

ENFORCEMENT OF CONFISCATION ORDERS - POWERS OF THE MAGISTRATES' COURT

1. When a Confiscation Order is made by the Crown Court, the default position is that the Magistrates' Court has responsibility for enforcing it. If a Defendant does not voluntarily satisfy the Confiscation Order, the Magistrates' Court enforces the Confiscation Order as if it were a fine. *Old regime: s9 DTA and s75 CJA. New regime: s35 POCA.*

2. This means that the provisions of Sections 139 and 140 of the Powers of Criminal Courts (Sentencing) Act 2000 apply, (albeit subject to some modifications).

3. The following enforcement methods are available:

Distress Warrant – section 76 MCA 1980. Empowers bailiffs to take possession of and sell property belonging to the Defendant to satisfy the compensation order.

Third party debt orders – s87 MCA 1980. Formerly garnishee order. Order obtained from County Court or High Court that third party who holds property belonging to defendant pay into court in satisfaction.

New regime only: s67 POCA. Rather than applying to the County Court or High Court, the Magistrates' Court itself can order that money belonging to a Defendant held in a bank or building society be paid into court in satisfaction of the Confiscation Order. This only applies if the money is the subject of a restraint order.

Warrant of commitment – s76 MCA. Commits D to prison to serve the default sentence as set by the Crown Court.

R v Hastings and Rother Justices ex p Anscombe (Div Ct, 5th February 1998) Under fines legislation, the Court normally has to conduct a means enquiry and find wilful refusal or culpable neglect to pay before the defaulter can be committed to prison, no such requirement for Confiscation Orders. The Court must nevertheless enquire into the Defendant's proposals for payment, and determine whether any other method of enforcement might be effective. If no proposals and no other methods appear effective, the Court can commit the Defendant to prison.

JOANNE SEAR

13 King's Bench Walk
Temple, London

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