CHAPTER 39

An Act to make provision for the registration in the High Court or a magistrates' court of certain maintenance orders made by the other of those courts or a county court and with respect to the enforcement and variation of registered orders; to make provision for the attachment of sums falling to be paid by way of wages, salary or other earnings or by way of pension for the purpose of enforcing certain maintenance orders; to amend section seventy-four of the Magistrates' Courts Act, 1952; to make provision for the review of committals to prison by magistrates' courts for failure to comply with maintenance orders; to enable Orders in Council under section twelve of the Maintenance Orders (Facilities for Enforcement) Act, 1920, to be revoked or varied; and for purposes connected with the matters aforesaid. [7th July, 1958]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

REGISTRATION, ENFORCEMENT AND VARIATION OF CERTAIN MAINTENANCE ORDERS

Application of Part I.

1.—(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,

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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.

Registration of orders.

2.—(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

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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

PART I —*cont.*

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.

Enforcement of registered orders.

3.—(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.

Variation of orders registered in magistrates' courts.

4.—(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—

(*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.

Cancellation of registration.

5.—(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.

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(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.

PART II

ATTACHMENT OF EARNINGS ORDERS

Powers of courts to make orders attaching earnings of defaulters under maintenance orders.

6.—(1) If, on the application of a person entitled to receive payments under a maintenance order, it appears to a court by which payment of any arrears under the order is enforceable—

(*a*) that, at the time when the application was made, there was due under the order and unpaid 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; and

(*b*) that the defendant is a person to whom earnings fall to be paid,

then, subject to the next following subsection, the court may, if it thinks fit, by an order or orders require the person to whom the order in question is directed, being a person appearing to the court to be the defendant's employer in respect of those earnings or a part thereof, to make out of those earnings or that part thereof payments in accordance with the Schedule to this Act; and any such order is in this Act referred to as an " attachment of earnings order ".

(2) The court shall not make an attachment of earnings order if it appears to the court that the failure of the defendant to make payments in accordance with the maintenance order in question was not due to his wilful refusal or culpable neglect.

(3) An attachment of earnings order shall—

(*a*) specify the normal deduction rate, that is to say, the rate at which, after taking into account any right or liability of the defendant to deduct income tax from payments made under the related maintenance order, the court making or varying the attachment of earnings order thinks it reasonable that the earnings to which that order relates should be applied from time to time in satisfying the requirements of the maintenance order, not exceeding the rate appearing to that court to be necessary for the purpose of—

(i) securing payment of the sums falling due from time to time under the maintenance order; and

(ii) securing payment within a reasonable period of any sums already due and unpaid under the maintenance order and any costs incurred in proceedings relating to the maintenance order which are payable by the defendant;

(*b*) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and needs of the defendant and the needs of persons for whom he must or reasonably may provide, the court aforesaid thinks it reasonable that the relevant earnings within the meaning of the Schedule to this Act should not be reduced by a payment made in pursuance of the attachment of earnings order;

(*c*) designate the officer to whom any payment under the said Schedule is to be made, being—

(i) if the order is made by the High Court, the registrar of such county court as may be specified by the order or, if the High Court thinks fit so to provide, the proper officer of the High Court;

PART II —*cont.*

(ii) if the order is made by a county court, the registrar of that court;

(iii) if the order is made by a magistrates' court and payments under the related maintenance order are for the time being required by an order under subsection (1) of section fifty-two of the Magistrates' Courts Act, 1952, to be made to the clerk of a magistrates' court, that clerk;

(iv) in any other case where the order is made by a magistrates' court, the clerk of that court; and

(*d*) contain, so far as they are known to the court making the order, such particulars as may be prescribed for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

(4) An attachment of earnings order shall not come into force until the expiration of seven days from the date when a copy of the order is served on the person to whom the order is directed.

(5) For the avoidance of doubt it is hereby declared that, in relation to a maintenance order made by the High Court, the reference in subsection (1) of this section to a court by which payment of any arrears under the order is enforceable includes a reference to a county court.

Powers of courts to make attachment of earnings orders in proceedings under other Acts.

7. Without prejudice to the powers to make attachment of earnings orders conferred by the last foregoing section, where proceedings are brought—

(*a*) in the High Court or a county court under section five of the Debtors Act, 1869 (which authorises the committal to prison of persons refusing or neglecting to pay certain debts which they have had the means to pay) in respect of a default in making payments under a maintenance order; or

(*b*) under the Magistrates' Courts Act, 1952, to enforce the payment of any sum ordered to be paid by a maintenance order,

and it appears to the court that, at the date when the proceedings were begun, such an amount as is mentioned in paragraph (*a*) of subsection (1) of the last foregoing section was due under the maintenance order and unpaid and that the defendant is a person to whom earnings fall to be paid, then, subject to subsection (2) of that section, the court may, if it thinks fit, make an attachment of earnings order instead of making any other order to enforce the making of payments under the maintenance order.

Restriction of issue of orders etc. of commitment on making of attachment of earnings orders.

8. Where an attachment of earnings order is made, no order or warrant of commitment shall be issued in consequence of any proceedings for the enforcement of the related maintenance order begun before the making of the attachment of earnings order.

PART II —*cont.*

Variation and discharge etc. of attachment of earnings orders.

9.—(1) The court by which an attachment of earnings order has been made may if it thinks fit, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

(2) An attachment of earnings order shall cease to have effect—

(*a*) upon the grant of an application under section two of this Act for the registration of the related maintenance order under Part I of this Act, notwithstanding that, in the case of an application under subsection (1) of that section, the grant may subsequently become void under subsection (2) thereof;

(*b*) where the related maintenance order is registered under the said Part I, upon the giving of notice with respect thereto under section five of this Act;

(*c*) upon the making of an order of commitment or the issue of a warrant of commitment for the enforcement of the related maintenance order, or upon the exercise for that purpose of the power conferred on a magistrates' court by subsection (2) of section sixty-five of the Magistrates' Courts Act, 1952, to postpone the issue of such a warrant;

(*d*) upon the discharge of the related maintenance order while it is not registered under Part I of this Act;

(*e*) upon the related maintenance order ceasing to be registered in a court in England, or becoming registered in a court in Scotland or Northern Ireland, under Part II of the Maintenance Orders Act, 1950;

and where an attachment of earnings order ceases to have effect as aforesaid the proper officer of the prescribed court shall give notice of the cessation to the person to whom the order was directed:

Provided that where the related maintenance order is discharged as mentioned in paragraph (*d*) of this subsection and it appears to the court discharging the order that arrears thereunder will remain to be recovered after the discharge, that court may, if it thinks fit, direct that this subsection shall not apply.

(3) Where notice is given to a court in pursuance of subsection (4) of the next following section, the court shall discharge the attachment of earnings order to which the notice relates.

(4) Where at any time it appears to the officer designated in pursuance of paragraph (*c*) of subsection (3) of section six of this

PART II —*cont.*

Act by an attachment of earnings order made by the High Court or a county court that—

(*a*) the aggregate of the payments made for the purposes of the related maintenance order by the defendant (whether under the attachment of earnings order or otherwise) exceeds the aggregate of the payments required up to that time by the maintenance order; and

(*b*) the normal deduction rate specified by the attachment of earnings order (or where two or more such orders are in force in relation to the maintenance order, the aggregate of the normal deduction rates specified by those orders) exceeds the rate of payments required by the maintenance order; and

(*c*) no proceedings for the variation or discharge of the attachment of earnings order are pending,

the said officer shall give the prescribed notice to the person to whom he is required to pay sums received under the attachment of earnings order and to the defendant, and the court which made that order—

(i) shall make the appropriate variation order unless the defendant requests the court in the prescribed manner and before the expiration of the prescribed period to proceed under the following paragraph and the court decides to proceed thereunder;

(ii) if the court decides to proceed under this paragraph, shall make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks fit.

In this and the next following subsection "the appropriate variation order" means an order varying the attachment of earnings order in question by reducing the normal deduction rate specified thereby so as to secure that that rate (or, in the case mentioned in paragraph (*b*) of this subsection, the aggregate of the rates therein mentioned) is the same as the rate of payments required by the maintenance order or is such lower rate as the court thinks fit having regard to the amount of the excess mentioned in paragraph (*a*) of this subsection.

(5) Where at any time it appears to the officer designated as aforesaid by an attachment of earnings order made by a magistrates' court that the conditions specified in paragraphs (*a*) to (*c*) of the last foregoing subsection are satisfied, that officer shall make an application to that court for the appropriate variation order, and the court—

(*a*) shall grant the application unless the defendant appears at the hearing thereof and requests the court to proceed

under the following paragraph and the court decides to proceed thereunder;

(*b*) if the court decides to proceed under this paragraph, shall make an order either discharging the attachment of earnings order or varying that order in such manner as the court thinks fit.

(6) An order varying an attachment of earnings order shall not come into force until the expiration of seven days from the date when a copy of the first-mentioned order is served on the person to whom the attachment of earnings order is directed; and where an attachment of earnings order ceases to have effect under subsection (2) of this section, or is discharged otherwise than under subsection (3) thereof, the said person shall not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date when the notice required by the said subsection (2) or, as the case may be, a copy of the discharging order is served on him.

Liabilities of persons to whom attachment of earnings orders are directed.

10.—(1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other enactment but subject to the following provisions of this Act, comply with the order or, if the order is subsequently varied under the last foregoing section, with the order as so varied.

(2) Where on any occasion on which earnings fall to be paid to a defendant there are in force two or more attachment of earnings orders relating to those earnings, then, for the purpose of complying with the Schedule to this Act, the employer shall—

(*a*) deal with those orders according to the respective dates on which they came into force, disregarding any later order until any earlier order has been dealt with;

(*b*) deal with any later order as if the earnings to which it relates were the residue of the defendant's earnings after the making of any payment under the said Schedule in pursuance of any earlier order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under the said Schedule shall give to the defendant a statement in writing specifying the amount of that payment.

(4) 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 give notice in writing in the prescribed form to the court which made the order.

PART II —*cont.*

Powers of courts to obtain statements of earnings, etc.

11.—(1) Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or at the hearing and, in the case of proceedings brought in a magistrates' court, any justice of the peace acting for the same petty sessions area as that court may before the hearing—

(*a*) order the defendant to give to the court, within such period as may be specified by the order, a statement signed by him of—

(i) the name and address of his employer, or of each of his employers if he has more than one;

(ii) such particulars as to the defendant's earnings as may be so specified; and

(iii) such prescribed particulars as may be so specified for the purpose of enabling the defendant to be identified by any employer of his;

(*b*) order any person appearing to the court or justice to be an employer of the defendant to give to the court, within such period as may be specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order of all earnings of the defendant which fell to be paid by that person during such period as may be so specified.

(2) A document purporting to be such a statement as is mentioned in the foregoing subsection shall, in any such proceedings as are so mentioned, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.

Powers of courts to determine whether payments are earnings.

12.—(1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed or of the defendant or of the person in whose favour the order was made, determine whether payments to the defendant of a particular class or description specified by the application are earnings for the purposes of that order; and the person to whom the order is directed shall be entitled to give effect to any determination for the time being in force under this subsection.

(2) A person to whom an attachment of earnings order is directed who makes an application under the foregoing subsection shall not incur any liability for failing to comply with the order as respects any payments of the class or description specified by the application which are made by him to the defendant while the application, or any appeal in consequence thereof, is pending:

Provided that this subsection shall not apply as respects such payments if the said person subsequently withdraws the application or, as the case may be, abandons the appeal.

Miscellaneous provisions as to payments under attachment of earnings orders.

13.—(1) The officer to whom an employer pays any sum in pursuance of an attachment of earnings order shall pay that sum in accordance with rules of court to such person entitled to receive payments under the related maintenance order as is specified by the attachment of earnings order.

(2) Any sums received by virtue of an attachment of earnings order by the person aforesaid shall be deemed to be payments made by the defendant, with such deductions (if any) in respect of income tax as he is entitled or required to make, so as to discharge first any sums for the time being due and unpaid under the related maintenance order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the maintenance order which were payable by the defendant when the attachment of earnings order was made or last varied.

(3) On any occasion on which an employer makes a payment under the Schedule to this Act in respect of a defendant, the employer may, notwithstanding anything in any other enactment, retain for his own use out of any balance of the defendant's earnings remaining after the making of that payment the sum of sixpence or, if on that occasion the employer makes such payments in pursuance of two or more attachment of earnings orders relating to the defendant, the sum of sixpence in respect of each such payment.

Application of Part II to earnings paid by the Crown, etc.

14.—(1) In relation to earnings falling to be paid by the Crown or a Minister of the Crown or out of the public revenue of the United Kingdom, this Part of this Act shall have effect subject to the following modifications, that is to say—

(*a*) the earnings shall be treated as falling to be paid by the chief officer for the time being of the department, office or other body concerned; and

(*b*) the next following section shall not apply except in relation to a failure by the defendant to comply with an order under section eleven of this Act.

(2) If any question arises, in connection with any proceedings relating to an attachment of earnings order, as to what department, office or other body is concerned for the purposes of this section, or as to who for those purposes is the chief officer thereof, that question shall be referred to and determined by the Treasury, but the Treasury shall not be under any obligation to consider a reference under this subsection unless it is made by a court.

(3) A document purporting to set out a determination of the Treasury under the last foregoing subsection and to be signed by an official of the Treasury shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence

PART II —*cont.*

and deemed to contain an accurate statement of such a determination unless the contrary is shown.

(4) Subsection (2) of section two hundred and three of the Army Act, 1955, and subsection (2) of section two hundred and three of the Air Force Act, 1955 (which restrict the powers of courts to make orders attaching, among other things, pension payable in respect of service in Her Majesty's military and air forces) shall not apply to the making or variation of attachment of earnings orders.

Offences.

15.—(1) A person who—

(*a*) fails to comply with subsection (1) or subsection (4) of section ten of this Act or an order of a magistrates' court or justice of the peace under section eleven thereof; or

(*b*) gives such a notice as is mentioned in the said subsection (4), or a statement in pursuance of such an order as aforesaid, which he knows to be false in a material particular; or

(*c*) recklessly gives such a notice or statement which is false in a material particular.

shall, subject to the following subsection, be liable on summary conviction to a fine not exceeding ten pounds and in the case of a second or subsequent conviction (being, in the case of a failure to comply with the said subsection (1), a second or subsequent conviction relating to the same attachment of earnings order) to a fine not exceeding twenty-five pounds.

(2) It shall be a defence for a person charged with failing to comply with the said subsection (1) to prove that he took all reasonable steps to comply with the attachment of earnings order to which the failure relates.

PART III

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

Amendment of 15 & 16 Geo. 6. & 1 Eliz. 2. c. 55, s. 74.

16.—(1) Section seventy-four of the Magistrates' Courts Act, 1952 (which relates to the enforcement of payments under affiliation orders and orders enforceable as affiliation orders) shall have effect, in relation to complaints under that section made on or after the date on which this section comes into operation and to proceedings in pursuance of such complaints, as if for subsections (3) to (7) thereof there were substituted the following subsections, that is to say—

" (3) In relation to complaints under this section, section forty-seven of this Act shall not apply and section forty-eight

thereof shall have effect as if the words " if evidence has been received on a previous occasion " were omitted.

(4) Where at the time and place appointed for the hearing or adjourned hearing of a complaint under this section the complainant appears but the defendant does not, the court may proceed in his absence:

Provided that the court shall not begin to hear the complaint in the absence of the defendant unless either it is proved to the satisfaction of the court, on oath, or in such other manner as may be prescribed, that the summons was served on him within what appears to the court to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer the complaint.

(5) If a complaint under this section is substantiated on oath, any justice of the peace acting for the same petty sessions area as a court having jurisdiction to hear the complaint may issue a warrant for the defendant's arrest, whether or not a summons has been previously issued.

(6) A magistrates' court shall not impose imprisonment in respect of a default to which a complaint under this section relates unless the court has inquired in the presence of the defendant whether the default was due to the defendant's wilful refusal or culpable neglect, and shall not impose imprisonment as aforesaid if it is of opinion that the default was not so due; and, without prejudice to the foregoing provisions of this subsection, a magistrates' court shall not impose imprisonment as aforesaid—

(*a*) in a case in which the court has power to make an attachment of earnings order under the Maintenance Orders Act, 1958, unless the court is of opinion that it is inappropriate to make such an order;

(*b*) in any case, in the absence of the defendant.

(7) Notwithstanding anything in subsection (3) of section sixty-four of this Act, the period for which a defendant may be committed to prison under a warrant of commitment issued in pursuance of a complaint under this section shall not exceed six weeks.

(8) The imprisonment or other detention of a defendant under a warrant of commitment issued as aforesaid shall not operate to discharge the defendant from his liability to pay the sum in respect of which the warrant was issued."

(2) Subsections (7) and (8) of the said section seventy-four as amended by the foregoing subsection shall have effect in relation to a warrant of commitment issued on or after the date on which

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this section comes into operation in pursuance of a complaint under that section made before that date (not being a warrant of which the issue was postponed before that date by virtue of section sixty-five of the said Act of 1952) as those subsections have effect in relation to a warrant of commitment issued in pursuance of such a complaint made after that date.

Prohibition of committal more than once in respect of same arrears.

17. Where a defendant has been imprisoned or otherwise detained under an order or warrant of commitment issued in respect of his failure to pay a sum due under a maintenance order, then, notwithstanding anything in this Act, no such order or warrant (other than a warrant of which the issue has been postponed under paragraph (ii) of subsection (5) of the next following section) shall thereafter be issued in respect of that sum or any part thereof.

Powers of magistrates to review committals, etc.

18.—(1) Where, for the purpose of enforcing a maintenance order, a magistrates' court has exercised its power under subsection (2) of section sixty-five of the Magistrates' Courts Act, 1952, or this section to postpone the issue of a warrant of commitment and under the terms of the postponement the warrant falls to be issued, then—

(*a*) the warrant shall not be issued except in pursuance of subsection (2) or paragraph (*a*) of subsection (3) of this section; and

(*b*) the clerk of the court shall give notice to the defendant stating that if the defendant considers there are grounds for not issuing the warrant he may make an application to the court in the prescribed manner requesting that the warrant shall not be issued and stating those grounds.

(2) If no such application is received by the clerk of the court within the prescribed period, any justice of the peace acting for the same petty sessions area as the court may issue the warrant of commitment at any time after the expiration of that period; and if such an application is so received any such justice may, after considering the statements contained in the application—

(*a*) if he is of opinion that the application should be further considered, refer it to the court;

(*b*) if he is not of that opinion, issue the warrant forthwith;

and when an application is referred to the court under this subsection, the clerk of the court shall give to the defendant and the person in whose favour the maintenance order in question was made notice of the time and place appointed for the consideration of the application by the court.

(3) On considering an application referred to it under the last foregoing subsection the court shall, unless in pursuance of subsection (6) of this section it remits the whole of the sum in respect of which the warrant could otherwise be issued, either—

(*a*) issue the warrant; or

(*b*) further postpone the issue thereof until such time and on such conditions, if any, as the court thinks just; or

(*c*) if in consequence of any change in the circumstances of the defendant the court considers it appropriate so to do, order that the warrant shall not be issued in any event.

(4) A defendant who is for the time being imprisoned or otherwise detained under a warrant of commitment issued by a magistrates' court for the purpose of enforcing a maintenance order, and who is not detained otherwise than for the enforcement of such an order, may make an application to the court in the prescribed manner requesting that the warrant shall be cancelled and stating the grounds of the application; and thereupon any justice of the peace acting for the same petty sessions area as the court may, after considering the statements contained in the application—

(*a*) if he is of opinion that the application should be further considered, refer it to the court;

(*b*) if he is not of that opinion, refuse the application;

and when an application is referred to the court under this subsection, the clerk of the court shall give to the person in charge of the prison or other place in which the defendant is detained and the person in whose favour the maintenance order in question was made notice of the time and place appointed for the consideration of the application by the court.

(5) On considering an application referred to it under the last foregoing subsection, the court shall, unless in pursuance of the next following subsection it remits the whole of the sum in respect of which the warrant was issued or such part thereof as remains to be paid, either—

(*a*) refuse the application; or

(*b*) if the court is satisfied that the defendant is unable to pay, or to make any payment or further payment towards, the sum aforesaid and if it is of opinion that in all the circumstances of the case the defendant ought not to continue to be detained under the warrant, order that the warrant shall cease to have effect when the person in charge of the prison or other place aforesaid is informed of the making of the order;

PART III —*cont.*

and where the court makes an order under paragraph (*b*) of this subsection, it may if it thinks fit also—

(i) fix a term of imprisonment in respect of the sum aforesaid or such part thereof as remains to be paid, being a term not exceeding so much of the term of the previous warrant as, after taking into account any reduction thereof by virtue of the next following subsection, remained to be served at the date of the order; and

(ii) postpone the issue of a warrant for the commitment of the defendant for that term until such time and on such conditions, if any, as the court thinks just.

(6) On considering an application under this section in respect of a warrant or a postponed warrant, the court may, if the maintenance order in question is an affiliation order or an order enforceable as an affiliation order, remit the whole or any part of the sum due under the order; and where the court remits the sum or part of the sum in respect of which the warrant was issued or the postponed warrant could have been issued, section sixty-seven of the Magistrates' Courts Act, 1952 (which provides that on payment of the sum for which imprisonment has been ordered by a magistrates' court the order shall cease to have effect and that on payment of part of that sum the period of detention shall be reduced proportionately) shall apply as if payment of that sum or part had been made as therein mentioned.

(7) Where notice of the time and place appointed for the consideration of an application is required by this section to be given to the defendant or the person in whose favour the maintenance order in question was made and the defendant or, as the case may be, that person does not appear at that time and place, the court may proceed with the consideration of the application in his absence.

(8) A notice required by this section to be given by the clerk of a magistrates' court to any person shall be deemed to be given to that person if it is sent by registered post addressed to him at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by that person.

Revocation and variation of Orders in Council under 10 & 11 Geo. 5. c. 33, s. 12.

19. Her Majesty may by Order in Council revoke or vary any Order in Council made under section twelve of the Maintenance Orders (Facilities for Enforcement) Act, 1920 (which provides for the extension of that Act by Order in Council to certain oversea territories), and an Order under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient for the purposes of that Act.

Supplemental

PART III —*cont.*

Special provisions as to magistrates' courts.

20.—(1) Notwithstanding anything in this Act, the clerk of a magistrates' court who is entitled to receive payments under a maintenance order for transmission to another person shall not—

(*a*) apply for the registration of the maintenance order under Part I of this Act or give notice in relation to the order in pursuance of subsection (1) of section five thereof; or

(*b*) apply for an attachment of earnings order, or (except as required by subsection (5) of section nine of this Act) an order discharging or varying an attachment of earnings order, in respect of those payments,

unless he is requested in writing to do so by a person entitled to receive the payments through him; and where the clerk is requested as aforesaid—

(i) he shall comply with the request unless it appears to him unreasonable in the circumstances to do so;

(ii) the person by whom the request was made shall have the same liabilities for all the costs properly incurred in or about any proceedings taken in pursuance of the request as if the proceedings had been taken by that person;

and for the purposes of paragraph (ii) of this subsection any application made by the clerk as required by the said subsection (5) shall be deemed to be made on the request of the person in whose favour the attachment of earnings order in question was made.

(2) An application to a magistrates' court by virtue of subsection (2) of section four of this Act for the variation of a maintenance order and an application to a magistrates' court for an attachment of earnings order, or an order discharging or varying an attachment of earnings order, shall be made by complaint.

(3) It is hereby declared that a magistrates' court has jurisdiction to hear a complaint by or against a person residing outside England for the discharge or variation of an attachment of earnings order made by a magistrates' court; and where such a complaint is made against a person residing outside England, then—

(*a*) if he resides in Scotland or Northern Ireland, section fifteen of the Maintenance Orders Act, 1950 (which relates to the service of process on persons residing in those countries) shall have effect in relation to the complaint as it has effect in relation to the proceedings therein mentioned; and

PART III —*cont.*

(*b*) if the said person resides outside the United Kingdom and does not appear at the time and place appointed for the hearing of the complaint but it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the complainant has taken such steps as may be prescribed to give to the said person notice of the complaint and of the time and place aforesaid, the court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint at the time and place appointed for the hearing or for any adjourned hearing in like manner as if the said person had then appeared.

(4) For the purposes of section forty-three of the Magistrates' Courts Act, 1952 (which provides for the issue of a summons directed to the person against whom an order may be made in pursuance of a complaint)—

(*a*) the power to make an order in pursuance of a complaint by the defendant for the discharge or variation of an attachment of earnings order shall be deemed to be a power to make an order against the person in whose favour the attachment of earnings order was made; and

(*b*) the power to make an attachment of earnings order, or an order discharging or varying an attachment of earnings order, in pursuance of a complaint by any other person (including a complaint in proceedings to which paragraph (*b*) of section seven of this Act applies) shall be deemed to be a power to make an order against the defendant.

(5) Where the court referred to in subsection (1) of section twelve of this Act is a magistrates' court—

(*a*) the power conferred by subsection (2) of section one hundred and twenty-two of the Magistrates' Courts Act, 1952, to provide by rules for jurisdiction expressly conferred on a magistrates' court to hear a complaint to be extended to any other magistrates' court shall be exercisable, and

(*b*) subsection (1) of section seventy-seven of that Act (which relates to the attendance of witnesses) shall apply,

as if subsection (1) of the said section twelve required an application thereunder to be made by complaint; and on making a determination under that subsection the court may in its discretion make such order as it thinks just and reasonable as to the payment by any of the persons mentioned in that subsection of

PART III —*cont.*

the whole or any part of the costs of the determination, and costs ordered to be paid under this subsection shall—

(i) in the case of costs to be paid by the defendant to the person in whose favour the attachment of earnings order in question is made, be deemed to be a sum due under the related maintenance order; and

(ii) in any other case, be enforceable as a civil debt.

(6) In subsection (3) of section fifty-two of the Magistrates' Courts Act, 1952 (which provides for the clerk through whom payments under a magistrates' court order are required to be made to proceed in his own name for the recovery of arrears under the order) for the words " Where an order under subsection (1) of this section requires the payments to be made weekly " there shall be substituted the words " Where periodical payments under an order of any court are required to be paid to or through the clerk of a magistrates' court "; and in subsection (4) of that section (which provides that nothing in that section shall affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under any order under subsection (1) of that section) for the words " any order under subsection (1) of this section " there shall be substituted the words " an order of any court."

(7) A complaint for an attachment of earnings order may be heard notwithstanding that the complaint was not made within the six months allowed by section one hundred and four of the Magistrates' Courts Act, 1952.

(8) For the avoidance of doubt it is hereby declared that a complaint may be made to enforce payment of a sum due and unpaid under a maintenance order notwithstanding that a previous complaint has been made in respect of that sum or a part thereof and whether or not an order was made in pursuance of the previous complaint.

Interpretation, etc.

21.—(1) In this Act, unless the context otherwise requires, the following expressions have the following meanings—

" affiliation order ", " magistrates' court " and " petty sessions area " have the meanings assigned to them by the Magistrates' Courts Act, 1952, and for the purposes of the definition of a magistrates' court the reference to that Act in subsection (2) of section one hundred and twenty-four thereof shall be construed as including a reference to this Act;

" attachment of earnings order " has the meaning assigned to it by subsection (1) of section six of this Act;

PART III —*cont.*

" defendant ", in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under the maintenance order;

" earnings ", in relation to a defendant, means any sums (other than excepted sums) payable to him—

(*a*) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service);

(*b*) by way of pension (including an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment);

" employer " means a person by whom, as a principal and not as a servant or agent, earnings fall to be paid to a defendant, and references to payment of earnings shall be construed accordingly;

" England " includes Wales;

" excepted sums " means—

(*a*) sums payable by any public department of the government of any territory outside the United Kingdom or of Northern Ireland;

(*b*) pay or allowances payable to the defendant as a member of Her Majesty's forces;

(*c*) pension, allowances or benefit payable by the Minister of Pensions and National Insurance, other than such part of any pension as is so payable to the defendant in respect of his service in Her Majesty's forces or in respect of any employment of his;

(*d*) pension or allowances payable to the defendant in respect of his disablement or disability; and

(*e*) wages payable to the defendant as a seaman or apprentice, other than wages payable to him as a seaman or apprentice of a fishing boat;

and in paragraph (*e*) of this definition expressions used in the Merchant Shipping Act, 1894, have the same meanings as in that Act;

PART III
—cont.

" maintenance order " means—

(*a*) an order for alimony, maintenance or other payments made or deemed to be made by a court in England under any of the following enactments, that is to say—

(i) sections nineteen to twenty-seven of the Matrimonial Causes Act, 1950;

(ii) the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949;

(iii) subsection (2) of section three, subsection (4) of section five or section six of the Guardianship of Infants Act, 1925;

(iv) section four of the Affiliation Proceedings Act, 1957, section forty-four of the National Assistance Act, 1948, or section twenty-six of the Children Act, 1948;

(v) section eighty-seven of the Children and Young Persons Act, 1933, or section forty-three of the National Assistance Act, 1948; or

(*b*) an order registered in a court in England under Part II of the Maintenance Orders Act, 1950, or the Maintenance Orders (Facilities for Enforcement) Act, 1920, or an order confirmed by such a court under the last-mentioned Act,

and includes any such order which has been discharged if any arrears are recoverable thereunder;

" prescribed " means prescribed by rules of court;

" proper officer ", in relation to a magistrates' court, means the clerk of the court;

" rules of court ", in relation to a magistrates' court, means rules under section fifteen of the Justices of the Peace Act, 1949.

(2) Any reference in this Act to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive such payments either directly or through another person or for transmission to another person.

(3) Any reference in this Act to proceedings relating to an order includes a reference to proceedings in which the order may be made.

(4) Any reference in this Act to costs incurred in proceedings relating to a maintenance order shall be construed, in the case of a maintenance order made by the High Court, as a reference to such costs as are included in an order for costs relating solely to that maintenance order.

PART III —*cont.*

(5) Any earnings which, in pursuance of a scheme under the Dock Workers (Regulation of Employment) Act, 1946, fall to be paid to a defendant by a body responsible for the local administration of the scheme acting as agent for the defendant's employer or as delegate of the body responsible for the general administration of the scheme shall be treated for the purposes of this Act as falling to be paid to the defendant by the last-mentioned body acting as a principal.

(6) Any reference in this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment.

Legislative powers of Parliament of Northern Ireland.

22. No limitation on the powers of the Parliament of Northern Ireland imposed by the Government of Ireland Act, 1920, shall preclude that Parliament from making laws for purposes similar to the purposes of this Act.

Short title, extent, commencement and repeals.

23.—(1) This Act may be cited as the Maintenance Orders Act, 1958.

(2) This Act, except paragraph (*a*) of subsection (3) of section twenty, shall not extend to Scotland or, except section nineteen, the said paragraph (*a*) and the last foregoing section, to Northern Ireland.

(3) This Act shall come into operation on such date as the Secretary of State may by order, made by statutory instrument, appoint; and different dates may be so appointed for the purposes of different provisions of this Act.

(4) Subsection (2) of section eight of the Guardianship of Infants Act, 1925, and section ten of the Affiliation Proceedings Act, 1957, are hereby repealed; but nothing in this subsection shall affect any order in force or deemed to be in force under either of those provisions at the commencement of this subsection, and any such order may be discharged or varied as if this subsection had not been passed.

SCHEDULE

Sections 6, 10, 13.

PAYMENTS UNDER ATTACHMENT OF EARNINGS ORDERS

1. The provisions of this Schedule shall have effect in respect of each occasion (in this Schedule referred to as a " pay-day ") on which any earnings to which an attachment of earnings order relates fall to be paid.

2. In this Schedule, the following expressions have the following meanings respectively—

" normal deduction " and " protected earnings ", in relation to any pay-day, mean the amount which would represent a payment at the normal deduction rate specified by the order or, as the case may be, at the protected earnings rate so specified in respect of the period between the pay-day in question and either the last preceding pay-day or, where there is no last preceding pay-day, the date last before the pay-day in question on which the employer became the defendant's employer;

" relevant earnings ", in relation to any pay-day, means the amount of the earnings aforesaid falling to be paid on the pay-day in question after the deduction from those earnings of any amount falling to be deducted therefrom by the employer by way of income tax or of contributions under the National Insurance (Industrial Injuries) Acts, 1946 to 1957, the National Insurance Acts, 1946 to 1957, or the National Health Service Contributions Act, 1957, or of lawful deductions under any enactment, or in pursuance of a request in writing by the defendant, requiring or authorising deductions to be made for the purposes of a superannuation scheme within the meaning of the Wages Councils Act, 1945.

3. If the relevant earnings exceed the sum of—

(*a*) the protected earnings; and

(*b*) so much of any amount by which the relevant earnings falling to be paid on any previous pay-day fell short of the protected earnings for the purposes of that pay-day as has not been made good by virtue of this sub-paragraph on any other previous pay-day,

the employer shall, so far as that excess permits, pay to the officer designated for the purpose in the order—

(i) the normal deduction; and

(ii) so much of the normal deduction for any previous pay-day as was not paid on that pay-day and has not been paid by virtue of this sub-paragraph on any other previous pay-day.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Debtors Act, 1869	32 & 33 Vict. c. 62.
Merchant Shipping Act, 1894	57 & 58 Vict. c. 60.
Maintenance Orders (Facilities for Enforcement) Act, 1920	10 & 11 Geo. 5. c. 33.
Government of Ireland Act, 1920	10 & 11 Geo. 5. c. 67.
Guardianship of Infants Act, 1925	15 & 16 Geo. 5. c. 45.
Supreme Court of Judicature (Consolidation) Act, 1925	15 & 16 Geo. 5. c. 49.
Children and Young Persons Act, 1933	23 & 24 Geo. 5. c. 12.
Wages Councils Act, 1945	8 & 9 Geo. 6. c. 17.
Dock Workers (Regulation of Employment) Act, 1946	9 & 10 Geo. 6. c. 22.
National Assistance Act, 1948	11 & 12 Geo. 6. c. 29.
Children Act, 1948	11 & 12 Geo. 6. c. 43.
Justices of the Peace Act, 1949	12, 13 & 14 Geo. 6. c. 101.
Matrimonial Causes Act, 1950	14 Geo. 6. c. 25.
Maintenance Orders Act, 1950	14 Geo. 6. c. 37.
Magistrates' Courts Act, 1952	15 & 16 Geo. 6. & 1 Eliz. 2. c. 55.
Army Act, 1955	3 & 4 Eliz. 2. c. 18.
Air Force Act, 1955	3 & 4 Eliz. 2. c. 19.
National Health Service Contributions Act, 1957...	5 & 6 Eliz. 2. c. 34.
Affiliation Proceedings Act, 1957	5 & 6 Eliz. 2. c. 55.

PRINTED BY SIR JOHN ROUGHTON SIMPSON, C.B.
Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament
LONDON : PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE
Price 1*s.* 3*d.* net
PRINTED IN GREAT BRITAIN
(38004)