

Defendant not employed by person to whom attachment of earnings order directed

13. A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time thereafter, has on no occasion during the period of four weeks immediately preceding that time been the defendant's employer shall forthwith, under subsection (4) of section ten of the Act, give notice to the court which made the order in the form numbered 14 in the Schedule to these Rules.

Notice of application for appropriate variation order

14. The clerk of a magistrates' court, by which an application under subsection (5) of section nine of the Act for the appropriate variation of an attachment of earnings order is to be heard, shall give notice in writing of the time and place appointed for the hearing of the application to such person entitled to receive payment under the related maintenance order as is specified by the attachment of earnings order.

Jurisdiction as respects complaints for the discharge and variation of attachment of earnings orders

15.—(1) This Rule shall apply to a complaint for the discharge or variation of an attachment of earnings order except where the related maintenance order—

- (a) is an affiliation order and jurisdiction is confined by paragraph (a) of subsection (2) of section eighty-eight of the Children and Young Persons Act, 1933, to courts having jurisdiction in the place where the person liable thereunder is residing;
- (b) is an order made under section eighty-seven of the Children and Young Persons Act, 1933;
- (c) is an order made under section forty-three of the National Assistance Act, 1948.

(2) Where a complaint is made to a justice of the peace acting for the same petty sessions area as the court which made the attachment of earnings order and it appears to him that—

- (a) the person in whose favour the attachment of earnings order was made, or
- (b) the person liable to make payments under the related maintenance order,

is for the time being in some petty sessions area other than that for which the justice is acting, or that the complainant is the clerk of a magistrates' court acting for such other area, then, if it appears to the justice that the complaint may be more conveniently dealt with by a magistrates' court acting for that other area, he may cause the clerk of the court to send the complaint by post to the clerk of the other court and for that purpose shall write down the complaint if this has not already been done.

(3) On receipt by the clerk of a magistrates' court of a complaint under the preceding paragraph, he shall bring the complaint before the court and the court shall issue a summons requiring the person appropriate under subsection (4) of section twenty of the Act to appear before it, and shall hear and determine the complaint.

Complaints for variation or discharge of attachment of earnings orders against persons outside United Kingdom

16.—(1) Where a complaint for the variation or discharge of an attachment of earnings order is made against a person who resides outside the United Kingdom and that person does not appear at the time and place appointed for the hearing of the complaint, then, subject to paragraph (2) of this Rule, the court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint in accordance with subsection (3) of section twenty of the Act if it is proved to the satisfaction of the court that the complainant has taken any of the following steps to give the person against whom the complaint is made notice of the complaint and of the time and place appointed for the hearing thereof, that is to say—

- (a) has caused written notice of the matters aforesaid to be delivered to the said person;
- (b) has caused written notice of the matters aforesaid to be sent by post addressed to the said person at his last known or usual place of abode or at his place of business or at such other address at which there is ground for believing that it will reach him; or
- (c) has caused notice of the matters aforesaid to be inserted in one or more newspapers on one or more occasions.

(2) Where it is proposed to take any such steps as are mentioned in sub-paragraph (b) or (c) of the preceding paragraph, the complainant shall apply for directions to a justice of the peace acting for the same petty sessions area as that of the court by which the complaint is to be heard, and the taking of such steps shall be effective for the purposes of this Rule only if they were taken in accordance with the directions given by the said justice.

(3) Paragraph (1) of Rule 55 of the Magistrates' Courts Rules, 1952, shall apply for the purpose of proving the delivery of a written notice in pursuance of sub-paragraph (a) of paragraph (1) of this Rule as it applies for the purpose of proving the service of a summons.

In relation to a solemn declaration made outside the United Kingdom, paragraph (1) of the said Rule 55, as applied by this paragraph, shall have effect as if for the reference to the authorities mentioned in the said paragraph (1) there were substituted a reference to a consular officer of Her Majesty's Government in the United Kingdom or any person for the time being authorised by law, in the place where the declarant is, to administer an oath for any judicial or other legal purpose.

(4) Paragraph (2) of the said Rule 55 shall apply for the purpose of proving the sending of a written notice in pursuance of sub-paragraph (b) of paragraph (1) of this Rule, or the insertion of a notice in a newspaper in pursuance of sub-paragraph (c) thereof, as it applies for the purpose of proving the service of any process, provided, as respects the insertion of a notice in a newspaper, that a copy of the newspaper containing the notice is annexed to the certificate.

Applications under section twelve of the Act

17.—(1) An application under section twelve of the Act, for a determination whether payments of a particular class or description are earnings for the purposes of an attachment of earnings order, shall be in writing and may be made by the applicant in person, by his solicitor or by such other person as may be authorised by him in that behalf.

(2) The parties to proceedings in pursuance of such an application as aforesaid shall be the person to whom the attachment of earnings order is directed, the person in whose favour the order is made and the person liable to make payments under the related maintenance order.

(3) Where such an application as aforesaid is made to a court and a justice of the peace acting for the same petty sessions area as the court determines that the application could more conveniently be dealt with by a magistrates' court acting for some other petty sessions area being an area where one of the parties is for the time being or an area where the person to whom the attachment of earnings order is directed trades or conducts business, he may cause the clerk of the court to send by post to the clerk of that other court the application together with the name and other particulars of each of the parties, and the clerk of that other court shall bring the application before that court.

(4) The clerk of the court by which such an application as aforesaid is to be heard—

- (a) shall serve written notice on the parties to the proceedings of the time and place appointed for the hearing of the application; and
- (b) shall, when the hearing is concluded, give written notice to the parties to the proceedings, of the determination of the court.

(5) A court may, if the applicant does not appear, dismiss such an application as aforesaid and shall not begin to hear such an application in the absence of any of the other parties to the proceedings unless it is proved to the satisfaction of the court, on oath or in the manner prescribed by Rule 55 of the Magistrates' Courts Rules, 1952, that the provisions of sub-paragraph (a) of the preceding paragraph of this Rule have been complied with.

Method of making payment under attachment of earnings order

18.—(1) A clerk of a magistrates' court to whom any payment under an attachment of earnings order is to be made shall notify the person to whom the order is directed and such person entitled to

receive payments under the related maintenance order as is specified by the attachment of earnings order of the hours during which, and the place at which, payments are, subject to the provisions of this Rule, to be made and received.

(2) If an employer makes any payment under an attachment of earnings order to a clerk of a magistrates' court by post, he shall do so at his own risk and expense.

(3) A clerk of a magistrates' court may send by post any payment under an attachment of earnings order to such person entitled thereto as is specified by the attachment of earnings order at the request and at the risk and expense of that person.

Payments under attachment of earnings order after imprisonment imposed

19.—(1) Where imprisonment or other detention has been imposed for the purpose of enforcing a maintenance order, the clerk of a magistrates' court to whom any payment under a related attachment of earnings order is to be made—

- (a) in relation to such a payment shall be a person authorised to receive the said payment for the purposes of subsection (2) of section sixty-seven of the Magistrates' Courts Act, 1952 (which relates to release from custody and reduction of detention on payment);
- (b) on receiving such a payment shall notify the person authorised for the purposes aforesaid by paragraph (1) of Rule 45 of the Magistrates' Courts Rules, 1952, of the sum received.

(2) Where a person receives notice of the receipt of a sum under the preceding paragraph of this Rule, he shall note the receipt of that sum on the warrant of commitment, if any, held by him.

Service of orders and notices

20. Where under section eleven of the Act (which relates to statements of earnings, etc.) an order is directed to the defendant or to a person appearing to be an employer of the defendant or where under this Part of these Rules a copy of an order is to be served or a notice is to be given to any person—

- (a) service may be effected on, or notice may be given to, a person other than a corporation by delivering it to the person to whom it is directed or by sending it by post in a letter addressed to him at his last known or usual place of abode or, in the case of a person appearing to be an employer of the defendant or of a person to whom the related attachment of earnings order is directed, at his place of business;
- (b) service may be effected on, or notice given to, a corporation by delivering the document at, or sending it to—
 - (i) such office or place as the corporation may, for the purpose of this Rule, have specified in writing to the court which made the order or the related attachment of earnings order in relation to the defendant or to the class or description of persons to which he belongs, or
 - (ii) the registered office of the corporation if that office is in England and Wales or, if there is no registered office in England and Wales, any place therein where the corporation trades or conducts its business.