

**MAGISTRATES' COURT ACT****Principal Act**

<b>Act. 1961-23</b>	<i>Commencement</i>	1.1.1962
	<i>Assent</i>	21.12.1961

Amending enactment	Relevant current provisions	Commencement date
Acts. 1963-02	–	
1966-12	ss.15 and 62 (1)	
1967-04	–	
1967-14	–	
Regs of 28.5.1970	–	
Acts. 1971-19	–	
1972-04	–	
1972-05	–	
1972-15	–	
1973-18		
1975-15	s.6 (4)	
LN. 1977/012	–	
Acts. 1978-06	–	
1980-04	s.9(4)	
1983-12	–	
1983-48	–	
1988-35	s. 68A	15.12.1988
1993-16	ss. 44(1) and 65	1.9.1993
1993-29	s. 45(d)(e)	5.11.1998
2004-11	s.26	1.9.2004
2005-09	s. 45(a) & (e)	9.2.2005
2007-25	ss. 4, 6(1), (3), (4), 7, 8, 9(1), (4) 12(2) & 14	28.6.2007
2010-13	ss. 2(1), 18, 20(2), 45, 46(1), (2), (3) & (4), 47(1), 48(1), 49, 50(1) & 70	6.5.2010
2012-06	s. 9(4)(a)	19.7.2012
LN. 2018/267	s. 45(e), (f)	22.11.2018

Rules of court made under s.69 and other powers appear under the title Supreme Court.

**English sources:**

Justice of the Peace Act 1949 (12, 13, & 14 Geo.6c101)

Magistrates' Court Act 1952 (15 & 16 Geo.6 and 1 Eliz.2 c.55)

Maintenance Orders Act 1958 (6 & 7 Eliz.2c.39)

Legitimacy Act 1959 (7 & 8 Eliz.2 c.73)  
Administration of Justice Act 1964 (1964 c.42)

**EU Legislation/International Agreements involved:**  
Council Regulation (EC) No 2201/2003

Previous number	New number	Previous number	New number
1	1	29	“ s.112
2	2	30	“ s.114
3(1)	3	31	“ s.113
3(2)	16	31A	“ s.83
4	21	31B	“ s.84
5	24	31C	“ s.85
6	33 and Act.1961 No. 24, s.4	32	“ s.115
7	5	33	“ s.116
8	Act.1961 No. 24, s.93	33A	“ s.117
9	20		(1) and (2)
10	7	34	Act.1961 No. 24, s.72
11	12	35	“ s.91
12	6	36	“ s.104
13	8	37	“ s.105
14	9	38	“ s.270
15	<i>Repealed</i>	39	“ s.271
16	11	40	“ s.118
17	10	41	“ s.76
17A	15	42	“ s.106
18	Act.1961 No. 24, s.99	43	“ s.108
19	“ “ s.100	44	“ s.236
20	22	45	“ s.168
21		46	“ s.107
22(1)	17	47	“ s.237
22(2) and (3)	Act.1961 No.24, s.120	48	“ s.182 and 183
23	“ “ s.121	49	<i>Repealed</i>
24	“ “ s.122	50	Act.1961 No. 24, s.117(3)
25	“ “ s.123	51	“ s.101
25A	“ “ s.125	52	“ s.230
25B	“ “ s.71	53	“ s.40
25C	“ “ s.126	54	“ s.74
25D	“ “ s.124	55	“ s.102
25E	“ “ s.127	56	23
25F	“ “ s.75	57	34
26	“ “ s.46	58	25
26A	“ “ s.48	59	26
26B	“ “ s.109	60	38
26C	“ “ s.49	61	39
26D	“ “ s.52	62	36
26E	“ “ s.53	63	35
26F	“ “ s.11	64	37
27	<i>Repealed</i>	65	40
28	Act.1961 No. 24, s.111	66	41

67	42	101	64	“	“	s.299
68	43	102	Act.1961 No. 24,	s.51		
69	44	103		63		
70(1)	45	104	Act.1961 No. 24,	s.94		
70(2)	18	105	“	“	“	s.95
71	47	106	“	“	“	s.43
72	50	107	“	“	“	s.96
73	47	108	“	“	“	s.97
74	48	109	“	“	“	s.98
75	49	110	“	“	“	s.8
76	51 and Act.1961 No.24,s.184	111		65		
77	52 “ “s.185	112		67		
78	54 “ “s.186	113		13		
79	55 “ “s.187	114		14		
80	56 “ “s.188	115	65 and Act.1961 No. 24,	s.110		
81	58 “ “s.189	116	Act.1961 No. 24,	s.47		
82	Act.1961 No. 24, s.190	117	“	“	“	s.50
83	“ “ “ s.191	118	“	“	“	s.168
84	“ “ “ s.192	119	“	“	“	s.167
85	53	120	“	“	“	s.176
86	57	121	“	“	“	s.177
87	59	122	“	“	“	s.178
88	60	123		67		
89	28	124		68		
90	27	125	Act.1961 No. 24,	s.119		
91	29	126	“	“	“	s.233
92	30	127		4		
93	31 and Act.1961 No. 24, s.73	128		14		
94	“ “ “ 32	129		61		
95	Act.1961 No. 24, s.278	130		19		
96	“ “ “ s.281	131		69		
97	“ “ “ s.282	First Sch.	Act.1961 No. 24, Sch.2			
98	“ “ “ s.284	Second Sch.	“ “ Sch.4			
99	“ “ “ s.293	Third Sch.	“ “ Sch.5			
100	62 and Act.1961 No. 24, s.295					

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AN ACT TO CONSOLIDATE THE LAW GOVERNING THE MAGISTRATES' COURT AND TO PROVIDE FOR THE ESTABLISHMENT, POWERS, JURISDICTION AND PROCEDURE OF THE MAGISTRATES' COURT, FOR THE APPOINTMENT OF JUSTICES OF THE PEACE, AND FOR MATTERS CONNECTED THEREWITH.

**Short title.**

1. This Act may be cited as the Magistrates' Court Act.

**Interpretation.**

- 2.(1) In this Act, unless the context otherwise requires,—

“clerk of the court” and “clerk of the magistrates' court” mean the person appointed to be clerk of the magistrates' court under section 14;

“commit to custody” means commit to prison or, where any law authorizes or requires committal to some other place of detention instead of committal to prison to that other place;

“court house” means any building or place appointed to be a court house under the provisions of section 5;

“family proceedings” has the meaning assigned to it by section 45;

“guardianship order” means any order made under any law governing the guardianship of children;

“children” has the meaning given by the provisions of the Children Act 2009;

“impose imprisonment” means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone;

“indictable offence” means an offence which, if committed by an adult, is triable on indictment, (whether or not it is also triable by the magistrates' court) except an offence otherwise triable only by the magistrates' court which, under section 108 of the Criminal

Procedure Act<sup>1</sup> or any other law, is required to be tried on indictment at the instance of the accused or the prosecutor;

“justice” or “justice of the peace” means any justice of the peace appointed in accordance with the provisions of this Act and includes the stipendiary magistrate;

“magistrates’ court” and “court” mean the magistrates’ court constituted by this Act;

“maintenance order” means any order for the payment of monies made by a court under the Maintenance Act;

“stipendiary magistrate” means the stipendiary magistrate appointed under section 6;

“sum enforceable as a civil debt” means –

- (a) any sum recoverable summarily as a civil debt which is adjudged to be paid by the order of the magistrates’ court;
- (b) any other sum expressed by this Act or any other law to be so enforceable;

“summary offence” means an offence which, if committed by an adult, is triable by the magistrates’ court (whether or not it is also triable on indictment) except an offence triable by the magistrates’ court under section 105 of the Criminal Procedure Act<sup>1</sup>.

(2) Except where the contrary is expressed or implied, anything required or authorized by this Act or any other law to be done by justices may, where two or more justices are present, be done by one of them on behalf of others.

(3) Any reference in this Act to a sum adjudged to be paid by a conviction or order of the magistrates’ court shall be construed as including a reference to any costs, damages or compensation adjudged to be paid by the conviction or order of which the amount is ascertained by the conviction or order.

(4) Where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of the magistrates’ court, his age at the material time shall be deemed to be or to have been that which appears to the court after considering any available evidence to be or to have been his age at that time.

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<sup>1</sup> 1961-24

(5) Except where the context otherwise requires, any reference in this Act to an offence shall be construed as including a reference to an alleged offence; and any reference in this Act to an offence committed, completed or begun anywhere shall be construed as including a reference to an offence alleged to have been committed, completed or begun there.

**PART I.—ESTABLISHMENT OF AND APPOINTMENTS TO THE COURT AND CONSTITUTION OF BENCHES.**

*The court*

**Establishment of the court.**

3. There is hereby established a court subordinate to the Supreme Court to be called the magistrates' court.

**Seal.**

4. The court shall use a seal of such pattern as the Governor acting on the advice of the Judicial Service Commission may, by notice in the Gazette, direct.

**Court house.**

5. The Chief Justice may appoint any building or place as a court house for the sitting of the magistrates' court either generally or for any particular case or class of cases.

*Appointments.*

**Appointment of stipendiary magistrate.**

6.(1) The Governor acting on the advice of the Judicial Service Commission may appoint a legally qualified person to be the stipendiary magistrate.

(2) The stipendiary magistrate shall be ex officio a justice of the peace.

(3) In the case of the death, retirement, suspension or removal from office, or absence from Gibraltar of the stipendiary magistrate, the Governor acting on the advice of the Judicial Service Commission may appoint any legally qualified person to act as stipendiary magistrate.

(4) If for any reason the stipendiary magistrate is unable to perform the functions of his office or if it appears to the Governor acting on the advice of the Judicial Service Commission, that the business to be dealt with by the stipendiary magistrate so requires, the Governor acting on the advice of the

Judicial Service Commission may appoint any legally qualified person as an additional stipendiary magistrate and any person so appointed shall have all the powers, privileges and duties of the stipendiary magistrate:

Provided that no appointment shall be made under this subsection if the business to be dealt with by the additional stipendiary magistrate can be dealt with by justices of the peace.

(5) For the purposes of this section “legally qualified person” means a person qualified to practice as an advocate or as a solicitor in any court of unlimited jurisdiction in either civil or criminal matters in any part of Her Majesty’s dominions or the Republic of Ireland.

**Appointment of justices of the peace.**

7.(1) The Governor, acting on the advice of the Judicial Service Commission, may appoint by a commission under his hand and the public seal, as occasion may require, any British subject resident in Gibraltar to be a justice of the peace for Gibraltar.

(2) The Governor shall, on the advice of the Judicial Service Commission, revoke any commission.

**Roll of justices.**

8.(1) The Minister for Justice shall, in January of each year, prepare a roll to contain all justices appointed under this Act whose commissions are of full force and effect on the date of preparation of the roll, and shall cause the roll to be published in the Gazette.

(2) The roll shall be divided into two parts, Part II of which shall be the supplemental list.

**Supplemental list.**

9.(1) The Minister for Justice shall keep a list for the purposes of this section (in this Part called “the supplemental list”), in which supplemental list the name of any such person appointed a justice as is hereinafter mentioned shall be entered.

(2) A person who is appointed justice of the peace, but whose name is for the time being entered in the supplemental list, shall not by virtue of that appointment be qualified as a justice to do any act, except as mentioned in subsection (3).

(3) Subsection (2) shall not preclude a justice from doing all or any of the following acts as a justice, that is to say, –

- (a) signing any document for the purpose of authenticating another person's signature;
  - (b) taking and authenticating by his signature any written declaration not made on oath;
  - (c) giving a certificate of facts within his knowledge or of his opinion as to any matter; and
  - (d) performing any of the duties of a commissioner for oaths.
- (4) There shall be entered in the supplemental list the name of any justice –
- (a) who is of the age of seventy-two years or over; or
  - (b) who applies to have his name entered therein; or
  - (c) in respect of whom the Governor acting on the advice of the Judicial Service Commission is satisfied either that –
    - (i) by reason of that justice's age or infirmity or other like cause it is expedient he should cease to exercise judicial functions as a justice; or
    - (ii) that justice declines or neglects to take proper part in the exercise of those functions.

**Chairman and deputy chairman of the justices.**

10.(1) There shall be a chairman and deputy chairman of the justices chosen by the justices by secret ballot from amongst themselves.

(2) Subject to subsection (3), the chairman or deputy chairman shall preside, if present.

(3) Subsection (2) shall not confer on the chairman or deputy chairman any right to preside at meetings when the stipendiary magistrate is engaged as such in administering justice.

**Restriction on right to practice.**

11. It shall not be lawful for any solicitor or barrister who is a justice, nor for any partner of his, to act in connection with any proceedings before any court of law, as solicitor or barrister of any person concerned in those proceedings, unless his name is entered in the supplemental list of justices.

**Resignation and absence.**

12.(1) Every justice may, if and when he so desires, resign his appointment without showing any reason therefor, by so notifying the Chief Justice in writing for the information of the Governor; and his commission shall thereupon stand revoked from the date of his resignation.

(2) If any justice shall be absent from Gibraltar for a period of more than one year at any one time, his commission shall stand revoked, unless the Governor acting on the advice of the Judicial Service Commission, directs otherwise.

(3) Notice of every appointment, resignation and revocation shall be published in the Gazette.

**Effect of death, etc.**

13. A warrant or summons issued by a justice of the peace shall not cease to have effect by reason of his death or his ceasing to be a justice.

**Appointment of clerk of the court.**

14. The Minister with responsibility for Justice may designate a public officer to be clerk of the magistrates' court.

**Indemnification of justices and clerk.**

15.(1) Subject to the provisions of this section, a justice of the peace or the clerk of the court may be indemnified out of the Consolidated Fund in respect of –

- (a) any costs reasonably incurred by him in or in connection with proceedings against him in respect of anything done or omitted in the exercise or purported exercise of the duty of his office (including proceedings for an order of judicial review, or in taking steps to dispute any claim which might be made in such proceedings;
- (b) any damages awarded against him or costs ordered to be paid by him in any such proceedings;
- (c) any sums payable by him in connection with a reasonable settlement of any such proceedings or claim;

and shall be entitled to be so indemnified if, in respect of the matters giving rise to the proceedings or claim, he acted reasonably and in good faith.

(2) Any question whether or to what extent a person is to be indemnified under this section shall be determined by the Chief Justice; and a determination under this subsection with respect to any such costs or sums as are mentioned in paragraph (a) or paragraph (c) of subsection (1) may, if the person claiming to be indemnified so requests, be made in advance before those costs are incurred or the settlement made, as the case may be :

Provided that any such determination in advance for indemnity in respect of costs to be incurred shall be subject to such limitations, if any, as the Chief Justice thinks proper and to the subsequent determination of the amount of the costs reasonably incurred, and shall not affect any other determination which may fall to be made in connection with the proceedings or claim in question.

### *Constitution of benches.*

#### **Constitution of benches generally.**

16. Subject to the provisions of this Act and of any other law the court shall consist of and be held before either –

- (a) at least two justices; or
- (b) the stipendiary magistrate, sitting either alone or together with any justice or justices.

#### **Examining justices.**

17. The functions of examining justices may be discharged by a single justice.

#### **Family proceedings.**

18. The magistrates' court when hearing family proceedings shall be composed of not more than three justices of the peace.

#### **Juvenile courts.**

19. The provisions of this Act relating to the constitution, place of sitting and procedure of the magistrates' court shall, in their application to juvenile courts, have effect subject to any provision regulating the constitution, place of sitting or procedure of juvenile courts.

#### **Saving for stipendiary magistrate.**

20.(1) Nothing in this Act or any other law requiring the magistrates' court to be composed of two or more justices or limiting the powers of the magistrates' court when composed of a single justice, or when sitting elsewhere than in a court house, shall apply to the stipendiary magistrate.

(2) Nothing in section 18 shall prohibit the hearing and determination of any family proceedings by the stipendiary magistrate when sitting alone.

## **PART II.—JURISDICTION.**

### *Criminal.*

#### **General criminal jurisdiction.**

21.(1) The court shall have such jurisdiction to try offences as may be conferred upon it by this Act or by any other law.

(2) The court shall have such power to sit as examining justices over any indictable offence as may be conferred upon it by this Act or by any other law.

(3) The court shall have such other jurisdiction in criminal matters as may be conferred upon it by this Act or by any other law.

#### **Summary and indictable offences.**

22.(1) The court shall have jurisdiction to try all summary offences committed in Gibraltar.

(2) Where a person charged with a summary offence appears or is brought before the court in answer to a summons or warrant issued under paragraph (b) of section 100(2) of the Criminal Procedure Act the court shall have jurisdiction to try the offence.

(3) The magistrates' court shall have jurisdiction as examining justices over any offence committed by a person who appears or is brought before the court, whether or not the offence was committed in Gibraltar, if an indictment for the offence may legally be preferred in Gibraltar.

(4) The magistrates' court shall, in the exercise of its powers under section 104(3), 105, 270 or 271 of the Criminal Procedure Act<sup>1</sup> have jurisdiction to try summarily an indictable offence in any case in which under subsection (3) of this section it would have jurisdiction as examining justices.



(5) Nothing in this section shall affect any jurisdiction over offences conferred on the magistrates' court by any other law.

**Extradition.**

23. All powers vested in and acts authorized or required to be done by a police or stipendiary magistrates or any justice in relation to the surrender of fugitive criminals in the United Kingdom, under the Extradition Acts, 1870 to 1935, are hereby vested in, and may in Gibraltar be exercised and done by the magistrates' court in relation to the surrender of fugitive criminals under those Acts.

*Civil.*

**General civil jurisdiction.**

24. The court shall have such jurisdiction in civil matters and other matters not specified in section 21 as may be conferred upon it by this Act or by any other law.

**Complaints.**

25. The magistrates' court shall have jurisdiction to hear a complaint if the complaint relates to anything done within Gibraltar or anything left undone that ought to have been done in Gibraltar, or ought to have been done either in Gibraltar or elsewhere, or relates to any other matter arising within Gibraltar.

**Debt and breach of contract.**

26. *Revoked.*

**PART III.—WITNESSES AND EVIDENCE.**

**Evidence to be on oath.**

27. Subject to the provisions of any law authorizing the reception of unsworn evidence, evidence given before the magistrates' court shall be given on oath.

**Recalcitrant witnesses.**

28.(1) Where a justice of the peace is satisfied that any person in Gibraltar is likely to be able to give material evidence, or produce any document or thing likely to be material evidence, at an inquiry into an indictable offence by the magistrates' court or at the summary trial of an information or

hearing of a complaint by the court and that that person will not voluntarily attend as a witness or will not voluntarily produce the document or thing, the justice shall issue a summons directed to that person requiring him to attend before the court at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) If a justice of the peace is satisfied by evidence on oath of the matters mentioned in subsection (1) and also that it is probable that a summons under subsection (1) would not procure the attendance of the person in question, the justice may, instead of issuing a summons, issue a warrant to arrest that person and bring him before the court at a time and place specified in the warrant :

Provided that a warrant shall not be issued under this subsection where the attendance is required for the hearing of a complaint.

(3) On the failure of any person to attend before the magistrates' court in answer to a summons under this section, if—

- (a) the court is satisfied by evidence on oath that he is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings; and
- (b) it is proved on oath, or in such other manner as may be prescribed, that he has been duly served with the summons, and that a reasonable sum has been paid or tendered to him for costs and expenses; and
- (c) it appears to the court that there is no just excuse for failure,

the court may issue a warrant to arrest him and bring him before the court at a time and place specified in the warrant.

(4) If any person attending or brought before the magistrates' court refuses without just excuse to be sworn or give evidence, or to produce any document or thing, the court may commit him to custody until the expiration of such period not exceeding seven days as may be specified in the warrant or until he sooner gives evidence or produces the document or thing or may impose upon him a fine of £25.

(5) If such person, upon being brought before the court at or before the expiration of the period specified in the warrant, again refuses to do what is required of him, the court may, if it sees fit, further commit him to custody for such period not exceeding seven days as may be specified in the warrant and so again from time to time until such person consents to do what is so required of him.

(6) Without prejudice to any other powers conferred upon the magistrates' court by this section or by any other law, any person who, without just excuse,—

- (a) fails to attend before the court as required by a summons issued by a justice; or
- (b) having attended the court, departs without obtaining the permission of the court or fails to attend after adjournment of the court after being ordered to attend,

is liable by order of the court to a fine of £25.

### **Evidence of non-payment of sums adjudged.**

29. Where the magistrates' court has ordered one person to pay to another any sum of money, and proceedings are taken before the court to enforce payment of that sum, then—

- (a) if the person to whom the sum is ordered to be paid is the clerk of the court, a certificate purporting to be signed by the clerk that the sum has not been paid to him; and
- (b) in any other case a document purporting to be a statutory declaration by the person to whom the sum is ordered to be paid that the sum has not been paid to him,

is admissible as evidence that the sum has not been paid to him, unless the court requires the clerk or other person to be called as a witness.

### **Evidence of payment of wages.**

30. A statement in writing to the effect that wages of any amount have been paid to a person during any period, purporting to be signed by or on behalf of his employer, is evidence of the facts therein stated in any proceedings taken before the magistrates' court—

- (a) for enforcing payment by the person to whom the wages are stated to have been paid of a sum adjudged to be paid by a summary conviction or order; or
- (b) on any application made by or against that person for the making of a maintenance order, or for the variation, revocation, discharge or revival of such an order.

### **Onus of proving exceptions.**

31. Where the defendant to an information or complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded, the burden of proving the exception, exemption, proviso, excuse or qualification shall be on him; and this notwithstanding that the information or complaint contains an allegation negating the exception, exemption, proviso, excuse or qualification.

**False statements.**

32. If, in any solemn declaration, certificate or other writing made or given for the purpose of its being used as evidence of the service of any document or the handwriting or seal of any person, a person makes a statement that he knows to be false in a material particular, or recklessly makes any statement that is false in a material particular, he is guilty of an offence and is liable on summary conviction to imprisonment for six months and to a fine of £100.

**PART IV.—PROCEDURE AND POWERS IN CIVIL CASES.**

**Practice and procedure generally.**

33. The jurisdiction vested in the court by virtue of the provisions of section 24 shall be exercised so far as regards powers, practice and procedure in the manner provided by this Act and by any other law and in default thereof in conformity with the law and practice for the time being observed in England in magistrates' courts.

*Complaints.*

**Issue of summons on complaint.**

34. Subject to the provisions of this Act, where a complaint is made to a justice of the peace upon which the magistrates' court has power to make an order against any person, the justice may issue a summons directed to that person requiring him to appear before the magistrates' court to answer to the complaint.

**Non-appearance of complainant.**

35. Where at the time and place appointed for the hearing or adjourned hearing of a complaint the defendant appears but the complainant does not, the court may dismiss the complaint or, if evidence has been received on a previous occasion, proceed in the absence of the complainant.

**Non-appearance of defendant.**

36.(1) Where at the time and place appointed for the hearing or adjourned hearing of a complaint the complainant appears but the defendant does not, the court may, subject to subsection (3) proceed in his absence.

(2) Where the court, instead of proceeding in the absence of the defendant, adjourns, or further adjourns, the hearing, the court may, if the complaint has been substantiated on oath, and subject to the following provisions of this section, issue a warrant for his arrest.

(3) The court shall not begin to hear the complaint in the absence of the defendant or issue a warrant under this section 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 to the complaint.

(4) Where the defendant fails to appear at an adjourned hearing, the court shall not issue a warrant under this section unless it is satisfied that he has had adequate notice of the time and place of the adjourned hearing.

(5) Where the defendant is arrested under a warrant issued under this section, the court may, on any subsequent adjournment of the hearing, but subject to the provisions of subsection (6), remand him.

(6) The court shall not issue a warrant or remand a defendant under this section after he has given evidence in the proceedings.

(7) Where the court remands the defendant, the time fixed for the resumption of the hearing shall be that at which he is required to appear or be brought before the court in pursuance of the remand.

(8) A warrant under this section shall not be issued in any proceedings for the recovery or enforcement of a sum recoverable summarily as a civil debt or in proceedings in any matter of bastardy.

**Non-appearance of either party.**

37. Where at the time and place appointed for the hearing or adjourned hearing of a complaint neither the complainant nor the defendant appears, the court may dismiss the complaint.

**Procedure at hearing.**

38.(1) On the hearing of a complaint, the court shall, if the defendant appears, state to him the substance of the complaint.

(2) The court, after hearing the evidence and the parties, shall make the order for which the complaint is made or dismiss the complaint.

(3) Where a complaint is for an order for the payment of a sum recoverable summarily as a civil debt, or for the variation of the rate of any periodical payments ordered by the court to be made, or for such other matter as may be prescribed, the court may make the order with the consent of the defendant without hearing evidence.

#### **Adjournments.**

39.(1) The court may at any time, whether before or after beginning to hear a complaint, adjourn the hearing, and may do so, notwithstanding anything in this Act, when composed of a single justice.

(2) The court may when adjourning either fix the time and place at which the hearing is to be resumed or, unless it remands the defendant under section 36, leave the time and place to be determined later by the court; but the hearing shall not be resumed at that time and place unless the court is satisfied that the parties have had adequate notice thereof.

#### **Civil debts.**

40.(1) The court shall have power to make an order on complaint for the payment of any money recoverable summarily as a civil debt.

(2) Any sum payment of which may be ordered by the court shall be recoverable summarily as a civil debt except—

- (a) a sum recoverable on complaint for a maintenance order; or
- (b) a sum that may be adjudged to be paid by a summary conviction or by an order enforceable as if it were a summary conviction.

#### **Periodical payments.**

41.(1) Where the court orders money to be paid periodically by one person to another, the court may order that the payment shall be made to the clerk of the court.

(2) Where the order is a maintenance order or a guardianship order, the court shall, unless upon representations expressly made in that behalf by the applicant for the order it is satisfied that it is undesirable to do so, exercise its power under subsection (1).

(3) Where periodical payments under an order of any court are required to be paid to or through the clerk of the court, and any sums payable under the order are in arrear, the clerk shall, if the person for whose benefit the payment should have been made so requests in writing, and unless it appears to the clerk that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of those sums; but the said person shall have the same liability for all the costs properly incurred in or about the proceedings as if the proceedings had been taken by him.

(4) Nothing in this section shall affect any right of a person to proceed in his own name for the recovery of sums payable on his behalf under an order of any court.

**Revocation, revival and variation of orders.**

42. Where the court has made an order for the periodical payment of money, the court may, by order on complaint, revoke, revive or vary the order.

**Orders other than for payment of money.**

43.(1) Where the court has power to require the doing of any thing other than the payment of money, or to prohibit the doing of any thing, any order of the court for the purpose of exercising that power may contain such provisions for the manner in which anything is to be done, for the time within which anything is to be done, or during which anything is not to be done, and generally for giving effect to the order, as the court thinks fit.

(2) The court may by order made on complaint suspend or rescind any such order.

(3) Where any person disobeys an order of the court to do anything other than the payment of money or to abstain from doing anything, the court may—

- (a) order him to pay a sum not exceeding £1 for every day during which he is in default; or
- (b) commit him to custody until he has remedied his default:

Provided that a person shall not by virtue of this section be ordered to pay more than £20 or be committed for more than two months in all for disobeying one or more orders to do or abstain from doing the same thing.

(4) Any sum ordered to be paid under subsection (3) shall be enforceable as a civil debt.

(5) The provisions of this section shall not apply to any order for the enforcement of which provision is made by any other law.

**Costs.**

44.(1) On the hearing of a complaint, the court shall make an order as to costs—

- (a) on making the order for which the complaint is made, to be paid by the defendant to the complainant;
- (b) on dismissing the complaint, to be paid by the complainant to the defendant, unless to do so would not be just and reasonable;

Provided that, if the complaint is for an order for the periodical payment of money, or for the revocation, revival or variation of such an order, or for the enforcement of such an order, the court may, whatever adjudication it makes, order either party to pay the whole or any part of the other's costs.

(2) The amount of any sum ordered to be paid under subsection (1) shall be specified in the order, or order of dismissal, as the case may be.

(3) Subject to subsection (4), costs ordered to be paid under this section shall be enforceable as a civil debt.

(4) Any costs awarded on a complaint for a maintenance order, or for the enforcement, variation, revocation, discharge or revival of such an order, against the person liable to make payments under the order shall be enforceable as a sum ordered to be paid by a maintenance order.

(5) The provisions of this section shall have effect subject to any other law enabling the court to order a successful party to pay the other party's costs.

***Domestic proceedings.***

**Meaning of "family proceedings".**

45. In this Act the expression "family proceedings" means proceedings—

- (a) under any law relating to the guardianship of minors, including parental responsibility matters under Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;



- (b) under the Maintenance Act<sup>2</sup>;
- (c) *deleted*
- (d) under the Adoption Act<sup>4</sup>;
- (e) under the Civil Jurisdiction and Judgments Act 1993<sup>5</sup>, so far as it relates to the recognition or enforcement of maintenance orders; or
- (f) the Convention of 23 November 2007 on the International Recovery of Child Support and Other forms of Family Maintenance done at the Hague.

**Arrangements for and attendance at hearings.**

46.(1) The business of the court shall, so far as is consistent with the due dispatch of business, be arranged in such manner as may be requisite for separating the hearing and determination of family proceedings from other business.

(2) No person shall be present during the hearing and determination by the court of any family proceedings, except—

- (a) officers of the court;
- (b) parties to the case before the court, their solicitors and barristers, witnesses and other persons directly concerned in the case, and other persons whom either party desires to be present;
- (c) solicitors and barristers in attendance for other cases;
- (d) representatives of newspapers or news agencies;
- (e) any other person whom the court may permit to be present, so, however, that permission shall not be withheld from a person who appears to the court to have adequate grounds for attendance.

(3) When hearing family proceedings, the court may, if it thinks it necessary in the interests of the administration of justice or of public decency, direct that any persons, not being officers of the court or parties to the case, the parties' solicitors or barristers, or other persons directly

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<sup>2</sup> 1961-25

<sup>4</sup> 1951-19

<sup>5</sup> 1993-29

concerned in the case, be excluded during the taking of any indecent evidence.

(4) Where the same parties are parties to family proceedings and to proceedings for the enforcement of an order made under any law relating to the guardianship of children or under the Maintenance Act, or for the variation of any provision for the payment of money contained in an order made or confirmed under such law or Act, and the proceedings are heard together by the court, the provisions of subsection (2) and (3) shall, unless the court otherwise determines, have effect as if the whole of those proceedings were family proceedings.

(5) The powers conferred on the court by this section shall be in addition, and without prejudice, to any other powers of the court to hear proceedings in camera. (6) Nothing in this section shall affect the exercise by the court of the power to direct that witnesses shall be excluded until they are called for examination.

#### **Reports on attempts at conciliation.**

47.(1) Where in any family proceedings under the Maintenance Act, the court has requested a probation attempts, at officer or any other person to attempt to effect a conciliation between the parties, the probation officer or that other person may, if the attempt has proved unsuccessful and he thinks fit in the circumstances of the case to do so, furnish to the court a report made in the prescribed form and containing—

- (a) the allegations made by the complainant and defendant respectively; and
- (b) information about such other matters relating to the proceedings or to the parties as may be prescribed :

Provided that no allegation made by a party shall be included in a report made under this subsection without his or her consent in writing.

(2) Where a probation officer or other person furnishes a report to the court under this section he shall cause copies of it to be delivered to the complainant and the defendant, or sent by post addressed to each of them at his or her last or usual place of abode.

(3) Where a report made by a probation officer or other person has been furnished to the court and delivered or sent to the complainant and the defendant under this section, the court may, if it thinks fit, make use of the report for the purpose of putting or causing to be put questions to any witness; so, however, that nothing contained in the report shall be received by the court as evidence.

**Reports on means of parties.**

48.(1) Where in any family proceedings in which an order may be made for the periodical payment of money by any person, or in any proceedings for the enforcement or variation of any such order, the court has requested a probation officer to investigate the means of the parties to the proceedings, the court may direct the probation officer to report the result of his investigation to the court in accordance with the provisions of this section:

Provided that in the case of any such family proceedings no direction to report to the court shall be given to a probation officer under this subsection until the court has determined all issues arising in the proceedings other than the amount to be directed to be paid by such an order.

(2) Where the court directs a probation officer under this section to report to the court the result of any such investigation, the court may require him—

- (a) to furnish to the court a statement in writing about his investigation, which shall be read aloud in the presence of such parties to the proceedings as may be present at the hearing; or
- (b) to make an oral statement to the court about his investigation.

(3) Immediately after the statement of the probation officer has been read aloud or made, as the case may be, under subsection (2), the court shall ask each party to the proceedings whether he or she objects to anything contained in the statement; and where objection is made the court shall require the probation officer to give evidence on oath about his investigation.

(4) Any statement made by a probation officer in a statement furnished or made by him under subsection (2), or any evidence which he is required to give under subsection (3), may be received by the court as evidence, notwithstanding anything to the contrary in any law relating to the admissibility of evidence.

**Examination of witnesses by court.**

49. Where in any family proceedings, or in any proceedings for the enforcement or variation of an order made in family proceedings it appears to the court that any party to the proceedings who is not legally represented is unable effectively to examine or cross-examine a witness, the court shall ascertain from that party what are the matters about which the witness may be able to depose or on which the witness ought to be cross-examined, as the case may be, and shall put, or cause to be put, to the witness such

questions in the interests of that party as may appear to the court to be proper.

**Restriction on newspaper reports.**

50.(1) It shall not be lawful for the proprietor, editor or publisher of a newspaper or periodical to print or publish, or cause or procure to be printed or published, in it any particulars of family proceedings in the court other than the following, that is to say—

- (a) the names, addresses and occupations of the parties and witnesses;
- (b) the grounds of the application, and a concise statement of the charges, defences, and counter-charges in support of which evidence has been given;
- (c) submissions of any point of law arising in the course of the proceedings and the decision of the court on the submissions;
- (d) the decision of the court, and any observations made by the court in giving it.

(2) A person who contravenes this section is guilty of an offence and is liable on summary conviction to imprisonment for four months and to a fine of £100.

(3) No prosecution for an offence under this section shall be begun without the consent of the Attorney-General.

(4) Nothing in this section shall prohibit the printing or publishing of any matter in a newspaper or periodical of a technical character bona fide intended for circulation among members of the legal or medical professions.

**PART V.—ENFORCEMENT OF ORDERS**

*General provisions*

**Power to allow time for payment.**

51.(1) The court when it adjudges a sum to be paid may, instead of requiring immediate payment, allow time for payment, or order payment by instalments.

(2) Where the court has allowed time for payment, the court may, on application by or on behalf of the person liable to make the payment, allow further time or order payment by instalments.

(3) Where a court has ordered payment by instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid.

**Enforcement by distress or committal.**

52.(1) Subject to the following provisions of this Part and to section 168 of the Criminal Procedure Act, where default is made in paying a sum adjudged to be paid by order of the magistrates' court, the court may issue a warrant of distress for the purpose of levying the sum or issue a warrant committing the defaulter to prison.

(2) A warrant of commitment may be issued either—

- (a) where it appears on the return to a warrant of distress that the money and goods of the defaulter are insufficient to satisfy the sum with the costs and charges of levying the sum; or
- (b) instead of a warrant of distress.

(3) The period for which a person may be committed to prison under such a warrant as aforesaid shall not, subject to the provisions of any other law, exceed the period applicable to the case under Schedule 5 to the Criminal Procedure Act.

**Restriction on committal for civil debt.**

53.(1) The court shall not commit any person to prison or other detention in default of payment of a sum enforceable as a civil debt or for want of sufficient distress to satisfy such a sum except by an order made on complaint and on proof to the satisfaction of the court that that person has, or has had since the date on which the sum was adjudged to be paid, the means to pay the sum or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected to pay it.

(2) A complaint under this section may be made at any time notwithstanding anything in this Act or any other law.

(3) Where on any such complaint the defendant is committed to custody, such costs incurred by the complainant in proceedings for the enforcement of the sum as the court may direct shall be included in the sum on payment of which the defendant may be released from custody.

**Postponement of issue of a warrant.**

54. (1) Where the court has power to issue a warrant of distress under this Part, it may, if it thinks it expedient to do so, postpone the issue of the warrant until such time and on such conditions, if any, as the court thinks just.

(2) Where the court has power to issue a warrant of commitment under this Part, it may, if it thinks it expedient to do so, fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions, if any, as the court thinks just.

**Defects and irregularities.**

55.(1) A warrant of distress issued for the purpose of levying a sum adjudged to be paid by the conviction or order of the court shall not, if it states that the sum has been so adjudged to be paid, be held void by reason of any defect in the warrant.

(2) A person acting under a warrant of distress shall not be deemed to be a trespasser from the beginning by reason only of any irregularity in the execution of the warrant.

(3) Nothing in this section shall prejudice the claim of any person for special damages in respect of any loss caused by a defect in the warrant or irregularity in its execution.

(4) A person who removes any goods marked as articles impounded in the execution of a warrant of distress, or defaces or removes any such mark, is guilty of an offence and is liable on summary conviction to a fine of £5.

(5) A person charged with the execution of a warrant of distress who wilfully retains from the proceeds of a sale of the goods on which distress is levied, or otherwise exacts any greater costs and charges than those properly payable, or makes any improper charge, is guilty of an offence and is liable on summary conviction to a fine of £5.

**Release, etc., on payment.**

56.(1) Where imprisonment or other detention has been imposed on any person by the order of the court in default of payment of any sum adjudged to be paid by the order of the court or for want of sufficient distress to satisfy such a sum, then, on the payment of the sum, together with the costs and charges, if any, of the commitment and distress, the order shall cease to have effect; and if the person has been committed to custody he shall be released unless he is in custody for some other cause.

(2) Where, after a period of imprisonment or other detention has been imposed on any person in default of payment of any sum adjudged to be paid by the order of the court or for want of sufficient distress to satisfy such a sum, payment is made of part of the sum, the period of detention shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid bears to so much of the said sum, and the costs and charges of any distress levied to satisfy that sum, as was due at the time the period of detention was imposed.

(3) In calculating the reduction required under subsection (2) any fraction of a day shall be left out of account.

### *Maintenance orders*

#### **Special provisions applying in case of default.**

57.(1) Where default is made in paying a sum ordered to be paid by a maintenance order, the court shall not enforce payment of the sum under section 52 except by an order made on complaint.

(2) A complaint under this section shall be made not earlier than the fifteenth day after the making of the order for the enforcement of which it is made; but subject to this such a complaint may be made at any time notwithstanding anything in this Act or any other law.

(3) In relation to complaints under this section, section 36 shall not apply and section 35 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 may issue a warrant for the defendant's arrest, whether or not a summons has been previously issued.

(6) The 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 if it is of opinion that the default was not so due; and, without prejudice to the foregoing provisions of this subsection, the court shall not impose imprisonment—

- (a) in a case in which the court has power to make an attachment of earnings order under the Maintenance Act 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 section 52(3), 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) Be 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.

#### **Money found on defaulter.**

58.(1) Where the Court has Ordered the enforcement of a sum due from a person under a maintenance order, the court may order him to be searched.

(2) Any money found on the arrest of a person ordered to pay such a sum, or on a search or on his being taken to a prison or other place of detention in default of payment of such a sum or for want of sufficient distress to satisfy such a sum, may, unless the court otherwise directs, be applied towards payment of the said sum; and the balance, if any, shall be returned to him.

(3) The court shall not allow the application of any money found on a person if it is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention.

#### **Effect of committal on arrears.**

59. Where a person is committed to custody under this Part for failure to pay a sum due under a maintenance order, then, unless the court otherwise directs, no arrears shall accrue under the order while he is in custody.

#### **Power to remit arrears.**



60. On the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a maintenance order, the court may remit the whole or any part of the sum due under the order.

*Non-payment of rates*

**Special provisions in proceedings for non-payment.**

61.(1) Justices may state a case under this Act when called upon to issue a warrant of distress for a rate.

(2) Sections 27 and 56(2) shall apply to proceedings for the non-payment of a rate as they apply to proceedings for the non-payment of a sum adjudged to be paid by the court.

(3) Except as provided in the preceding provisions of this section, the power of justices to issue a warrant of distress for a rate, the form and execution of such a warrant and the committal of persons for want of sufficient distress to satisfy a rate shall not be subject to the provisions of this Act.

**PART VI.—CASES STATED**

**Right to apply for statement of case.**

62.(1) Any person who was a party to any proceeding before the court or is aggrieved by the order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the Supreme Court on the question of law or jurisdiction involved:

Provided that a person shall not make an application under this section in respect of a decision which by virtue of any law is final.

(2) An application under subsection (1) shall be made within fourteen days after the day on which the decision of the magistrates' court was given.

(3) On the making of an application under this section in respect of a decision any right of the applicant to appeal against the decision to the Supreme Court shall cease.

(4) If the justices are of opinion that an application under this section is frivolous, they may refuse to state a case, and, if the applicant so requires, shall give him a certificate stating that the application has been refused :

Provided that the justices shall not refuse to state a case if the application is made by or under the direction of the Attorney-General.

(5) Where justices refuse to state a case, the Supreme Court may, on the application of the person who applied for the case to be stated, make an order of mandamus requiring the justices to state a case.

**Recognizances and fees on case stated.**

63. Justices to whom application has been made to state a case for the opinion of the Supreme Court on any proceeding of the court shall not be required to state the case until the applicant has entered into a recognizance, with or without sureties, before the court, conditioned to prosecute the appeal without delay and to submit to the judgment of the Supreme Court and pay such costs as that court may award; and the clerk of the magistrates' court shall not be required to deliver the case to the applicant until the applicant has paid him the fees.

**Enforcement of decisions.**

64. Any order, determination or other proceeding of the court varied by the Supreme Court on an appeal by case stated, and any judgment or order of the Supreme Court on such an appeal, may be enforced as if it were a decision of the court.

**Limitation.**

65. Except as otherwise expressly provided by any law, the magistrates' court shall not hear a complaint unless it was made within six months from the time when the matter of complaint arose;

Provided that this section shall not apply to a complaint made under section 57 in respect of default in paying a sum ordered to be paid by the magistrates' court under the Maintenance Act.

**Legal representation.**

66. A party to any proceedings before the court may be represented by a barrister or solicitor; and an absent party so represented shall be deemed not to be absent:

Provided that appearance of a party by a barrister or solicitor shall not satisfy any provision in any law or any condition of a recognizance expressly requiring his presence.

**Defects in processes.**

67.(1) No objection shall be allowed to any information or complaint, or to any summons or warrant to procure the presence of the defendant, for any defect in it in substance or in form, or for any variance between it and the evidence adduced on behalf of the prosecutor or complainant at the hearing of the information or complaint.

(2) If it appears to the court that any variance between a summons or warrant and the evidence adduced on behalf of the prosecutor or complainant is such that the defendant has been misled by the variance, the court shall, on the application of the defendant, adjourn the hearing.

**Remission of fees.**

68.(1) The court may, on the ground of poverty or for other reasonable cause, remit in whole or in part any fee payable in proceedings before the court.

(2) Where the court adjudges an offender to pay a fine it shall, if the fine does not exceed £1, remit all fees payable by the prosecutor and direct all fees already paid by him to be repaid to him, unless in either case there is some special ground for not doing so.

**Offences of contempt of Magistrates' Court.**

68A.(1) The court has jurisdiction under this section to deal with any person who—

- (a) wilfully insults the justice or justices, any witness before or officer of the court or any solicitor or counsel having business in the court, during his or their sitting or attendance in court or in going to or returning from the court; or
- (b) wilfully interrupts the proceedings of the court or otherwise misbehaves in court.

(2) In any such case the court may order any officer of the court, or any police officer, to take the offender into custody and detain him until the rising of the court or the court may, if it thinks fit, commit the offender to custody for a specified period not exceeding one month or impose on him a fine not exceeding £ 1000 or both.

(3) The court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.

(4) A person against whom an order has been made under this section may appeal against that order to the Supreme Court in the like manner as a

person may appeal against conviction or sentence in accordance with the provisions of Part XIII of the Criminal Procedure Ordinance.

**Rules of court.**

69. The Chief Justice may make rules of court for the carrying out of the purposes of this Act and in particular, but without prejudice thereto, may make such rules providing for—

- (a) the practice and procedure of justices in exercising functions preliminary or incidental to proceedings before the court;
- (b) the service and execution of process issued by or for the purposes of the court;
- (c) the practice and procedure to be followed in proceedings under section 26;
- (d) the keeping of records of proceedings before the court and the manner in which things done in the course of, or as preliminary or incidental to, any such proceedings, or any proceedings on appeal from the court to the Supreme Court, may be proved in any legal proceedings;
- (e) the forms to be used and matters connected therewith;
- (f) the court fees to be paid;
- (g) the amount of the costs and expenses to be paid to prosecutors, complainants, parties and witnesses in proceedings before the court;
- (h) the functions of the Registrar for the purposes of securing the attendance of persons bound over conditionally by examining justices to attend a trial on indictment;
- (i) the furnishing by any person having custody of the depositions or copies thereof, and of copies of the information if it is in writing, to a person committed for trial;
- (j) the matters additional to those specified in section 38 on complaint for which the court shall have power to make an order with the consent of the defendant without hearing evidence;
- (k) prescribing anything which is to be, or may be, prescribed by this Act.

## **Savings and transitional provisions.**

70.(1) Any case dealt with by the magistrates' court or any order made by such court on any complaint or application or any domestic or other proceedings commenced in the magistrates' court in accordance with the provisions of the Magistrates' Court Act prior to the coming into operation of this Act, shall be deemed to have been validly made, commenced or continued.

(2) Upon coming into operation of this Act, any case, complaint, application or proceedings referred to in subsection (1) which has not been disposed of, the magistrate's court may, if it appears to the court convenient to do so refer those matters forthwith to the Family Judge for hearing and disposal.

(3) In this section, "this Act" means the Magistrates' Court (Amendment) Act 2010.