
STATUTORY INSTRUMENTS

1981 No. 552

The Magistrates' Courts Rules 1981

ORDERS FOR PERIODICAL PAYMENTS

Method of making periodical payments

39.—(1) A magistrates' court ordering periodical payments to be made through a clerk of a magistrates' court under section 59 of the Act of 1980 shall notify the person required to make the payments of the hours during which, and the place at which, payments are to be made.

- (2) A clerk of a magistrates' court shall send any periodical payments by post to—
- (a) the person entitled to them; or
 - (b) if the person entitled to them is a child, to the child or to the person with whom the child has his home:

Provided that the clerk may—

- (a) at the request of the person entitled to the payments; or
- (b) if the person entitled to them is a child, at the request of the child or the person with whom the child has his home,

make other arrangements for making the payments.

(3) If a person makes any periodical payments to a clerk of a magistrates' court otherwise than in person at the clerk's office, he shall do so at his own risk and expense.

Duty of clerk to notify arrears of periodical payments

40. Where an order under section 59(1) of the Act requires periodical payments to be made to the clerk of a magistrates' court and the payments are at any time in arrears to an amount equal—

- (a) in the case of payments to be made monthly or less frequently, to twice the sum payable periodically; or
- (b) in any other case, to four times the sum payable periodically,

the clerk shall, unless it appears to him that it is unnecessary or inexpedient to do so, give to the person entitled to the payments or, if that person is a child, to the child or the person with whom the child has his home notice in writing stating the particulars of the arrears.

Revocation, variation, etc., of orders for periodical payments

41.—(1) This rule shall apply to a complaint for the revocation, discharge, revival, alteration or variation of an affiliation order or order enforceable as an affiliation order, but shall not apply—

- (a) where jurisdiction is confined by paragraph (a) of subsection (2) of section 88 of the Children and Young Persons Act 1933(1) to courts appointed for the commission area where the person liable is residing;

(1) 1933 c. 12; section 88 was amended by the [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), section 89(2)(a) and Schedule 2, paragraph 4.

- (b) where an order has been made under the proviso to subsection (4) of that section;
- (c) to a contribution order;
- (d) to a complaint for an order under section 26(4) of the Children Act 1948(2);
- (e) to a complaint for an order under section 22(1) of the Maintenance Orders Act 1950(3).

(2) A complaint to which this rule applies may be made to a justice of the peace acting for the same petty sessions area as the responsible court or to a justice of the peace acting for the petty sessions area where the complainant is for the time being.

(3) A justice of the peace shall not take action on a complaint to which this rule applies unless either the complainant has furnished him with written particulars—

- (a) of the nature of the evidence that the complainant proposes to adduce at the hearing of the complaint and the names and addresses and, if known to him, the occupations of his witnesses; and
- (b) of the occupations of the complainant and defendant and the address of the complainant and last address of the defendant known to the complainant,

or the justice is acting for the same petty sessions area as the responsible court and it appears to him that the last address of the defendant known to the complainant is within that area.

(4) Where a complaint to which this rule applies is made to a justice of the peace acting for the same petty sessions area as the responsible court, and it appears to him that either of the places stated in the said particulars as being the addresses of the complainant and defendant is within another petty sessions area, then, if the justice determines that the complaint could more conveniently be dealt with by a magistrates' court acting for that other petty sessions area, he shall cause the clerk of the responsible court to send by post to the clerk of that other court the complaint, the said particulars and a copy of any relevant record of reasons for a decision kept in pursuance of rule 36.

(5) Where the places stated in the said particulars as being the addresses of the complainant and the defendant appear to the justice to be outside the petty sessions area for which the justice is acting and in other and different petty sessions areas, the reference in the last preceding paragraph to another petty sessions area shall be construed as a reference to such one of those other areas aforesaid as appears to the justice convenient.

(6) On receipt by the clerk of a magistrates' court of a complaint, the particulars and a copy of any relevant record of reasons under paragraph (4), he shall bring the complaint before the court, and the court shall issue a summons requiring the defendant to appear before it, and shall hear and determine the complaint.

(7) Where a complaint to which this rule applies is made to a justice of the peace acting for a petty sessions area other than that for which the responsible court acts, the justice shall cause the clerk of the magistrates' court acting for that other petty sessions area to send the complaint, the said particulars and the said copy of any relevant record of reasons by post to the clerk of the responsible court; and the clerk of the responsible court shall bring the complaint before the court; and thereupon paragraphs (4) to (6) shall have effect as if the complaint had been made and the particulars and the copy of any relevant record of reasons furnished to a justice of the peace acting for the same petty sessions area as the responsible court.

(8) Notwithstanding the foregoing provisions of this rule, a justice to whom a complaint is made may refer the complaint to the responsible court which may, in such case or when the complaint is brought before the court in accordance with paragraph (6), cause the complaint, the particulars and the copy of any relevant record of reasons to be sent by post to the clerk of the court which made

(2) 1948 c. 43; section 26(4) was amended by the Domestic Proceedings and Magistrates' Courts Act 1978, section 89(2)(a) and Schedule 2, paragraph 8.

(3) 1950 c. 37; section 22(1) was amended by the Domestic Proceedings and Magistrates' Courts Act 1978, section 89(2)(a) and Schedule 2, paragraph 14.

the original order and that clerk and that court shall proceed in accordance with the provisions of paragraph (6).

(9) Where a magistrates' court makes an order on a complaint to which this rule applies affecting an order made by another magistrates' court or affecting an order under which payments are made to the clerk of another magistrates' court, the clerk of the first-mentioned court shall cause a copy of the order to be sent to the clerk of that other court.

(10) In this rule “responsible court” means—

- (a) where payments under the order are made to the clerk of a magistrates' court, that court;
- (b) where payments are not so made, the court which made the order.

Application for sums under affiliation order to be paid to person having custody of child

42. An application under section 5(3) of the Affiliation Proceedings Act 1957 shall be by complaint for an order.

Service of copy of order

43. Where a magistrates' court makes, revokes, discharges, suspends, revives, alters or varies an affiliation order or order enforceable as an affiliation order or allows time or further time for payment of a lump sum under any such order or orders payment of a lump sum under any such order to be paid by instalments or varies any such order for payment by instalments the court shall cause a copy of its order to be served on the defendant by delivering it to him or by sending it by post in a letter addressed to him at his last known or usual place of abode.

Remission of sums due under order

44.—(1) Before remitting the whole or any part of a sum due under an affiliation order or an order enforceable as an affiliation order under section 95 of the Act of 1980, the court shall, except save where it appears to it to be unnecessary or impracticable to do so, cause the person in whose favour the order is made or, if that person is a child, the child or the person with whom the child has his home to be notified of its intention and shall afford to such person a reasonable opportunity to make representations to the court, either orally at an adjourned hearing of the complaint for enforcement or in writing and such representations shall be considered by the court.

(2) Any written representations may be considered by the court if they purport to be signed by or on behalf of the person in whose favour the order is made or, if that person is a child, by or on behalf of the child or the person with whom the child has his home.

Duty of clerk to notify remarriage of person entitled to payments under a maintenance order

45.—(1) Where the clerk of a magistrates' court to whom any payments under an order to which this rule applies are required to be made is notified in writing by or on behalf of the person entitled to payments under such an order, the person liable to make payments under such an order or the personal representatives of either of those persons that the person so entitled has remarried, the clerk shall forthwith in writing so notify the clerk or other appropriate officer of each of the courts mentioned in paragraph (2) of which he is not the clerk.

(2) The courts referred to in paragraph (1) are—

- (a) any court which has made a relevant order or, in the case of a provisional order made under section 3 of the Maintenance Orders (Facilities for Enforcement) Act 1920(4) or

(4) 1920 c. 33.

section 3 of the Maintenance Orders (Reciprocal Enforcement) Act 1972⁽⁵⁾, the court which confirmed the order;

- (b) if a relevant order has been transmitted abroad for registration under section 2 of the said Act of 1920 or section 2 of the said Act of 1972 the court in which the order is registered, and
- (c) if a complaint for the enforcement of a relevant order has been sent to a court under rule 59(2), that court.

(3) This rule applies to an order in relation to which section 4(2) of the Act of 1978 applies, an order to which section 38 of the Matrimonial Causes Act 1973⁽⁶⁾ applies and an attachment of earnings order made to secure payments under either of the above-mentioned orders and in paragraph (2) “relevant order” means any such order to which the payments referred to in paragraph (1) relate.

⁽⁵⁾ 1972 c. 18.
⁽⁶⁾ 1973 c. 18.