
STATUTORY INSTRUMENTS

1981 No. 552

The Magistrates' Courts Rules 1981

SATISFACTION, ENFORCEMENT AND APPLICATION OF PAYMENTS

Notice to defendant of fine or forfeited recognizance

46.—(1) Where under section 32(1) of the Powers of Criminal Courts Act 1973, section 49 of the Criminal Justice Act 1967 or section 19(5) of the Coroners Act 1887(1) a magistrates' court is required to enforce payment of a fine imposed or recognizance forfeited by the Crown Court or by a coroner or where a magistrates' court allows time for payment of a sum adjudged to be paid by a summary conviction, or directs that the sum be paid by instalments, or where the offender is absent when a sum is adjudged to be paid by a summary conviction, the clerk of the court shall serve on the offender notice in writing stating the amount of the sum and, if it is to be paid by instalments, the amount of the instalments, the date on which the sum, or each of the instalments, is to be paid and the places and times at which payment may be made; and a warrant of distress or commitment shall not be issued until the preceding provisions of this rule have been complied with.

(2) A notice under this rule shall be served by delivering it to the offender or by sending it to him by post in a letter addressed to him at his last known or usual place of abode.

Registration and notification of financial penalty enforcement order

47.—(1) The clerk of a magistrates' court receiving a financial penalty enforcement order made by the Defence Council or an officer authorised by them shall cause the said order to be registered in his courts by means of a memorandum entered in the register kept pursuant to rule 66 and signed by him and shall send notice in writing to the Defence Council or the authorised officer, as appropriate, stating that the order has been so registered.

(2) Where a financial penalty enforcement order has been registered in accordance with the provisions of paragraph (1), the clerk shall forthwith serve on the person against whom the order was made a notice of registration in the prescribed form.

(3) A notice required by paragraph (2) shall be served on the person by delivering it to him or by sending it by post addressed to him at the address shown on the financial penalty enforcement order.

(4) In this rule “financial penalty enforcement order” means an order made under section 133A(1) of the Army Act 1955(2), section 133A(1) of the Air Force Act 1955(3) or section 128F(1) of the Naval Discipline Act 1957(4).

To whom payments are to be made

48.—(1) A person adjudged by the conviction or order of a magistrates' court to pay any sum shall, unless the court otherwise directs, pay that sum, or any instalment of that sum, to the clerk of the court.

(1) 1887 c. 71.

(2) 1955 c. 18; section 133A(1) was inserted by the [Armed Forces Act 1976 \(c. 52\)](#), section 16 and Schedule 8, paragraph 1.

(3) 1955 c. 19; section 133A(1) was inserted by the [Armed Forces Act 1976](#), section 16 and Schedule 8, paragraphs 1 and 2.

(4) 1957 c. 53; section 128F(1) was inserted by the [Armed Forces Act 1976](#), section 16 and Schedule 8, paragraphs 1 and 3.

(2) Where payment of any sum or instalment of any sum adjudged to be paid by the conviction or order of a magistrates' court is made to any person other than the clerk of the court, that person, unless he is the person to whom the court has directed payment to be made or, in the case of a child, is the person with whom the child has his home, shall, as soon as may be, account for and, if the clerk so requires, pay over the sum or instalment to the clerk of the court.

(3) Where payment of any sum adjudged to be paid by the conviction or order of a magistrates' court, or any instalment of such a sum, is directed to be made to the clerk of some other magistrates' court, the clerk of the court that adjudged the sum to be paid shall pay over any sums received by him on account of the said sum or instalment to the clerk of that other court.

Duty of clerk to give receipt

49. The clerk of a magistrates' court shall give or send a receipt to any person who makes a payment to him in pursuance of a conviction or order of a magistrates' court and who asks for a receipt.

Relief of collecting officer

50.—(1) Where a magistrates' court has ordered periodical payments to be made through the clerk of a magistrates' court, then, if it is proved that the person on whose behalf the order was made or, if that person is a child, the child or the person with whom the child has his home has persistently received the payments direct from the person liable to make them, the court that made the order may by order vary it so as to require the payments to be made direct.

(2) An order under this rule may be made—

- (a) on complaint by the clerk through whom payments were ordered to be made; or
- (b) on the hearing of a complaint to enforce the original order, if both parties are present.

Application for further time

51. An application under section 75(2) of the Act of 1980, section 22 of the Act of 1978, section 12B(5) of the Guardianship of Minors Act 1971⁽⁵⁾ or section 6A(5) of the Affiliation Proceedings Act 1957⁽⁶⁾ may, unless the court requires the applicant to attend, be made in writing.

Notice of date of hearing of means inquiry etc.

52. Where a magistrates' court, under subsection (1) of section 86 of the Act of 1980 (power of magistrates' court to fix pay for appearance of offender at means inquiry etc.), has fixed a day on which an offender must appear in person before the court and, under subsection (3) of that section, fixes a later day in substitution for the day previously fixed, service of the notice of the substituted day may be effected in any manner in which service of a summons may be effected under rule 99(1).

Notice to defendant before enforcing order

53.—(1) A warrant of distress shall not be issued for failure to pay a sum enforceable as a civil debt unless the defendant has been previously served with a copy of the minute of the order, or the order was made in his presence and the warrant is issued on that occasion.

(2) A warrant of commitment shall not be issued for disobedience to an order of a magistrates' court unless the defendant has been previously served with a copy of the minute of the order, or the order was made in his presence and the warrant is issued on that occasion:

(5) 1971 c. 3; section 128 was inserted by the [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22\)](#), section 43.

(6) 1957 c. 55; section 6A was inserted by the [Domestic Proceedings and Magistrates' Courts Act 1978](#), section 53.

Provided that this paragraph shall not apply to—

- (a) an order to pay money; or
- (b) an expedited order under section 16(2) and (6) of the Act of 1978.

(3) A copy of the minute of the order shall be served under this rule by delivering it to the defendant or by sending it to him by post in a letter addressed to him at his last known or usual place of abode.

(4) In relation to an order under section 16 of the Act of 1978 (other than an expedited order under subsections (2) and (6) of that section) paragraphs (2) and (3) shall have effect as if for the references to a copy of a minute of the order there were substituted references to a copy of the order.

Execution of distress warrant

54.—(1) A warrant of distress issued for the purpose of levying a sum adjudged to be paid by a summary conviction or order—

- (a) shall name or otherwise describe the person against whom the distress is to be levied;
- (b) shall be directed to the constables of the police area in which the warrant is issued or to the authorised persons for the police area specified in the warrant, or to a person named in the warrant and shall, subject to, and in accordance with, the provisions of this rule, require them to levy the said sum by distress and sale of the goods belonging to the said person;
- (c) may where it is directed to the constables of a police area, instead of being executed by any of those constables, be executed by any person under the direction of a constable.

(2) The warrant shall authorise the person charged with the execution of it to take as well any money as any goods of the person against whom the distress is levied; and any money so taken shall be treated as if it were the proceeds of the sale of goods taken under the warrant.

(3) The warrant shall require the person charged with the execution to pay the sum to be levied to the clerk of the court that issued the warrant.

(4) There shall not be taken under the warrant the wearing apparel or bedding of any person or his family or the tools and implements of his trade; so however that if the tools and implements of his trade exceed in value fifty pounds it shall be lawful to take such of the tools and implements as will leave in that person's possession tools and implements of his trade to the value of fifty pounds.

(5) The distress levied under any such warrant as aforesaid shall be sold within such period beginning not earlier than the 6th day after the making of the distress as may be specified in the warrant, or if no period is specified in the warrant, within a period beginning on the 6th day and ending on the 14th day after the making of the distress:

Provided that with the consent in writing of the person against whom the distress is levied the distress may be sold before the beginning of the said period.

(6) The said distress shall be sold by public auction or in such other manner as the person against whom the distress is levied may in writing allow.

(7) Notwithstanding anything in the preceding provisions of this rule, the said distress shall not be sold if the sum for which the warrant was issued and the charges of taking and keeping the distress have been paid.

(8) Subject to any direction to the contrary in the warrant, where the distress is levied on household goods, the goods shall not, without the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale; and so much of the goods shall be impounded as is in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark.

(9) The constable or other person charged with the execution of any such warrant as aforesaid shall cause the distress to be sold, and may deduct out of the amount realised by the sale all costs

and charges incurred in effecting the sale; and he shall return to the owner the balance, if any, after retaining the amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant.

(10) The constable or other person charged with the execution of any such warrant as aforesaid shall as soon as practicable send to the clerk of the court that issued it a written account of the costs and charges incurred in executing it; and the clerk shall allow the person against whom the distress was levied to inspect the account within one month after the levy of the distress at any reasonable time to be appointed by the court.

(11) If any person pays or tenders to the constable or other person charged with the execution of any such warrant as aforesaid the sum mentioned in the warrant, or produces a receipt for that sum given by the clerk of the court that issued the warrant, and also pays the amount of the costs and charges of the distress up to the time of the payment or tender or the production of the receipt, the constable or other person as aforesaid shall not execute the warrant, or shall cease to execute it, as the case may be.

Payment after imprisonment imposed

55.—(1) The persons authorised for the purposes of section 79(2) of the Act of 1980 to receive a part payment are—

- (a) unless there has been issued a warrant of distress or commitment, the clerk of the court enforcing payment of the sum, or any person appointed under section 88 of that Act to supervise the offender;
- (b) where the issue of a warrant of commitment has been suspended on conditions which provide for payment to be made to the clerk of some other magistrates' court, that clerk;
- (c) any constable holding a warrant of distress or commitment, or, where the warrant is directed to some other person, that person;
- (d) the governor or keeper of the prison or place in which the defaulter is detained, or other person having lawful custody of the defaulter:

Provided that—

- (i) the said governor or keeper shall not be required to accept any sum tendered in part payment under the said subsection (2) except on a week-day between 9 o'clock in the morning and 5 o'clock in the afternoon; and
- (ii) no person shall be required to receive in part payment under the said subsection (2) an amount which, or so much of an amount as, will not procure a reduction of the period for which the defaulter is committed or ordered to be detained.

(2) Where a person having custody of a defaulter receives payment of any sum he shall note receipt of the sum on the warrant of commitment.

(3) Where the clerk of a court other than the court enforcing payment of the sums receives payment of any sum he shall inform the clerk of the other court.

(4) Where a person appointed under section 88 of the Act of 1980 to supervise an offender receives payment of any sum, he shall send it forthwith to the clerk of the court which appointed him.

(5) If the period of imprisonment imposed on any person in default of payment of a sum adjudged to be paid by a conviction or order of a magistrates' court, or for want of sufficient distress to satisfy such a sum, is reduced through part payments to less than 5 days, he may be committed either to a prison or to a place certified by the Secretary of State under section 134 of the Act of 1980, or, if he is already in prison, the Secretary of State may transfer him to a place so certified.

Order for supervision

56.—(1) Unless an order under section 88(1) of the Act of 1980 is made in the offender's presence, the clerk of the court making the order shall deliver to the offender, or serve on him by post, notice in writing of the order.

(2) It shall be the duty of any person for the time being appointed under the said section to advise and befriend the offender with a view to inducing him to pay the sum adjudged to be paid and thereby avoid committal to custody and to give any information required by a magistrates' court about the offender's conduct and means.

Transfer of fine order

57.—(1) The clerk of a magistrates' court which has made a transfer of fine order under section 89 or 90 or section 90 as applied by section 91 of the Act of 1980 shall send to the clerk of the court having jurisdiction under the order a copy of the order with a statement of the offence and the steps, if any, taken to recover the sum adjudged to be paid, and with such further information as is available and is in the opinion of the first-mentioned clerk likely to assist the last-mentioned court.

(2) Where a magistrates' court has made a transfer of fine order in respect of a sum adjudged to be paid by a court in Scotland or in Northern Ireland the clerk of the magistrates' court shall send a copy of the order to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be.

(3) Where the clerk of a magistrates' court receives a copy of a transfer of fine order (whether made in England and Wales, or in Scotland or in Northern Ireland) specifying that court as the court by which payment of the sum in question is to be enforceable, he shall thereupon, if possible, deliver or send by post to the offender notice in writing in the prescribed form.

(4) Where under a transfer of fine order a sum adjudged to be paid by a Scottish court or by a Northern Irish court is enforceable by a magistrates' court—

- (a) if the sum is paid, the clerk of the magistrates' court shall send it to the clerk of the Scottish court or to the clerk of the Northern Irish court, as the case may be;
- (b) if the sum is not paid, the clerk of the magistrates' court shall inform the clerk of the Scottish court or the clerk of the Northern Irish court, as the case may be, of the manner in which the adjudication has been satisfied or that the sum, or any balance thereof, appears to be irrecoverable.

Civil debt: judgment summons

58.—(1) A summons issued on a complaint made for the purposes of section 96 of the Act of 1980 (in these rules referred to as a “judgment summons”) shall be served on the judgment debtor personally:

Provided that if a justice of the peace is satisfied by evidence on oath that prompt personal service of the summons is impracticable, he may allow the summons to be served in such a way as he may think just.

(2) Unless the judgment debtor appears and consents to an immediate hearing, the court shall not hear the complaint unless the summons was served at least 3 clear days before the hearing.

(3) Service of a judgment summons outside the commission area for which the justice issuing the summons acted may, without prejudice to any other provision of these rules enabling service of a summons to be proved, be proved by affidavit.

Enforcement of affiliation orders, etc.

59.—(1) Subject to the following provisions of this rule, a complaint for the enforcement of an affiliation order, or an order enforceable as an affiliation order, shall be heard by the court that made the order:

Provided that—

(a) where—

- (i) the complainant is the person in whose favour the order was made or, if that person is a child, is the child or the person with whom the child has his home; and
- (ii) the complainant resides in a petty sessions area other than that for which the court acts; and
- (iii) payment is directed to be made either to the complainant or the clerk of a magistrates' court acting for that petty sessions area,

the complaint may be heard by the last-mentioned court;

(b) where the complainant is the clerk of a magistrates' court, the complaint may be heard by that court.

(2) Where a complaint is made to a justice of the peace for the enforcement of such an order as aforesaid and it appears to him that the defendant is for the time being in some petty sessions area other than that for which the justice is acting and that the order may be more conveniently enforced by a magistrates' court acting for that area, the justice shall cause the clerk of the court to send the complaint by post to the clerk of a magistrates' court acting for that other petty sessions area, 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 sent under the last preceding paragraph, he shall bring it before the court; and the court shall issue a summons or warrant for procuring the appearance of the defendant before it, and shall hear and determine the complaint.

(4) If, after a complaint has been sent to the clerk of a magistrates' court under this rule, the clerk of the court to which the complaint was made receives any payment under the order, he shall forthwith send by post to the clerk to whom the complaint was sent a certificate of the amount of the payment and of the date when it was made.

(5) If, after a complaint has been sent as aforesaid, payment under the order is made, not to the clerk of the court to which the complaint was originally made, but to the person specified in the order or, in the case of a child, to the person with whom the child has his home, that person shall forthwith inform the clerk of the amount and date as aforesaid and the clerk shall forthwith send a certificate of the amount and date as required by the last preceding paragraph.

(6) A certificate under this rule purporting to be signed by the clerk of the court to which the complaint was originally made shall be admissible as evidence on the hearing of the complaint that the amount specified in the certificate was paid on the date so specified.

(7) This rule shall not apply—

- (a) where jurisdiction is confined by section 88(2)(a) of the Children and Young Persons Act 1933(7), to courts having jurisdiction in the place where the person liable is residing;
- (b) to a contribution order.

(7) 1933 c. 12; section 88 was amended by the Children and Young Persons Act 1969 (c. 54) section 72(3) and Schedule 5, paragraph 10 and the Domestic Proceedings and Magistrates' Courts' Act 1978 (c. 22), section 89(2)(a) and Schedule 2, paragraph 4.

Enforcement where periodical payments made under more than one order

60.—(1) Where periodical payments are required to be made to any person by another person under more than one periodical payments order, proceedings for the recovery of the payments may be brought by way of one complaint. Any such complaint shall indicate the payments due under each order referred to in the complaint.

(2) Any sum paid to the clerk of a magistrates' court on any date under 2 or more periodical payments orders by the person liable to make payments under the orders which is less than the total sum required to be paid on that date to that clerk by that person in respect of those orders (being orders one of which requires payments to be made for the benefit of a child to the person with whom the child has his home and one or more of which requires payments to be made to that person either for his own benefit or for the benefit of another child who has his home with him) shall be apportioned equally between the orders to the extent of the amount due under each order and if, as a result of the apportionment, the payments under any such order are no longer in arrears the residue shall be applied to the amount due under the other order or (if there is more than one other order) shall be apportioned equally in the same way between the other orders.

(3) In this rule—

“periodical payments order” means an order made by a magistrates' court, or registered in a magistrates' court under Part II of the Maintenance Orders Act 1950 or Part I of the Maintenance Orders Act 1958⁽⁸⁾, which requires the making of periodical payments,

and any payments required under a periodical payments order to be made to a child shall for the purposes of this rule be treated as if they were required to be made to the person with whom the child has his home.

Notice of adjudication on complaint for enforcement of affiliation order, etc.

61. A magistrates' court shall give notice in writing to the complainant of its adjudication on a complaint for the enforcement of an affiliation order, or order enforceable as an affiliation order, unless the complainant is present or is the clerk of the court.

Particulars relating to payment of lump sum under affiliation order, etc. to be entered in register

62. Where a magistrates' court allows time for payment of a lump sum required to be paid under an affiliation order, or order enforceable as an affiliation order, or orders that any such lump sum shall be paid by instalments or varies the number of instalments payable, the amount of any instalment payable or the date on which any instalment becomes payable, particulars thereof shall be entered in the register or in any separate record kept for the purpose of recording particulars of lump sum payments.

Notice of date of reception in custody and discharge

63.—(1) Where in proceedings to enforce an affiliation order, or an order enforceable as an affiliation order, the defendant is committed to custody, then on his discharge the governor or keeper of the prison or place of detention shall send to the clerk of the court that committed the defendant a certificate showing the dates of the defendant's reception and discharge; and that clerk shall, if the payments under the order are required to be made to the clerk of any other court, send the certificate to the last-mentioned clerk.

(2) Where a magistrates' court issues a warrant of commitment for a default in paying a sum adjudged to be paid by a summary conviction then on the discharge of the defaulter the governor of

(8) 1958 c. 39.

or keeper of the prison or place of detention shall send to the clerk of the court a certificate showing the dates of the defaulter's reception and discharge.

Direction that money found on defaulter shall not be applied in satisfaction of debt

64. Where the defaulter is committed to, or ordered to be detained in, a prison or other place of detention, any direction given under section 80(2) of the Act of 1980 shall be endorsed on the warrant of commitment.

Particulars of fine enforcement to be entered in register

65.—(1) Where the court on the occasion of convicting an offender of an offence issues a warrant of commitment for a default in paying a sum adjudged to be paid by the conviction or, having power to issue such a warrant, fixes a term of imprisonment under section 77(2) of the Act of 1980, the reasons for the court's action shall be entered in the register, or any separate record kept for the purpose of recording particulars of fine enforcement.

(2) There shall be entered in the register, or any such record, particulars of any—

- (a) means inquiry under section 82 of the Act of 1980;
- (b) hearing under subsection (5) of the said section 82;
- (c) allowance of further time for the payment of a sum adjudged to be paid by a conviction;
- (d) direction that such a sum shall be paid by instalments;
- (e) distress for the enforcement of such a sum;
- (f) attachment of earnings order for the enforcement of such a sum;
- (g) order under that Act placing a person under supervision pending payment of such a sum;
- (h) order under section 85(1) of that Act remitting the whole or any part of a fine;
- (i) order under section 120(4) of that Act remitting the whole or any part of any sum enforceable under that section (forfeiture of recognizance);
- (j) authority granted under section 87(3) of that Act authorising the taking of proceedings in the High Court or county court for the recovery of any sum adjudged to be paid by a conviction;
- (k) transfer of fine order made by the court;
- (l) order transferring a fine to the court;
- (m) order under section 32(1) of the Powers of Criminal Courts Act 1973 specifying the court for the purpose of enforcing a fine imposed or a recognizance forfeited by the Crown Court; and
- (n) any fine imposed or recognizance forfeited by a coroner which has to be treated as imposed or forfeited by the court.