



# Administration of Justice Act 1970

## 1970 CHAPTER 31

An Act to make further provision about the courts (including assizes), their business, jurisdiction and procedure; to enable a High Court judge to accept appointment as arbitrator or umpire under an arbitration agreement; to amend the law respecting the enforcement of debt and other liabilities; to amend section 106 of the Rent Act 1968; and for miscellaneous purposes connected with the administration of justice. [29th May 1970]

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

#### COURTS AND JUDGES

##### *High Court*

#### **1 Redistribution of business among divisions of the High Court**

- (1) The Probate, Divorce and Admiralty Division of the High Court shall be re-named the Family Division; and the principal probate registry shall be re-named the principal registry of the Family Division.
- (2) There shall be assigned to the Family Division all causes and matters involving the exercise of the High Court's jurisdiction in proceedings specified in Schedule 1 to this Act.
- (3) Causes and matters involving the exercise of the High Court's Admiralty jurisdiction, or its jurisdiction as a prize court, shall be assigned to the Queen's Bench Division.
- (4) As respects the exercise of the High Court's probate jurisdiction—

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- (a) non-contentious or common form probate business shall continue to be assigned to the Family Division ; and
  - (b) all other probate business shall be assigned to the Chancery Division.
- (5) In section 5 of the Supreme Court of Judicature (Consolidation) Act 1925 (which enables Her Majesty, on the recommendation of the judges, by Order in Council to alter the number of divisions of the High Court or of puisne judges to be attached to any division) for the reference to a report or recommendation of the council of judges there shall be substituted a reference to a recommendation of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor.
- (6) In accordance with the foregoing subsections—
- (a) the enactments specified in Schedule 2 to this Act (that is to say, the said Act of 1925 and other enactments relative to the High Court, its jurisdiction, judges, divisions and business) shall be amended as shown in that Schedule; and
  - (b) references in any other enactment or document to the Probate, Divorce and Admiralty Division, the President of that division, the principal probate registry, the principal (or senior) probate registrar and a probate registrar shall, so far as may be necessary to preserve the effect of the enactment or document, be construed respectively as references to the Family Division and to the President, principal registry, principal registrar and a registrar of that division.
- (7) This section is not to be taken as affecting any of the following provisions of the said Act of 1925—
- (a) section 55 (which provides for the distribution of business in the High Court to be regulated by rules);
  - (b) section 57 (which enables the Lord Chancellor to assign or re-assign the jurisdiction of the court among divisions and judges);
  - (c) section 58 (which provides for the assignment of causes and matters);
  - (d) section 59 (which enables an action to be transferred at any stage from one division to another).
- (8) Notwithstanding anything in section 114(3) of the said Act of 1925 (appointment of officers attached to a division), the right of filling any vacancy in the office of the Admiralty registrar or assistant Admiralty registrar shall be vested in the Lord Chancellor; and any other officer of the Supreme Court who is to be employed in the Admiralty registry shall be appointed by the Lord Chancellor.

## **2 Admiralty Court**

- (1) There shall be constituted, as part of the Queen's Bench Division of the High Court, an Admiralty Court to take Admiralty business, that is to say causes and matters assigned to that division and involving the exercise of the High Court's Admiralty jurisdiction, or its jurisdiction as a prize court.
- (2) The judges of the Admiralty Court shall be such of the puisne judges of the High Court as the Lord Chancellor may from time to time nominate to be Admiralty Judges.
- (3) Nothing in this section is to be taken as prejudicing provisions of the Supreme Court of Judicature (Consolidation) Act 1925 which enable the whole jurisdiction of the High Court to be exercised by any judge of that court.

- (4) In section 1(1) of the Administration of Justice Act 1956 (which defines the Admiralty jurisdiction of the High Court) for the words " which is for the time being assigned by rules of court to the Probate, Divorce and Admiralty Division " there shall be substituted the words " which is for the time being assigned by rules of court to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty Court ".
- (5) In the Prize Act 1948—
- (a) in section 7(2) (determination of form and manner of advertising for claims in relation to the Supreme Court Prize Deposit Account), for the words " the President of the Probate Division of the High Court " there shall be substituted the words " such one of the Admiralty Judges of the High Court as the Lord Chancellor may nominate for the purposes of this section " and for the words " the said President " there shall be substituted the words " the said Admiralty Judge "; and
  - (b) in section 8 (regulation of payments into and out of the said Account) for the words from " the President " onwards there shall be substituted the words " such one of the Admiralty Judges of the High Court as the Lord Chancellor may nominate for the purposes of this section ".

### **3 Commercial Court**

- (1) There shall be constituted, as part of the Queen's Bench Division of the High Court, a Commercial Court to take such causes and matters as may in accordance with rules of court be entered in the commercial list
- (2) The judges of the Commercial Court shall be such of the puisne judges of the High Court as the Lord Chancellor may from time to time nominate to be Commercial Judges.
- (3) Nothing in this section is to be taken as prejudicing provisions of the said Act of 1925 which enable the whole jurisdiction of the High Court to be exercised by any judge of that court.

### **4 Power of judges of Commercial Court to take arbitrations**

- (1) A judge of the Commercial Court may, if in all the circumstances he thinks fit, accept appointment as sole arbitrator, or as umpire, by or by virtue of an arbitration agreement within the meaning of the Arbitration Act 1950, where the dispute appears to him to be of a commercial character.
- (2) A judge of the Commercial Court shall not accept appointment as arbitrator or umpire unless the Lord Chief Justice has informed him that, having regard to the state of business in the High Court and at assizes, he can be made available to do so.
- (3) The fees payable for the services of a judge as arbitrator or umpire shall be taken in the High Court.
- (4) Schedule 3 to this Act shall have effect for modifying, and in certain cases replacing, provisions of the Arbitration Act 1950 in relation to arbitration by judges and, in particular, for substituting the Court of Appeal for the High Court in provisions of that Act whereby arbitrators and umpires, their proceedings and awards, are subject to control and review by the court.

- (5) Any jurisdiction which is exercisable by the High Court in relation to arbitrators and umpires otherwise than under the Arbitration Act 1950 shall, in relation to a judge of the Commercial Court appointed as arbitrator or umpire, be exercisable instead by the Court of Appeal.

## 5 The Vice-Chancellor

- (1) The Lord Chancellor may, from among the puisne judges for the time being attached to the Chancery Division of the High Court, nominate one of them to be Vice-Chancellor, who shall be responsible to the Lord Chancellor (as president of the Chancery Division) for the organisation and management of the business of the division.
- (2) The Vice-Chancellor shall be included among the persons with power under section 99(4) of the Supreme Court of Judicature (Consolidation) Act 1925 to make rules of court; and in that subsection—
- (a) for the words " and four other judges " there shall be substituted the words " the Vice-Chancellor and three other judges "; and
  - (b) for the words "The four" there shall be substituted the words " The three ".

## 6 Divisional Courts

In paragraph (b) of the proviso to section 63(6) of the Supreme Court of Judicature (Consolidation) Act 1925 (which requires the president of a division of the High Court, in constituting a divisional court, to obtain the concurrence of other judges of his division, but only two of them in the case of the Queen's Bench Division), the words " with the concurrence of the other judges of the Division or a majority thereof, or in the case of the King's Bench Division " shall be omitted.

### *Assizes and Central Criminal Court*

## 7 Extension of power to dispense with holding of assizes

- (1) An Order in Council under section 72 of the Supreme Court of Judicature (Consolidation) Act 1925 (regulation of circuits) may contain a direction that, notwithstanding any enactment or custom to the contrary, assizes shall no longer be held for such county or at such place as may be specified in the Order either at all or for the transaction of such class of business as may be so specified.
- (2) Where such an Order contains in relation to any county or place a direction authorised by this section, the Order may also contain such provisions as appear to Her Majesty to be necessary or expedient in consequence of the direction including, without prejudice to the generality of the foregoing provision or to the provisions of paragraphs (f), (g) and (h) of subsection (1) of the said section 72, provision—
- (a) for enabling business which would or might have been transacted at assizes held in or for that county or place to be transacted at other assizes and persons who would or might have been tried or dealt with by a court of assize held in or at that county or place to be tried or dealt with by a court of assize held elsewhere;
  - (b) for assigning to such local authority as may be prescribed by the Order liability in respect of the costs of cases taken at any assizes in consequence of

a provision made by virtue of paragraph (a) above (so far as those costs are payable out of local funds under the Costs in Criminal Cases Act 1952) and in respect of such of the expenses of holding any court of assize at which cases are so taken as may be so prescribed; and

- (c) for the modification or amendment of any enactment (including an enactment extending to Scotland) relating to courts of assize and their jurisdiction.

- (3) In this section " county" has the same meaning as in the Supreme Court of Judicature (Consolidation) Act 1925.

## **8 Sittings of Central Criminal Court**

The Administration of Justice Act 1964 shall be deemed to have been enacted with the following paragraph in place of paragraph 14 of Schedule 1 (which Schedule relates to the constitution, jurisdiction, sittings, etc. of the Central Criminal Court):—

“14 (1) The Court may sit in more than one division simultaneously.

(2) Any division of the Court may sit at any place in Greater London.”.

### *Court of Appeal*

## **9 Constitution of criminal division and powers of single judge**

- (1) A court of the criminal division of the Court of Appeal shall, for the purpose of exercising any of its jurisdiction, be duly constituted if it consists of an uneven number of judges, not being less than three.

- (2) A court of the said division shall be duly constituted if it consists of two judges, but not for the purpose—

- (a) of determining an appeal; or  
(b) of determining an application for leave to appeal to the House of Lords; or  
(c) of refusing an application for leave to appeal to the criminal division, other than an application which has been refused by a single judge under section 31 of the Criminal Appeal Act 1968.

- (3) In section 45(2) of the said Act of 1968 (which defines " single judge ", for the purposes of sections 31 and 44 of the Act, as meaning any judge of the Court of Appeal or of the Queen's Bench Division of the High Court) the words " of the Queen's Bench Division of " shall be omitted.

- (4) In section 83(1) of the Criminal Justice Act 1967 (which enables the Secretary of State to make regulations about legal aid in criminal cases and, by paragraph (b), enables a court's powers in relation to legal aid to be made exercisable by a member or officer of the court) that paragraph shall have effect in relation to the criminal division of the Court of Appeal as if for the reference to a person entitled to sit as a member of the court there were substituted a reference to any judge of the court or of the High Court.

*Patents and Registered Designs Appeal Tribunals***10 Temporary additional judges**

- (1) If it appears to the Lord Chancellor expedient, having regard to the state of business pending before the Patents Appeal Tribunal or the Registered Designs Appeal Tribunal, he may appoint—
- (a) a judge of the Court of Appeal; or
  - (b) a person who has held office as a judge of the Court of Appeal or of the High Court; or
  - (c) one of Her Majesty's counsel,
- to sit and act as an additional judge of the Tribunal (either alone or with a judge of the High Court who is a judge of the Tribunal) for such period, or for the purpose of hearing such appeals, as the Lord Chancellor may specify.
- (2) A person appointed to either Tribunal under this section shall, while sitting and acting as aforesaid, have all the jurisdiction of, but shall not otherwise be deemed to be, a judge of the Tribunal.
- (3) The Lord Chancellor may pay to a person appointed to either Tribunal under this section (other than a judge of the Court of Appeal) such remuneration as he may determine with the approval of the Minister for the Civil Service ; and any such remuneration shall be included in the expenses of the Tribunal.
- (4) In this section " the Patents Appeal Tribunal " means the Appeal Tribunal constituted under section 85 of the Patents Act 1949 (as amended by section 24 of the Administration of Justice Act 1969); and " the Registered Designs Appeal Tribunal " means the Appeal Tribunal constituted under section 28 of the Registered Designs Act 1949 (as so amended).
- (5) In subsection (8) of the said section 85 and subsection (8) of the said section 28 (which confer power on the two Tribunals to make rules about procedure etc.), there shall in each case be inserted at the end of the subsection the words " including right of audience ".

**PART II**

## ENFORCEMENT OF DEBT

*Provisions restricting sanction of imprisonment***11 Restriction on power of committal under Debtors Act 1869 (c. 62)**

The jurisdiction given by section 5 of the Debtors Act 1869 to commit to prison a person who makes default in payment of a debt, or instalment of a debt, due from him in pursuance of an order or judgment shall be exercisable only—

- (a) by the High Court in respect of a High Court maintenance order; and
- (b) by a county court in respect of—
  - (i) a High Court or a county court maintenance order; or

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- (ii) a judgment or order which is enforceable by a court in England and Wales and is for the payment of any of the taxes, contributions or liabilities specified in Schedule 4 to this Act.

## **12 Restriction on magistrates' power of committal for civil debt**

- (1) The power of a magistrates' court under section 64 of the Act of 1952 to issue a warrant to commit to prison a person who makes default in paying a sum adjudged to be paid by such a court shall be restricted in accordance with this section.
- (2) This section does not affect the court's power to issue such a warrant in the case of default in paying a sum adjudged to be paid by a conviction, or treated (by any enactment relating to the collection or enforcement of fines, costs, compensation or forfeited recognizances) as so adjudged to be paid; but in the case of a sum adjudged to be paid by an order the power shall be exercisable only in respect of default under—
  - (a) a magistrates' court maintenance order;
  - (b) an order for the payment of any of the taxes, contributions or liabilities specified in Schedule 4 to this Act; or
  - (c) an order (in this Act referred to as a " legal aid contribution order") under section 76 of the Criminal Justice Act 1967 (contribution by legally assisted person to cost of his defence in a criminal case).

### *Enforcement by attachment of earnings*

## **13 Courts with power to attach earnings**

- (1) The High Court may make an attachment of earnings order to secure payments under a High Court maintenance order.
- (2) A county court may make an attachment of earnings order to secure—
  - (a) payments under a High Court or a county court maintenance order;
  - (b) the payment of a judgment debt, other than a debt of less than £5 or such other sum as may be prescribed by county court rules ; or
  - (c) payments under an administration order.
- (3) In this Part of this Act, " judgment debt" means a sum payable under—
  - (a) a judgment or order enforceable by a court in England and Wales (not being a magistrates' court); or
  - (b) an order of a magistrates' court for the payment of money recoverable summarily as a civil debt; or
  - (c) an order of any court which is enforceable as if it were for the payment of money so recoverable,but does not include any sum payable under a maintenance order or an administration order.
- (4) A magistrates' court may make an attachment of earnings order to secure—
  - (a) payments under a magistrates' court maintenance order ;
  - (b) the payment of any sum adjudged to be paid by a conviction or treated (by any enactment relating to the collection and enforcement of fines, costs, compensation or forfeited recognizances) as so adjudged to be paid; or
  - (c) the payment of any sum required to be paid by a legal aid contribution order.

- (5) The following provisions of this Part of this Act apply, except where otherwise stated, to attachment of earnings orders made, or to be made, by any court; and in those provisions—
- (a) " the relevant adjudication ", in relation to any payment secured or to be secured by an attachment of earnings order, means the conviction, judgment, order or other adjudication from which there arises the liability to make the payment; and
  - (b) " the debtor ", in relation to an attachment of earnings order, or to proceedings in which a court has power to make an attachment of earnings order, or to proceedings arising out of such an order, means the person by whom payment is required by the relevant adjudication to be made.
- (6) Any power conferred by this Part of this Act to make an attachment of earnings order includes a power to make such an order to secure the discharge of liabilities arising before the coming into force of this Part of this Act.

#### **14 Application for order and conditions of court's power to make it**

- (1) The following persons may apply for an attachment of earnings order:—
- (a) the person to whom payment under the relevant adjudication is required to be made (whether directly or through an officer of any court);
  - (b) where the relevant adjudication is an administration order, any one of the creditors scheduled to the order;
  - (c) without prejudice to paragraph (a) above, where the application is to a magistrates' court for an order to secure maintenance payments, and there is in force an order under section 52(1) of the Act of 1952, or section 19(2) of the Maintenance Orders Act 1950, that those payments be made to the clerk of a magistrates' court, the clerk of that court;
  - (d) in the following cases the debtor—
    - (i) where the application is to a magistrates' court; or
    - (ii) where the application is to the High Court or a county court for an order to secure maintenance payments.
- (2) An application for an attachment of earnings order to secure maintenance payments shall not be made, except by the debtor, unless at least fifteen days have elapsed since the making of the related maintenance order.
- (3) For an attachment of earnings order to be made on the application of any person other than the debtor it must appear to the court that the debtor has failed to make one or more payments required by the relevant adjudication.
- (4) Where proceedings are brought—
- (a) in the High Court or a county court for the enforcement of a maintenance order by committal under section 5 of the Debtors Act 1869 ; or
  - (b) in a magistrates' court for the enforcement of a maintenance order under section 64 of the Act of 1952 (distress or committal),
- then, subject to subsection (5) below, the court may make an attachment of earnings order to secure payments under the maintenance order, instead of dealing with the case under section 5 of the said Act of 1869 or, as the case may be, section 64 of the Act of 1952.

- (5) The court shall not, except on the application of the debtor, make an attachment of earnings order to secure payments under a maintenance order if it appears to it that the debtor's failure to make payments in accordance with the maintenance order is not due to his wilful refusal or culpable neglect.
- (6) Where proceedings are brought in a county court for an order of committal under section 5 of the Debtors Act 1869 in respect of a judgment debt for any of the taxes, contributions or liabilities specified in Schedule 4 to this Act, the court may, in any circumstances in which it has power to make such an order, make instead an attachment of earnings order to secure the payment of the judgment debt.
- (7) A county court shall not make an attachment of earnings order to secure the payment of a judgment debt if there is in force an order or warrant for the debtor's committal, under section 5 of the Debtors Act 1869, in respect of that debt; but in any such case the court may discharge the order or warrant with a view to making an attachment of earnings order instead.
- (8) Where a county court makes an administration order in respect of a debtor's estate, it may also make an attachment of earnings order to secure the payments required by the administration order; and at any time when an administration order is in force a county court may (with or without an application) make an attachment of earnings order to secure the payments required by the administration order, if it appears to the court that the debtor has failed to make any such payment.
- (9) The power of a county court under subsection (8) above to make an attachment of earnings order to secure the payments required by an administration order shall, where the debtor is already subject to an attachment of earnings order to secure the payment of a judgment debt, include power to direct that the last-mentioned order shall take effect (with or without variation under section 18 of this Act) as an order to secure the payments required by the administration order.

## **15 Effect and contents of order**

- (1) An attachment of earnings order shall be an order directed to a person who appears to the court to have the debtor in his employment and shall operate as an instruction to that person—
  - (a) to make periodical deductions from the debtor's earnings in accordance with Part I of Schedule 5 to this Act; and
  - (b) at such times as the order may require, or as the court may allow, to pay the amounts deducted to the collecting officer of the court, as specified in the order.
- (2) For the purposes of this Part of this Act, the relationship of employer and employee shall be treated as subsisting between two persons if one of them, as a principal and not as a servant or agent, pays to the other any sums defined as earnings by section 26 of this Act.
- (3) An attachment of earnings order shall contain prescribed particulars enabling the debtor to be identified by the employer.
- (4) Except where it is made to secure maintenance payments, the order shall specify the whole amount payable under the relevant adjudication (or so much of that amount as remains unpaid), including any relevant costs.

- (5) The order shall specify—
- (a) the normal deduction rate, that is to say, the rate (expressed as a sum of money per week, month or other period) at which the court thinks it reasonable for the debtor's earnings to be applied to meeting his liability under the relevant adjudication; and
  - (b) the protected earnings rate, that is to say the rate (so expressed) below which, having regard to the debtor's resources and needs, the court thinks it reasonable that the earnings actually paid to him should not be reduced.
- (6) In the case of an order made to secure payments under a maintenance order (not being an order for the payment of a lump sum), the normal deduction rate—
- (a) shall be determined after taking account of any right or liability of the debtor to deduct income tax when making the payments ; and
  - (b) shall not exceed the rate which appears to the court 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.
- (7) For the purposes of an attachment of earnings order, the collecting officer of the court shall be (subject to later variation of the order under section 18 of this Act)—
- (a) in the case of an order made by the High Court, either—
    - (i) the proper officer of the High Court, or
    - (ii) the registrar of such county court as the order may specify;
  - (b) in the case of an order made by a county court, the registrar of that court; and
  - (c) in the case of an order made by a magistrates' court, the clerk either of that court or of another magistrates' court specified in the order.

## **16 Compliance with order by employer**

- (1) Where an attachment of earnings order has been made, the employer shall, if he has been served with the order, comply with it; but he shall be under no liability for noncompliance before seven days have elapsed since the service.
- (2) Where a person is served with an attachment of earnings order directed to him and he has not the debtor in his employment, or the debtor subsequently ceases to be in his employment, he shall (in either case), within ten days from the date of service or, as the case may be, the cesser, give notice of that fact to the court.
- (3) Part II of Schedule 5 to this Act shall have effect with respect to the priority to be accorded as between two or more attachment of earnings orders directed to a person in respect of the same debtor.
- (4) On any occasion when the employer makes, in compliance with the order, a deduction from the debtor's earnings—
- (a) he shall be entitled to deduct, in addition, one shilling or such other sum as may be prescribed by order made by the Lord Chancellor towards his clerical and administrative costs; and
  - (b) he shall give to the debtor a statement in writing of the total amount of the deduction.

As from the appointed day for the purposes of the Decimal Currency Act 1969, paragraph (a) of this subsection shall have effect with the substitution for " one shilling " of " five new pence ".

- (5) An order of the Lord Chancellor under subsection (4) (a) above—
- (a) may prescribe different sums in relation to different classes of cases;
  - (b) may be varied or revoked by a subsequent order made under that paragraph ;  
and
  - (c) shall be made by statutory instrument subject to annulment by resolution of either House of Parliament.

## **17 Interrelation with alternative remedies open to creditor**

- (1) Where an attachment of earnings order has been made to secure maintenance payments, 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.
- (2) Where a county court has made an attachment of earnings order to secure the payment of a judgment debt—
- (a) no order or warrant of commitment shall be issued in consequence of any proceedings for the enforcement of the debt begun before the making of the attachment of earnings order; and
  - (b) so long as the order is in force no execution for the recovery of the debt shall issue against any property of the debtor without the leave of the county court.
- (3) An attachment of earnings order made to secure the payment of a judgment debt shall cease to have effect on the making of an order of commitment or the issue of a warrant of commitment for the enforcement of the debt.
- (4) An attachment of earnings order made to secure any payment specified in section 13 (4) (6) or (c) of this Act shall cease to have effect on the issue of a warrant committing the debtor to prison for default in making that payment.
- (5) Where an attachment of earnings order ceases to have effect under this section, the proper officer of the prescribed court shall give notice of the cessation to the person to whom the order was directed.

## **18 Variation, lapse and discharge of orders**

- (1) The court may make an order discharging or varying an attachment of earnings order.
- (2) Where an order is varied, the employer shall, if he has been served with notice of the variation, comply with the order as varied; but he shall be under no liability for noncompliance before seven days have elapsed since the service.
- (3) Rules of court may make provision—
- (a) as to the circumstances in which an attachment of earnings order may be varied or discharged by the court of its own motion;
  - (b) in the case of an attachment of earnings order made by a magistrates' court, for enabling a single justice, on an application made by the debtor on the ground of a material change in his resources and needs since the order was made or

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last varied, to vary the order for a period of not more than four weeks by an increase of the protected earnings rate ;

- (c) excluding, in the case of any such application as is referred to in paragraph (b) above, the operation of section 20(2) of the Act of 1958 (which requires applications to be made by complaint).

This subsection is without prejudice to any other power to make rules of court.

- (4) Where an attachment of earnings order has been made and the person to whom it is directed ceases to have the debtor in his employment, the order shall lapse (except as respects deduction from earnings paid after the cesser and payment to the collecting officer of amounts deducted at any time) and be of no effect unless and until the court again directs it to a person (whether the same as before or another) who appears to the court to have the debtor in his employment.
- (5) The lapse of an order under subsection (4) above shall not prevent its being treated as remaining in force for other purposes.
- (6) Where an attachment of earnings order—
  - (a) ceases to have effect under section 9(2) of the Act of 1958 (registration of related maintenance order, committal of debtor for arrears, etc.) or under section 17 of this Act; or
  - (b) is discharged under this section,
 the person to whom the order has been directed 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 section 9(2) or section 17 or, as the case may be, a copy of the discharging order is served on him.
- (7) Where, in the case of an attachment of earnings order made otherwise than to secure maintenance payments, the whole amount payable under the relevant adjudication has been paid, and also any relevant costs, the court shall give notice to the employer that no further compliance with the order is required

## **19 Application of sums received by collecting officer**

- (1) Subject to subsection (3) below, the collecting officer to whom a person makes payments in compliance with an attachment of earnings order shall, after deducting such court fees, if any, in respect of proceedings for or arising out of the order, as are deductible from those payments, deal with the sums paid in the same way as he would if they had been paid by the debtor to satisfy the relevant adjudication.
- (2) Any sums paid to the collecting officer under an attachment of earnings order made to secure maintenance payments shall, when paid to the person entitled to receive those payments, be deemed to be payments made by the debtor (with such deductions, if any, in respect of income tax as the debtor is entitled or required to make) so as to discharge—
  - (a) 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
  - (b) secondly, any costs incurred in proceedings relating to the related maintenance order which were payable by the debtor when the attachment of earnings order was made or last varied.

- (3) Where a county court makes an attachment of earnings order to secure the payment of a judgment debt and also, under section 29(1) of this Act, orders the debtor to furnish to the court a list of all his creditors, sums paid to the collecting officer in compliance with the attachment of earnings order shall not be dealt with by him as mentioned in subsection (1) above, but shall be retained by him pending the decision of the court whether or not to make an administration order and shall then be dealt with by him as the court may direct.

## **20 Power of court to obtain statements of earnings etc.**

- (1) Where in any proceedings a court has power to make an attachment of earnings order, it may—
- (a) order the debtor to give to the court, within a specified period, a statement signed by him of—
    - (i) the name and address of any person by whom earnings are paid to him ;
    - (ii) specified particulars as to his earnings and anticipated earnings, and as to his resources and needs; and
    - (iii) specified particulars for the purpose of enabling the debtor to be identified by any employer of his;
  - (b) order any person appearing to the court to have the debtor in his employment to give to the court, within a specified period, a statement signed by him or on his behalf of specified particulars of the debtor's earnings and anticipated earnings.
- (2) Where an attachment of earnings order has been made, the court may at any time thereafter while the order is in force make such an order as is described in subsection (1)(a) or (b) above.
- (3) In the case of an application to a magistrates' court for an attachment of earnings order, or for the variation or discharge of such an order, the power to make an order under subsection (1) or (2) above shall be exercisable also, before the hearing of the application, by a single justice.
- (4) Without prejudice to subsections (1) to (3) above, rules of court may provide that where notice of an application for an attachment of earnings order is served on the debtor, it shall include a requirement that he shall give to the court, within such period and in such manner as may be prescribed, a statement in writing of the matters specified in subsection (1)(a) above and of any other prescribed matters which are, or may be, relevant under section 15 of this Act to the determination of the normal deduction rate and the protected earnings rate to be specified in any order made on the application.
- (5) In any proceedings in which a court has power to make an attachment of earnings order, and in any proceedings for the making, variation or discharge of such an order, a document purporting to be a statement given to the court in compliance with an order under subsection (1)(a) or (b) above, or with any such requirement of a notice of application for an attachment of earnings order as is mentioned in subsection (4) above, shall, in the absence of proof to the contrary, be deemed to be a statement so given and shall be evidence of the facts stated therein.

## **21 Obligation of debtor and his employers to notify changes of employment and earnings**

While an attachment of earnings order is in force—

- (a) the debtor shall from time to time notify the court in writing of every occasion on which he leaves any employment or becomes employed or re-employed not later (in each case) than seven days from the date, on which he did so ;
- (b) the debtor shall, on any occasion when he becomes employed or re-employed, include in his notification under paragraph (a) above particulars of his earnings and anticipated earnings from the relevant employment ; and
- (c) any person who becomes the debtor's employer and knows that the order is in force and by what court it was made shall, within seven days of his becoming the debtor's employer or of acquiring that knowledge (whichever is the later) notify that court in writing that he is the debtor's employer, and include in his notification a statement of the debtor's earnings and anticipated earnings.

## **22 Power of court to determine whether particular payments are earnings**

- (1) Where an attachment of earnings order is in force, the court shall, on the application of a person specified in subsection (2) below, determine whether payments to the debtor of a particular class or description specified by the application are earnings for the purposes of the order; and the employer shall be entitled to give effect to any determination for the time being in force under this section.
- (2) The persons referred to in subsection (1) above are—
  - (a) the employer;
  - (b) the debtor;
  - (c) the person to whom payment under the relevant adjudication is required to be made (whether directly or through an officer of any court); and
  - (d) without prejudice to paragraph (c) above, where the application is in respect of an attachment of earnings order made to secure payments under a magistrates' court maintenance order, the collecting officer.
- (3) Where an application under this section is made by the employer, he shall not incur any liability for non-compliance with the order as respects any payments of the class or description specified by the application which are made by him to the debtor while the application, or any appeal in consequence thereof, is pending; but this subsection shall not, unless the court otherwise orders, apply as respects such payments if the employer subsequently withdraws the application or, as the case may be, abandons the appeal.

## **23 Consolidated orders**

- (1) The powers of a county court under sections 13 and 14 of this Act shall include power to make an attachment of earnings order to secure the payment of any number of judgment debts; and the powers of a magistrates' court under those sections shall include power to make an attachment of earnings order to secure the discharge of any number of such liabilities as are specified in section 13(4).
- (2) An attachment of earnings order made by virtue of this section shall be known as a consolidated attachment order.

- (3) The power to make a consolidated attachment order shall be exercised subject to and in accordance with rules of court; and rules made for the purposes of this section may provide—
- (a) for the transfer from one court to another—
    - (i) of an attachment of earnings order, or any proceedings for or arising out of such an order ; and
    - (ii) of functions relating to the enforcement of any liability capable of being secured by attachment of earnings;
  - (b) for enabling a court to which any order, proceedings or functions have been transferred under the rules to vary or discharge an attachment of earnings order made by another court and to replace it (if the court thinks fit) with a consolidated attachment order;
  - (c) for the cases in which any power exercisable under this section or the rules may be exercised by a court of its own motion or on the application of a prescribed person;
  - (d) for requiring the clerk or registrar of a court who receives payments made to him in compliance with an attachment of earnings order, instead of complying with section 19 of this Act, to deal with them as directed by the court or the rules; and
  - (e) for modifying or excluding provisions of this Part of this Act, section 9 or 20 of the Act of 1958 or Part III of the Act of 1952, but only so far as may be necessary or expedient for securing conformity with the operation of rules made by virtue of paragraphs (a) to (d) of this subsection.
- (4) Subsection (3) above is without prejudice to any other power to make rules.

## **24 Provisions as to persons employed under the Crown**

- (1) The fact that an attachment of earnings order is made at the suit of the Crown shall not prevent its operation at any time when the debtor is in the employment of the Crown.
- (2) Where a debtor is in the employment of the Crown and an attachment of earnings order is made in respect of him, then for the purposes of this Part of this Act—
- (a) the chief officer for the time being of the department, office or other body in which the debtor is employed shall be treated as having the debtor in his employment (any transfer of the debtor from one department, office or body to another being treated as a change of employment); and
  - (b) any earnings paid by the Crown or a Minister of the Crown, or out of the public revenue of the United Kingdom, shall be treated as paid by the said chief officer.
- (3) If any question arises, in proceedings for or arising out of 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, the question shall be referred to and determined by the Minister for the Civil Service; but that Minister shall not be under any obligation to consider a reference under this subsection unless it is made by the court.
- (4) A document purporting to set out a determination of the said Minister under subsection (3) above and to be signed by an official of the Civil Service Department shall, in any such proceedings as are mentioned in that subsection, be admissible in

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

- (5) This Part of this Act shall have effect notwithstanding any enactment passed before this Act and preventing or avoiding the attachment or diversion of sums due to a person in respect of service under the Crown, whether by way of remuneration, pension or otherwise.

## 25 Enforcement provisions

- (1) If, after being served with notice of an application to a county court for an attachment of earnings order or for the variation of such an order, the debtor fails to attend on the day and at the time specified for any hearing of the application, the court may adjourn the hearing and order him to attend at a specified time on another day; and if the debtor—

- (a) fails to attend at that time on that day ; or
- (b) attends, but refuses to be sworn or give evidence,

he may be ordered by the judge to be imprisoned for not more than fourteen days.

- (2) Subject to this section, a person commits an offence if—

- (a) being required by section 16(1) or 18(2) of this Act to comply with an attachment of earnings order, he fails to do so ; or
- (b) being required by section 16(2) of this Act to give a notice for the purposes of that subsection, he fails to give it, or fails to give it within the time required by that subsection ; or
- (c) he fails to comply with an order under section 20(1) of this Act or with any such requirement of a notice of application for an attachment of earnings order as is mentioned in section 20(4), or fails (in either case) to comply within the time required by the order or notice; or
- (d) he fails to comply with section 21 of this Act; or
- (e) he gives a notice for the purposes of section 16(2) of this Act, or a notification for the purposes of section 21 thereof, which he knows to be false in a material particular or recklessly gives such a notice or notification which is false in a material particular ; or
- (f) in purported compliance with section 16(2) or 21 of this Act, or with an order under section 20(1) thereof, or with any such requirement of a notice of application for an attachment of earnings order as is mentioned in section 20(4), he makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular.

- (3) Where a person commits an offence under subsection (2) above in relation to proceedings in, or to an attachment of earnings order made by, the High Court or a county court, he shall be liable on summary conviction to a fine of not more than £25 or he may be ordered by a judge of the High Court or the county court judge (as the case may be) to pay a fine of not more than £25 or, in the case of an offence specified in subsection (4) below, to be imprisoned for not more than fourteen days; and where a person commits such an offence otherwise than as mentioned above in this subsection, he shall be liable on summary conviction to a fine of not more than £25.

- (4) The offences referred to above in the case of which a judge may impose imprisonment are—

- (a) an offence under subsection (2)(c) or (d), if committed by the debtor;
  - (b) an offence under subsection (2)(e) or (f), whether committed by the debtor or any other person.
- (5) It shall be a defence—
- (a) for a person charged with an offence under subsection (2)(a) above to prove that he took all reasonable steps to comply with the attachment of earnings order in question;
  - (b) for a person charged with an offence under subsection (2)(b) above to prove that he did not know, and could not reasonably be expected to know, that the debtor was not in his employment or (as the case may be) had ceased to be so and that he gave the required notice as soon as reasonably practicable after the fact came to his knowledge.
- (6) Where a person is convicted or dealt with for an offence under subsection (2)(a) above, the court may order him to pay, to whoever is the collecting officer of the court for the purposes of the attachment of earnings order in question, any sums deducted by that person from the debtor's earnings and not already paid to the collecting officer.
- (7) Where under this section a person is ordered by a judge of the High Court or a county court judge to be imprisoned, the judge may at any time revoke the order and, if the person is already in custody, order his discharge.
- (8) Any fine imposed by a judge of the High Court under subsection (3) above and any sums ordered by the High Court to be paid under subsection (6) above shall be recoverable in the same way as a fine imposed by that court in the exercise of its jurisdiction to punish for contempt of court; section 179 of the County Courts Act 1959 (enforcement of fines) shall apply to payment of a fine imposed by a county court judge under subsection (3) and of any sums ordered by a county court judge to be paid under subsection (6); and any sum ordered by a magistrates' court to be paid under subsection (6) shall be recoverable as a sum adjudged to be paid on a conviction by that court.
- (9) For the purposes of section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), subsection (3) above shall be treated as an enactment enabling the High Court or a county court to deal with an offence under subsection (2) above as if it were contempt of court.
- (10) In this section references to proceedings in a court are to proceedings in which that court has power to make an attachment of earnings order or has made such an order.

## **26 Meaning of " earnings "**

- (1) For the purposes of this Act, but subject to the following subsection, " earnings " are any sums payable to a person—
- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to 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 rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment).
- (2) The following shall not be treated as earnings:—

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- (a) sums payable by any public department of the Government of Northern Ireland or of a territory outside the United Kingdom;
  - (b) pay or allowances payable to the debtor as a member of Her Majesty's forces ;
  - (c) pension, allowances or benefit payable under any of the enactments specified in Schedule 6 to this Act (being enactments relating to social security);
  - (d) pension or allowances payable in respect of disablement or disability;
  - (e) wages payable to a person as a seaman, other than wages payable to him as a seaman of a fishing boat.
- (3) In subsection (2)(e) above, expressions used in the Merchant Shipping Act 1894 have the same meanings as in that Act.

## **27 Consequential amendments of 1958 Act**

- (1) The following provisions of the Act of 1958 (as amended by this section), that is to say—
- (a) section 9(2), (4) and (5) (cases in which attachment of earnings order ceases to have effect or is to be varied or discharged); and
  - (b) section 20 (procedure in magistrates' courts with respect to attachment of earnings orders),
- shall be construed as if they were contained in this Part of this Act.
- (2) The provisions of the Act of 1958 which are specified in Part I of Schedule 7 to this Act shall have effect with the amendments there specified; and in accordance with this section, sections 9 and 20 of that Act (omitting subsection (6) of section 20) shall have effect as set out in Part II of that Schedule.
- (3) In section 1 of the Act of 1958 (introductory provisions setting out the scheme of Part I as respects registration in one court of a maintenance order made by another), after subsection (1) there shall be inserted the following subsection:—
- “(1A) In the following provisions of this Act " maintenance order " means any order specified in Schedule 8 to the Administration of Justice Act 1970.”.

## **28 Other provisions for interpretation of Part II**

- (1) In this Part of this Act, except where the context otherwise requires—
- " the Act of 1952 " and " the Act of 1958 " mean respectively the Magistrates' Courts Act 1952 and the Maintenance Orders Act 1958 ;
  - " administration order " means an order made under, and so referred to in, Part VII of the County Courts Act 1959;
  - " the court ", in relation to an attachment of earnings order, means the court which made the order, subject to rules of court as to the venue for, and the transfer of, proceedings in county courts and magistrates' courts ;
  - " debtor ", " judgment debt ", and " relevant adjudication " have the meanings given by section 13 of this Act;
  - " the employer " in relation to an attachment of earnings order, means the person who is required by the order to make deductions from earnings paid by him to the debtor;

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" High Court maintenance order ", " county court maintenance order " and " magistrates' court maintenance order " mean respectively a maintenance order enforceable by the High Court, a county court and a magistrates' court;

" legal aid contribution order " means an order under section 76 of the Criminal Justice Act 1967 ;

" maintenance order " means any order specified in Schedule 8 to this Act and includes such an order which has been discharged, if any arrears are recoverable thereunder;

" maintenance payments " means payments required under a maintenance order;

" prescribed " means prescribed by rules of court; and

" rules of court " in relation to a magistrates' court, means rules under section 15 of the Justices of the Peace Act 1949 ;

and, in relation to a magistrates' court, references to a single justice are to a justice of the peace acting for the same petty sessions area as the court.

- (2) Any reference in this Act to sums payable under a judgment or order, or to the payment of such sums, includes a reference to costs and the payment of them ; and the references in sections 15(4) and 18(7) to relevant costs are to any costs of the proceedings in which the attachment of earnings order in question was made, being costs which the debtor is liable to pay.
- (3) References in sections 15(5)(b), 18(3)(b) and 20(1)(a) of this Act to the debtor's needs include references to the needs of any person for whom he must, or reasonably may, provide.
- (4) Earnings which, in pursuance of a scheme under the Dock Workers (Regulation of Employment) Act 1946, are paid to a debtor by a body responsible for the local administration of the scheme acting as agent for the debtor's employer or as delegate of the body responsible for the general administration of the scheme shall be treated for the purposes of this Part of this Act as paid to the debtor by the last-mentioned body acting as principal.
- (5) This Part of this Act, so far as it relates to magistrates' courts, and Part III of the Act of 1952 shall be construed as if this Part were contained in that Part.

### *Supplementary*

## **29 Extension of county court's power to make administration order**

- (1) Where, on an application to a county court for an attachment of earnings order to secure the payment of a judgment debt, it appears to the court that the debtor also has other debts, the court—
  - (a) shall consider whether the case may be one in which all the debtor's liabilities should be dealt with together and that for that purpose an order should be made for the administration of his estate ; and
  - (b) if of opinion that it may be such a case, shall have power (whether or not it makes the attachment of earnings order applied for), with a view to making an administration order, to order the debtor to furnish to the court a list of all his creditors and the amounts which he owes to them respectively.

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- (2) If, on receipt of the list referred to in subsection (1)(b) above, it appears to the court that the debtor's whole indebtedness amounts to not more than the amount for the time being specified in section 148(1) (b) of the County Courts Act 1959 (limit of total indebtedness governing county court's power to make administration order on application of debtor), the court may make such an order in respect of the debtor's estate, subject however to section 20(3) of the Administration of Justice Act 1965 (which requires that, before such an order is made, notice is to be given to all the creditors and thereafter restricts the right of any creditor to institute bankruptcy proceedings).
- (3) Where under subsection (1) above a county court orders a person to furnish to it a list of all his creditors, the making of the order shall, for the purposes of the Bankruptcy Act 1914, be an act of bankruptcy by him.
- (4) Nothing in this section is to be taken as prejudicing any right of a debtor to apply, under section 148 of the County Courts Act 1959, for an administration order.
- (5) In Part VII of the said Act of 1959 (administration orders)—
  - (a) in section 153 (appropriation of money paid under administration order), paragraph (a) (which requires appropriation first in satisfaction of the plaintiff's costs) shall be omitted and, for the word " next " there shall be substituted the word " first "; and
  - (b) in section 156(1) (power of Lord Chancellor to make rules about administration orders), after the words " the objects of this Part of this Act " there shall be inserted the words " and section 29 of the Administration of Justice Act 1970 ".

### **30 Consequential and transitional provisions**

- (1) Sections 11 and 12 of this Act shall not affect the validity of an order made, or warrant issued, by a court before the coming into force of those sections for the committal of a person to prison in respect of any description of liability for which there remains power under either of those sections for that or any other court to commit, nor affect the continuance of any proceedings, or the exercise of any power, in connection with such an order or warrant; but subject to this any order or warrant of committal made or issued by any court before the appointed day shall on that day cease to have effect if it is one which, in consequence of the said sections 11 and 12, that court would, on and after that day, have no jurisdiction to make.
- (2) Any person who immediately before the appointed day was in custody under an order or warrant which ceases to have effect by virtue of subsection (1) above shall be discharged.
- (3) As from the appointed day, an attachment of earnings order made before that day under Part II of the Act of 1958 (including an order made under that Part of that Act as applied by section 46 or 79 of the Criminal Justice Act 1967) shall take effect as an attachment of earnings order made under the corresponding power in this Part of this Act, and the provisions of this Part of this Act shall apply to it accordingly, so far as they are capable of doing so.
- (4) Rules of court may make such provision as the rule-making authority considers requisite—

- (a) for enabling an attachment of earnings order to which subsection (3) above applies to be varied so as to bring it into conformity, as from the appointed day, with the provisions of this Part of this Act, or to be replaced by an attachment of earnings order having effect as if made under the corresponding power in this Part of this Act;
  - (b) to secure that anything required or authorised by this Part of this Act to be done in relation to an attachment of earnings order made thereunder is required or, as the case may be, authorised to be done in relation to an attachment of earnings order to which the said subsection (3) applies.
- (5) In this section, " the appointed day" means the day appointed under section 54 of this Act for the coming into force of this Part of this Act.

### PART III

#### DISCOVERY AND RELATED PROCEDURES

#### **31 Power of court to order disclosure, etc. of documents before commencement of proceedings**

On the application, in accordance with rules of court, of a person who appears to the High Court to be likely to be a party to subsequent proceedings in that court in which a claim in respect of personal injuries to a person or in respect of a person's death is likely to be made, the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who appears to the court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim—

- (a) to disclose whether those documents are in his possession, custody or power ;  
and
- (b) to produce to the applicant such of those documents as are in his possession, custody or power.

#### **32 Extension of existing powers of court to order disclosure of documents, inspection of property, etc.**

(1) On the application, in accordance with rules of court, of a party to any proceedings in which a claim in respect of personal injuries to a person or in respect of a person's death is made, the High Court shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the court to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising out of that claim—

- (a) to disclose whether those documents are in his possession, custody or power ;  
and
- (b) to produce to the applicant such of those documents as are in his possession, custody or power.

(2) On the application, in accordance with rules of court, of a party to any such proceedings as are referred to in subsection (1) above, the High Court shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters, that is to say—

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- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject matter of the proceedings or as to which any question arises in the proceedings;
  - (b) the taking of samples of any such property as is mentioned in paragraph (a) above and the carrying out of any experiment on or with any such property.
- (3) The foregoing provisions of this section are without prejudice to the exercise by the High Court of any power to make orders which is exercisable apart from those provisions.
- (4) In this section " property " includes any land, chattel or other corporeal property of any description.

### **33 Provisions supplementary to ss. 31 and 32**

- (1) The power to make rules of court under section 99 of the Supreme Court of Judicature (Consolidation) Act 1925 shall include power to make rules of court as to the circumstances in which an order under section 31 or 32 of this Act can be made; and any such rules may include such incidental, supplementary and consequential provisions as the authority making the rules may consider necessary or expedient.
- (2) Without prejudice to the generality of subsection (1) above, rules of court shall be made under the said section 99 for the purpose of ensuring that the costs of and incidental to proceedings for an order under section 31 or 32 of this Act incurred by the person against whom the order is sought shall be awarded to that person unless the court otherwise directs.
- (3) In this Part of this Act " personal injuries " includes any disease and any impairment of a person's physical or mental condition.

### **34 Application of ss. 31 to 33 to county courts and High Court in Northern Ireland**

- (1) Sections 31, 32 and 33 of this Act shall have effect in relation to county courts in England and Wales as they have effect in relation to the High Court, as if in those sections references to rules of court and to section 99 of the Supreme Court of Judicature (Consolidation) Act 1925 included references to county court rules and to section 102 of the County Courts Act 1959.
- (2) In the application of the provisions of this Part of this Act to Northern Ireland, " the High Court " means the High Court of Justice in Northern Ireland, the reference in section 33(1) to section 99 of the Supreme Court of Judicature (Consolidation) Act 1925 shall be construed as a reference to section 7 of the Northern Ireland Act 1962, and subsection (1) above shall be omitted.

### **35 Application to Crown**

- (1) This Part of this Act shall bind the Crown.
- (2) Section 21 of the Administration of Justice Act 1969 (power of court to order inspection, custody, etc. of property pending commencement of action) shall bind the Crown so far as it relates to property (within the meaning of that section) as to which it appears to the court that it may become the subject-matter of subsequent proceedings

involving a claim in respect of personal injuries to a person or in respect of a person's death.

- (3) A court shall not make an order under section 31 or 32 of this Act, nor an order under section 21 of the said Act of 1969, if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.
- (4) In this section references to the Crown do not include references to Her Majesty in Her private capacity nor to Her Majesty in right of Her Duchy of Lancaster, nor to the Duke of Cornwall.

## PART IV

### ACTIONS BY MORTGAGEES FOR POSSESSION

#### **36 Additional powers of court in action by mortgagee for possession of dwelling-house**

- (1) Where the mortgagee under a mortgage of land which consists of or includes a dwelling-house brings an action in which he claims possession of the mortgaged property, not being an action for foreclosure in which a claim for possession of the mortgaged property is also made, the court may exercise any of the powers conferred on it by subsection (2) below if it appears to the court that in the event of its exercising the power the mortgagor is likely to be able within a reasonable period to pay any sums due under the mortgage or to remedy a default consisting of a breach of any other obligation arising under or by virtue of the mortgage.
- (2) The court—
  - (a) may adjourn the proceedings, or
  - (b) on giving judgment, or making an order, for delivery of possession of the mortgaged property, or at any time before the execution of such judgment or order, may—
    - (i) stay or suspend execution of the judgment or order, or
    - (ii) postpone the date for delivery of possession,for such period or periods as the court thinks reasonable.
- (3) Any such adjournment, stay, suspension or postponement as is referred to in subsection (2) above may be made subject to such conditions with regard to payment by the mortgagor of any sum secured by the mortgage or the remedying of any default as the court thinks fit.
- (4) The court may from time to time vary or revoke any condition imposed by virtue of this section.
- (5) This section shall have effect in relation to such an action as is referred to in subsection (1) above begun before the date on which this section comes into force unless in that action judgment has been given, or an order made, for delivery of possession of the mortgaged property and that judgment or order was executed before that date.
- (6) In the application of this section to Northern Ireland, " the court" means a judge of the High Court in Northern Ireland, and in subsection (1) the words from " not being " to " made " shall be omitted.

### **37 Exclusive jurisdiction of county court in certain mortgage actions**

- (1) Where a mortgage of land consists of or includes a dwelling-house and no part of the land is situated in Greater London or the county palatine of Lancaster, then, subject to subsection (2) below, if a county court has jurisdiction by virtue of section 48 of the County Courts Act 1959 or section 38 of this Act to hear and determine an action in which the mortgagee under that mortgage claims possession of the mortgaged property, no court other than a county court shall have jurisdiction to hear and determine that action.
- (2) This section shall not apply to an action for foreclosure or sale in which a claim for possession of the mortgaged property is also made.
- (3) Nothing in this section shall be taken as affecting the jurisdiction of any court to hear and determine an action which is pending in that court at the date on which this section comes into force.

### **38 Further provisions as to actions in county court for possession of mortgaged land**

- (1) If an action in which the mortgagee under a mortgage of land claims possession of the mortgaged property would, by virtue of section 48 of the County Courts Act 1959, be within the jurisdiction of a county court had that claim been the only claim made in the action, a county court shall have jurisdiction to hear and determine the action notwithstanding that a claim for payment by the mortgagor of the amount owing in respect of the mortgage is also made in the action and that by reason of the amount claimed the last-mentioned claim is not within the jurisdiction of a county court.
- (2) Nothing in subsection (1) above shall be taken as empowering a county court to hear and determine an action for foreclosure or sale which is not within the jurisdiction of a county court.
- (3) Without prejudice to section 102(3)(c) of the County Courts Act 1959 (which enables county court rules to authorise the registrar to hear and determine certain proceedings and actions), the registrar of a county court may hear and determine any action in which the mortgagee under a mortgage of land claims possession of the mortgaged land, being an action which is within the jurisdiction of a county court.

### **39 Interpretation of Part IV**

- (1) In this Part of this Act—
  - " dwelling-house " includes any building or part thereof which is used as a dwelling;
  - " mortgage " includes a charge and " mortgagor " and " mortgagee " shall be construed accordingly ;
  - " mortgagor " and " mortgagee " includes any person deriving title under the original mortgagor or mortgagee.
- (2) The fact that part of the premises comprised in a dwelling-house is used as a shop or office or for business, trade or professional purposes shall not prevent the dwelling-house from being a dwelling-house for the purposes of this Part of this Act.

## PART V

### MISCELLANEOUS PROVISIONS

#### **40 Punishment for unlawful harassment of debtors**

- (1) A person commits an offence if, with the object of coercing another person to pay money claimed from the other as a debt due under a contract, he—
  - (a) harasses the other with demands for payment which, in respect of their frequency or the manner or occasion of making any such demand, or of any threat or publicity by which any demand is accompanied, are calculated to subject him or members of his family or household to alarm, distress or humiliation;
  - (b) falsely represents, in relation to the money claimed, that criminal proceedings lie for failure to pay it ;
  - (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or
  - (d) utters a document falsely represented by him to have some official character or purporting to have some official character which he knows it has not.
- (2) A person may be guilty of an offence by virtue of subsection (1)(a) above if he concert with others in the taking of such action as is described in that paragraph, notwithstanding that his own course of conduct does not by itself amount to harassment.
- (3) Subsection (1)(a) above does not apply to anything done by a person which is reasonable (and otherwise permissible in law) for the purpose—
  - (a) of securing the discharge of an obligation due, or believed by him to be due, to himself or to persons for whom he acts, or protecting himself or them from future loss; or
  - (b) of the enforcement of any liability by legal process.
- (4) A person guilty of an offence under this section shall be liable on summary conviction to a fine of not more than £100, and on a second or subsequent conviction to a fine of not more than £400.

#### **41 Recovery of costs and compensation awarded by magistrates, assizes, quarter sessions, etc.**

- (1) In the cases specified in Part I of Schedule 9 to this Act (being cases where, in criminal proceedings, a court makes an order against the accused for the payment of costs, compensation, etc.) any sum required to be paid by such an order as is there mentioned shall be treated, for the purposes of collection and enforcement, as if it had been adjudged to be paid on a conviction by a magistrates' court, being—
  - (a) where the order is made by a magistrates' court, that court; and
  - (b) in any other case, such magistrates' court as may be specified in the order.
- (2) In the cases specified in Part II of the said Schedule (being cases where a court makes an order against the prosecutor in criminal proceedings, and certain cases where an order for costs arises out of an appeal to quarter sessions in proceedings which are not criminal) any sum required to be paid by such an order as is there mentioned shall

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be enforceable as if the order were for the payment of money recoverable summarily as a civil debt.

- (3) Without prejudice to the foregoing subsections, but subject to subsection (4) below, in the cases specified in Schedule 9 to this Act any sum required to be paid by such an order as is there mentioned shall be enforceable by the High Court or a county court (otherwise than by issue of a writ of fieri facias or other process against goods or by imprisonment or attachment of earnings) as if the sum were due in pursuance of a judgment or order of the High Court or county court, as the case may be.
- (4) Subsection (3) above shall not authorise the enforcement by a county court of payment of any sum exceeding the limit for the time being in force under section 40 of the County Courts Act 1959 on the amount of any penalty recoverable by statute in a county court.
- (5) References in subsections (1) and (2) above to orders mentioned in Schedule 9 to this Act include references to orders made before the day appointed under section 54 of this Act for the coming into force of this section, except an order in the case of which the person entitled to payment has before that day begun proceedings for its enforcement; and in relation to such a case the enactments in force immediately before that day with reference to the enforcement of such an order shall continue to apply notwithstanding any repeal effected by this Act, without prejudice however to section 13(6) of this Act.

For the purpose of the operation of subsection (1) above with respect to an order made (otherwise than by a magistrates' court) before the day so appointed, the order shall be deemed to specify the magistrates' court for the petty sessions area in which the person subject to the order for the time being resides.

- (6) In the Magistrates' Courts Act 1952—
  - (a) in section 72(1) (transfer of fine order in England and Wales) and in section 72A(1) (the same as between England and Scotland), for the words from the beginning to " the offender " there shall be substituted in each case the words " Where a magistrates' court has, or is treated by any enactment as having, adjudged a person by a conviction to pay a sum and it appears to the court that the person "; and
  - (b) in section 72(2) (enforcement functions on transfer of fine in England and Wales), for the words " the convicting court" there shall be substituted the words " the court which made the order ".
- (7) In section 32(2) of the Courts-Martial (Appeals) Act 1968 (enforcement of order for costs against unsuccessful appellant or applicant for leave to appeal to that court), for paragraph (a) there shall be substituted the following:—
  - “(a) in the same manner as an order for costs made by the criminal division of the Court of Appeal under section 25 of the Criminal Appeal Act 1968; or”.
- (8) In any of the cases specified in Part I of Schedule 9 to this Act, a court (other than a magistrates' court) which makes such an order as is there mentioned may, if it thinks that the period for which the person subject to the order is liable apart from this subsection to be committed to prison for default under the order is insufficient, specify a longer period for that purpose, but not exceeding twelve months; and then, in the case of default—

- (a) the specified period shall be substituted as the maximum for which the person may be imprisoned under section 64 of the Magistrates' Courts Act 1952 (distress or committal); and
  - (b) paragraph 2 of Schedule 3 to that Act shall apply, with the necessary modifications, for the reduction of the specified period where, at the time of the person's imprisonment, he has made part payment under the order.
- (9) Where a magistrates' court has power to commit a person to prison for default in paying a sum due under an order enforceable as mentioned in this section, the court shall not exercise the power unless it is satisfied that all other methods of enforcing payment have been tried or considered and either have proved unsuccessful or are likely to do so.

#### **42 Enforcement of fines**

In section 45(1) of the Criminal Justice Act 1967 (which enables payment of a fine to be enforced by High Court or county court process, excepting execution on goods and imprisonment) after the words " or by imprisonment" there shall be inserted the words " or attachment of earnings ".

#### **43 Procedure for recovery of legal aid contributions in criminal cases**

- (1) The appropriate authority for the purposes of section 76 of the Criminal Justice Act 1967 (that is to say, the authority to whom a recipient of legal aid in a criminal case may under that section be ordered to pay a contribution towards the costs) shall be the clerk of a magistrates' court (referred to in this section as " the collecting court") specified in the order; and the court so specified shall be—
- (a) in a case where the court making the legal aid contribution order is itself a magistrates' court, that court;
  - (b) in a case where the order is made on the disposal of an appeal from a magistrates' court, or in respect of a person who was committed (whether for trial or otherwise) by a magistrates' court to assizes or quarter sessions, the court from which the appeal is brought or, as the case may be, which committed him ; and
  - (c) in any other case, a magistrates' court nominated by the court making the order.
- (2) Subject to subsection (5) below, any sum required to be paid by a legal aid contribution order shall be recoverable as if it had been adjudged to be paid by an order of the collecting court, subject to and in accordance with the provisions of Schedule 10 to this Act (being provisions which mainly apply the same enforcement procedure as for maintenance orders).
- (3) Without prejudice to subsection (2) above, but subject to the following subsections, payment of any sum required to be paid by a legal aid contribution order shall be enforceable by the High Court or a county court (otherwise than by issue of a writ of fieri facias or other process against goods or by imprisonment or attachment of earnings) as if the sum were due to the clerk of the collecting court in pursuance of a judgment or order of the High Court or county court, as the case may be.
- (4) The last foregoing subsection shall not authorise the enforcement by a county court of payment of any sum exceeding the limit for the time being in force under section 40 of the County Courts Act 1959 on the amount of any penalty recoverable by statute in a county court.

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- (5) Where a legal aid contribution order has been made by the Courts-Martial Appeal Court in respect of a member of Her Majesty's armed forces and the Secretary of State notifies the collecting court that any sum payable under the order will be recovered by deductions from the person's pay in pursuance of one of the enactments amended by subsection (6) below, the collecting court shall not enforce payment of any such sum unless and until the Secretary of State subsequently notifies it that the person is no longer a member of those forces and that the sum has not been fully recovered.
- (6) In section 150(1) of the Army Act 1955 and section 150(1) of the Air Force Act 1955 (enforcement by deduction from service-man's pay of certain orders made by civil courts), after paragraph (c) there shall be inserted—
- “(d) a contribution towards the costs of legal aid ordered for him, under Part IV of the Criminal Justice Act 1967, for the purpose of, or in connection with, an appeal to or from the Courts-Martial Appeal Court”;
- and in section 1(1) of the Naval Forces (Enforcement of Maintenance Liabilities) Act 1947 (which enables maintenance payments due from a person in naval or marine service to be recovered by deductions from pay), after paragraph (b) there shall be inserted—
- “(c) for the payment of any contribution towards the costs of legal aid ordered for him, under Part IV of the Criminal Justice Act 1967, for the purpose of, or in connection with, an appeal to or from the Courts-Martial Appeal Court.”
- (7) The clerk of the collecting court shall not take proceedings by virtue of subsection (3) above to recover any sum required to be paid by a legal aid contribution order unless authorised to do so by the court.
- (8) Any expenses incurred by the clerk of a magistrates' court in recovering any sum so required to be paid shall be treated for the purposes of Part IV of the Justices of the Peace Act 1949 as expenses of the magistrates' court committee.
- (9) Nothing in this section applies to a legal aid contribution order made before the day appointed under section 54 of this Act for the coming into force of this section ; and in relation to such an order the enactments in force immediately before that day and relating to the enforcement of such an order shall continue to apply notwithstanding any repeal effected by this Act, without prejudice however to section 13(6) of this Act.
- (10) In this section " legal aid contribution order " means an order under section 76 of the Criminal Justice Act 1967.

#### **44 Interest on judgment debts**

- (1) The Lord Chancellor may by order made with the concurrence of the Treasury direct that section 17 of the Judgments Act 1838 (as that enactment has effect for the time being whether by virtue of this subsection or otherwise) shall be amended so as to substitute for the rate specified in that section as the rate at which judgment debts shall carry interest such rate as may be specified in the order.
- (2) An order under this section shall be made by statutory instrument which shall be laid before Parliament after being made.

**45 Removal of limit on number of county court judges assignable to a district and of certain registrars appointed jointly**

- (1) There shall be no limit on the number of judges who may be assigned to a district by direction of the Lord Chancellor under section 4(4) of the County Courts Act 1959 and, accordingly, for the words in that subsection from "for a district" to "two judges" there shall be substituted the words "there shall be such number of judges for a district as may be specified in the direction".
- (2) In section 18(3) of the said Act of 1959 (which enables the Lord Chancellor, in the case of a populous district, to appoint two persons to execute jointly the office of registrar for the district and on the death, etc. of a joint registrar either to appoint another joint registrar in his place or direct that the continuing registrar shall act as sole registrar)—
  - (a) for the words "in the case of a populous district, appoint two persons to execute jointly the office of registrar for the district" there shall be substituted the words "appoint two or more persons to execute jointly the office of registrar for a district"; and
  - (b) at the end there shall be added the words "or, as the case may be, that the continuing registrars shall execute jointly the office of registrar".and in the definition of "registrar" and "registrar of a county court" in section 201 of the said Act of 1959, after the word "two" there shall be inserted the words "or more" and after the word "either" there shall be inserted the words "or any".
- (3) In section 84(3) of the Supreme Court of Judicature (Consolidation) Act 1925 (which makes, in relation to the office of district registrar, provision similar to that made by section 18(3) of the said Act of 1959), after the word "two" there shall be inserted the words "or more" and at the end there shall be added the words "or, as the case may be, that the continuing registrars shall execute jointly the office of district registrar".

**46 Deputy county court registrar not to act as such in certain proceedings**

Section 29 of the County Courts Act 1959 (which provides that no officer of a county court shall, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for any party in any proceedings in that court) shall have effect, and be deemed always to have had effect, as if after subsection (1) thereof there were inserted—

“(1A) Subsection (1) of this section shall not apply to a deputy registrar, but a deputy registrar shall not act as such in relation to any proceedings in which he is, either by himself or his partner, directly or indirectly engaged as a solicitor or agent for any party.”

**47 Extension of power to make rules, etc. for purposes of [Rent Act 1968 \(c. 23\)](#)**

Section 106 of the Rent Act 1968 (which empowers the Lord Chancellor or, when the Great Seal is in commission, any Lord Commissioner to make rules and give directions for the purpose of giving effect to the provisions of that Act specified in subsection (3) of that section) shall be amended as follows:—

- (a) in subsection (1), the words "Subject to subsection (3) below" shall be inserted at the beginning and the words "specified in subsection (3) below" shall be omitted;
- (b) for subsection (3) there shall be substituted—

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“(3) The power conferred by subsection (1) above shall not be exercisable in relation to the provisions of Part IV or VI of this Act other than section 51(2).”

**48 Variation in rate of payments in maintenance order registered in magistrates' court**

- (1) Section 4 of the Maintenance Orders Act 1958 (which enables the rate of payments in a maintenance order registered in a magistrates' court under that Act to be varied by the court of registration) shall be amended in accordance with this section.
- (2) Subsection (3) of that section (rate of payments not to be varied upwards) shall cease to have effect in relation to any maintenance order as defined by section 28(1) of this Act, whether made or registered before or after the coming into force of this section.
- (3) In subsection (4) of that section (power of magistrates' court, on application for variation, to remit to the court which made the order), for the words " that, by reason of the Umitations imposed on the court's jurisdiction by the last foregoing subsection or for any other reason, it is " there shall be substituted the words " that it is for any reason ".

**49 Amendments relating to guardianship of minors**

- (1) Any order made under section 4(2) of the Family Law Reform Act 1969 (maintenance for persons between 18 and 21 who have been subject to an order under the Guardianship of Infants Acts) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.
- (2) In the Guardianship of Infants Act 1886—
  - (a) in section 5, the words from " and in every case " on wards (costs in custody proceedings); and
  - (b) in section 11 (rules of procedure) paragraph (a) and, in paragraph (c), the words " England or ",
 shall cease to have effect.
- (3) Subsection (1) of this section shall be deemed to have come into operation at the same time as section 4 of the said Act of 1969.

**50 Proof of age before magistrates**

Section 126(5) of the Magistrates' Courts Act 1952 (which relates to proof of age) shall have effect as if the provisions of that Act included—

- (a) section 1 of the First Offenders Act 1958 ; and
- (b) section 18, section 24(1) and (2) and section 33 of the Criminal Justice Act 1967.

**51 Minor amendments of [Children and Young Persons Act 1969 \(c. 54\)](#)**

- (1) In sections 2(4) and 104 of the Act of 1952 the references to sections 20 and 21 of that Act (which are repealed by the Act of 1969 and replaced by section 6 of that Act) shall be construed as references to the said section 6; and for the purposes of section 126(5)

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of the Act of 1952 and section 70(3) of the Act of 1969 (which relate to proof of age) the said section 6 shall be deemed to be a provision of the Act of 1952 and not the Act of 1969.

- (2) The following paragraph shall be inserted after paragraph 1 of Schedule 4 to the Act of 1969 (transitional provisions and savings)—

“1A (1) Where—

- (a) before the date when section 1 of this Act comes into force any child or young person (hereafter in this paragraph referred to as " the relevant infant ") has been brought before a juvenile court under section 62 of the Children and Young Persons Act 1933 or has been brought before such a court by virtue of a provision of section 40 or 40A of the Education Act 1944 ; and
- (b) immediately before that date that court has neither made any order which it had power to make in respect of the relevant infant under the said section 62 nor dismissed the case,

nothing in paragraph 13 of Schedule 5 to this Act nor in any provision of Schedule 6 thereto shall prevent the proceedings before that court in respect of the relevant infant being continued; but the court shall in those proceedings have power to make any order which it has power to make in proceedings under section 1 of this Act and shall not have power to make any other order, and subsections (3), (4) and (5) of the said section 1 and subsections (10) and (13) of section 2 of this Act shall have effect accordingly with any necessary modifications.

- (2) For the purposes of subsection (12) of the said section 2, any order made in respect of the relevant infant by virtue of sub-paragraph (1) of this paragraph shall be deemed to be made under section 1 of this Act.
- (3) Any record of a finding of the fact that the relevant infant is in need of care or protection made in pursuance of section 5 of the Children and Young Persons Act 1938 in any such proceedings as are referred to in sub-paragraph (1) of this paragraph shall, notwithstanding the repeal of the said section 5 by this Act, be admissible as evidence of that fact in those proceedings.”

- (3) In this section " the Act of 1952 " and " the Act of 1969 " mean respectively the Magistrates' Courts Act 1952 and the Children and Young Persons Act 1969.

## PART VI

### GENERAL

#### 52 Financial provisions

There shall be defrayed out of moneys provided by Parliament any increase attributable to the provisions of this Act in the sums payable under any other enactment out of moneys so provided.

**53 Powers of Parliament of Northern Ireland**

Notwithstanding anything in the Government of Ireland Act 1920, the Parliament of Northern Ireland shall have power to make laws for purposes similar to the purposes of section 24 or 37 of this Act.

**54 Citation, interpretation, repeals, commencement and extent**

- (1) This Act may be cited as the Administration of Justice Act 1970.
- (2) References in this Act to any enactment include references to that enactment as amended or extended by or under any other enactment, including this Act.
- (3) The enactments specified in Schedule 11 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (4) This Act shall come into force on such day as the Lord Chancellor may appoint by order made by statutory instrument, and different days may be so appointed for different provisions of this Act, or for different purposes.
- (5) Except insofar as it amends, or authorises the amendment of, any enactment which extends to Scotland, this Act shall not extend to Scotland.
- (6) This section (except subsection (3)) and the following provisions only of this Act extend to Northern Ireland, that is to say—
  - (a) sections 1(6) and 27 and Schedules 2 and 7, so far as they relate to any enactment which extends to Northern Ireland, and section 2(5);
  - (b) Part III; and
  - (c) sections 36, 39, 43(6) and 53.

and the amendment of section 25 of the Court of Probate Act (Ireland) 1859 made by the said section 1(6) and Schedule 2 shall be treated for the purposes of section 6 of the Government of Ireland Act 1920 (which restricts the power of the Parliament of Northern Ireland to alter Acts of the Parliament of the United Kingdom passed after the day appointed for the purposes of that section) as having been made by an Act passed before that day.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### HIGH COURT BUSINESS ASSIGNED TO FAMILY DIVISION

##### *Business at first instance*

Proceedings consisting of a matrimonial cause, or any matter arising out of or connected with such a cause; proceedings for a decree of presumption of death and dissolution of marriage ; and any other proceedings with respect to which rules of court may be made by virtue of section 7(1) of the Matrimonial Causes Act 1967.

Proceedings for a declaration—

- (a) under section 39 of the Matrimonial Causes Act 1965, as to a person's legitimacy, or the validity of a marriage, or a person's right to be deemed a British subject; or
- (b) with respect to a person's matrimonial status.

Proceedings in relation to the wardship of minors.

Proceedings under the Adoption Acts 1958 and 1968.

Proceedings under the Guardianship of Infants Act 1886 and 1925 and otherwise in relation to the guardianship of minors, except proceedings for the appointment of a guardian of a minor's estate alone.

Proceedings under section 3 of the Marriage Act 1949 for obtaining the court's consent to the marriage of a minor.

Proceedings under section 17 of the Married Women's Property Act 1882 (determination of title to property in dispute between spouses).

Proceedings in which a parent or guardian of a minor applies for a writ of habeas corpus ad subjiciendum relative to the custody, care or control of the minor.

Proceedings under the following enactments:—

- (a) the Maintenance Orders (Facilities for Enforcement) Act 1920 (enforcement in England and Wales of orders made overseas for periodical payments to a man's wife or dependant);
- (b) Part II of the Maintenance Orders Act 1950 (enforcement in England and Wales of certain maintenance and other orders made in Scotland or Northern Ireland);
- (c) the Maintenance Orders Act 1958 (registration and enforcement of certain maintenance and other orders);
- (d) Part II of this Act.

Proceedings under section 1 of the Matrimonial Homes Act 1967 (means whereby a spouse can continue in occupation of, or obtain entry to, a dwelling-house which is, or has been, the matrimonial home).

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### *Appellate business*

Proceedings on appeal under—

- (a) section 10 of the Guardianship of Infants Act 1886 (appeal to High Court from order of county court under that Act);
- (b) section 7(3) of the Guardianship of Infants Act 1925 (corresponding appeal from a magistrates' court);
- (c) section 11 of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (appeal from certain decisions of a magistrates' court under that Act).

Proceedings on appeal from a magistrates' court under section 10 of the Adoption Act 1958 against the making of, or refusal to make, an adoption order.

Proceedings on appeal from a magistrates' court under section 4(7) of the Maintenance Orders Act 1958 against the variation of, or refusal to vary, an order registered in accordance with the provisions of that Act.

Proceedings on appeal under section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court) from an order or decision of a magistrates' court under section 54(3) of the Magistrates' Courts Act 1952 where the order or decision was made to enforce an order of such a court under the Guardianship of Infants Acts 1886 and 1925 or the Matrimonial Proceedings (Magistrates' Courts) Act 1960.

Proceedings on appeal by case stated against an order or determination of a court of quarter sessions, or a magistrates' court, made or given in affiliation proceedings. Proceedings on appeal by case stated against an order or determination of a magistrates' court with regard to the enforcement of—

- (a) an order for the payment of money made by virtue of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 ;
- (b) an order for the payment of money registered in a magistrates' court under the Maintenance Orders Act 1958 or registered in a court in England and Wales under Part II of the Maintenance Orders Act 1950 or the Maintenance Orders (Facilities for Enforcement) Act 1920 or confirmed by a magistrates' court under the last-mentioned Act.

Proceedings on appeal by case stated against an order or determination of a magistrates' court under section 24 of the Matrimonial Causes Act 1965 (alteration of maintenance agreement between spouses).

## SCHEDULE 2

Section 1.

### AMENDMENT OF ENACTMENTS CONSEQUENTIAL ON SECTION 1

#### *THE COURT OF PROBATE ACT (IRELAND) 1859 (22 and 23 Vict. c. 31)*

- 1 In section 25 of the Court of Probate Act (Ireland) 1859 (certificate of principal probate registrar in England required before English grants are resealed), after the words "principal probate registrar" insert the words " or, under the hand of a registrar of the Family Division of the High Court in England, that bond has been given to the principal registrar of that Division ".

*THE MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) ACT 1920 (c. 33)*

- 2 In section 1 of the Maintenance Orders (Facilities for Enforcement) Act 1920 (provisions for registration and enforcement of maintenance orders made overseas), in subsection (2), for the words " Probate, Divorce and Admiralty Division" substitute the words " Family Division ".

*THE ADMINISTRATION OF ESTATES ACT 1925 (c. 23)*

- 3 In section 23 of the Administration of Estates Act 1925 (grant of representation in the case of settled land), in subsections (3) and (4), for the words " Principal Probate Registry " substitute the words " principal registry of the Family Division of the High Court ".
- 4 In section 47A of the said Act of 1925 (life interest of surviving spouse on an intestacy), in subsection (7), for the words " principal probate registrar" substitute the words " principal registrar of the Family Division of the High Court ".
- 5 In section 55 of the said Act of 1925 (interpretation), for paragraph (xv) substitute—  
“(xv) ' Probate Judge ' means the President of the Family Division of the High Court”.

*THE SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT 1925 (c. 49)*

References to Probate Division and its President

- 6 In the following provisions of the Supreme Court of Judicature (Consolidation) Act 1925, for the words "Probate, Divorce and Admiralty Division" or "Probate Division ", in each place where they occur, substitute the words " Family Division " :—
- section 2 (constitution of High Court), subsection (1);
  - section 3 (qualification to sit as judge), subsection (1);
  - section 4 (divisions of High Court), subsections (1)(iii) and (2);
  - section 6 (constitution of Court of Appeal), subsection (2);
  - section 9 (qualification of judges), subsection (3);
  - section 16 (precedence of judges), subsections (2) and (2a);
  - section 70 (commissioners of assize), subsections (3) and (5);
  - section 99 (rules of court), subsections (4) and (6);
  - section 100 (rules about non-contentious probate business), subsection (1);
  - section 108 (district probate registries), subsections (2), (3) and (5);
  - section 109 (clerks of district probate registries), subsections (1) and (2);
  - section 113 (power to abolish offices);
  - section 115 (tenure of officers of Supreme Court), subsection (3);
  - section 116 (appointment of deputies for court officers), subsection (4);
  - section 128A (district probate registrar), subsections (2) and (3);
  - section 152 (duties of district probate registrars), subsection (2), (3), (5) and (6) ;
  - section 156 (calendars of grants), subsection (2);
  - section 157 (copies of will to be delivered to Revenue);
  - section 172 (depositories of wills of living persons);
  - section 174 (seals for use in probate registries), subsection (1);
  - section 220 (documents filed in, or in custody of, central office), subsection (3);

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Schedule 2 (district probate registries), paragraph 2 ;

Schedule 3, Part I (officers to whom special provisions as to appointment, retirement and pension apply).

Other amendments in Parts I to V

- 7 In section 5 of the said Act of 1925 (power to alter divisions by Order in Council), in subsection (1), for the words " on a report or recommendation of the council of judges of the Supreme Court assembled in pursuance of the provisions of Part X of this Act", substitute the words " on a recommendation of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor ".
- 8 In section 56 of the said Act of 1925 (allocation of business to divisions)—
- (a) in subsection (1)(b), for the words " The wardship of infants and the care of infants' estates " substitute—
    - “The appointment of a guardian of a minor's estate alone”;
  - (b) after subsection (1)(b) insert—
    - “(bb) all causes and matters involving the exercise of the High Court's probate jurisdiction otherwise than in respect of non-contentious or common form probate business”;
  - (c) after subsection (2)(a) insert—
    - “(aa) all causes and matters involving the exercise of the High Court's Admiralty jurisdiction, or its jurisdiction as a prize court”;
  - (d) for subsection (3) substitute—
    - “(3) To the Family Division—
      - (a) all causes and matters involving the exercise of the High Court's jurisdiction in proceedings specified in Schedule 1 to the Administration of Justice Act 1970;
      - (b) all causes and matters which under, or by virtue or in pursuance of, any other enactment for the time being in force are assigned to the Family Division.”
- 9 For section 107 of the said Act of 1925 (principal probate registry) substitute—
- “**107** The principal registry of the Family Division, for the purpose of non-contentious or common form probate business, shall remain in London, unless Her Majesty by Order in Council appoints some other place for it.”
- 10 In section 112 of the said Act of 1925 (classification of Supreme Court clerks), in subsection (1), for the words "the principal" substitute the words " the principal registry of the Family Division ".
- 11 In Schedule 3 to the said Act of 1925, Part I (officers to whom special provisions as to appointment, retirement and pension apply), after the words "Assistant Master of the Supreme Court (King's Bench Division)" insert the words " Admiralty Registrar ".

Amendments of references in Part VII to principal probate registry and registrar

- 12 In the following provisions of the said Act of 1925, for the words " the principal probate registry", in each place where they occur, substitute the words " the principal registry of the Family Division " :—
- section 126 (qualification for appointment to certain offices), subsection (3);

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- section 150 (application for grants);  
section 151 (grants in district probate registries), subsection (3);  
section 152 (duties of district probate registrars), subsections (1), (2), (3), (4) and (5);  
section 154 (caveats), subsections (1) and (2);  
section 156 (records of grants), subsection (1);  
section 168 (resealing of Scottish confirmations), subsections (1), (2) and (3);  
section 169 (resealing of Northern Irish grants), subsections (1), (2) and (3);  
section 170 (deposit of wills, etc.) ;  
section 171 (official copies of wills), paragraphs (b) and (c) ;  
section 174 (seals for use in probate registries), subsection (1).
- 13 In section 157 of the said Act of 1925 (copies of wills to be delivered to Commissioners of Inland Revenue), for the words " every probate registry " substitute the words " the principal registry of the Family Division and every district probate registry ".
- 14 In the following provisions of the said Act of 1925, for the words " the principal probate registrar ", in each place where they occur, substitute the words " the principal registrar of the Family Division " :—  
section 167 (administration bonds), subsection (2);  
section 168 (re-sealing of Scottish confirmations), subsection (3);  
section 169 (re-sealing of Northern Irish grants), subsection (2);  
section 171 (official copies of wills), paragraph (c).
- 15 In section 167 of the said Act of 1925 (administration bonds), in subsection (1), for the words from " senior " to " principal probate registrar", where last occurring, substitute the words " principal registrar of the Family Division and, subject to the provisions of this section, if that registrar " ; and in subsection (4), for the words " the principal probate registrar " substitute the words " the principal registrar of the Family Division or, before the coming into force of section 1 of the Administration of Justice Act 1970, the principal probate registrar ".

*THE INHERITANCE (FAMILY PROVISION) ACT 1938 (c. 45)*

- 16 In section 3 of the Inheritance (Family Provision) Act 1938 (effect and form of order as to provision to be made for dependant of deceased person), in subsection (3), for the words " principal probate registry " substitute the words " principal registry of the Family Division ".

*THE ADMINISTRATION OF JUSTICE (PENSIONS) ACT 1950 (14 & 15 Geo. 6 c. 11)*

- 17 In Schedule 1 to the Administration of Justice (Pensions) Act 1950 (list of judges and others whose pensions are affected by Part I of the Act), in the left-hand column—  
(a) after the words " Assistant Master of the Supreme Court (King's Bench Division )" insert " Admiralty Registrar " .  
(b) for the words " Registrar, Probate Division " substitute the words " Registrar, Probate or Family Division " .

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*THE SUPREME COURT OFFICERS (PENSIONS) ACT 1954 (c. 38)*

- 18 In section 2 of the Supreme Court Officers (Pensions) Act 1954 (judges' secretaries and clerks), in subsections (2), (5) and (6), for the words " Probate, Divorce and Admiralty Division" substitute the words " Family Division ".

*THE PUBLIC RECORDS ACT 1958 (c. 51)*

- 19 In section 8 of the Public Records Act 1958 (deposit and custody of court records), in subsection (5), for the words " Probate Division " substitute the words " Family Division ".

*THE JUDICIAL PENSIONS ACT 1959 (c. 9)*

- 20 In Schedule 1 to the Judicial Pensions Act 1959 (judicial offices qualifying for pension at rates set out in section 1) for the words " Probate, Divorce and Admiralty Division" substitute the words " Probate, Divorce and Admiralty, or Family Division ".

*THE COUNTY COURTS ACT 1959 (c. 22)*

- 21 In section 42 of the County Courts Act 1959 (jurisdiction by agreement in certain actions) for the words " Probate, Divorce and Admiralty Division " substitute the words " Family Division or have involved the exercise of the High Court's Admiralty jurisdiction ".
- 22 At the end of section 54(2) of the said Act of 1959 (transfer of equity proceedings from High Court to county court) insert the words " other than a matter in relation to which section 63 of this Act applies ".
- 23 In section 62(1) of the said Act of 1959 (probate jurisdiction) and section 63 thereof (transfer of probate proceedings from High Court to county court), for the words " principal probate registry ", in each place where they occur, substitute the words " principal registry of the Family Division ".
- 24 In section 64 of the said Act of 1959 (effect of order of judge in probate proceedings), in paragraph (a), after the word "principal" insert the words " registry of the Family Division " ; and, in paragraph (b), for the words " principal probate registry " substitute the words " principal registry of the Family Division ".

*THE JUDGES' REMUNERATION ACT 1965 (c. 61)*

- 25 In Schedule 1 to the Judges' Remuneration Act 1965 (salaries of higher United Kingdom judiciary), for "Probate, Divorce and Admiralty Division " substitute " Family Division ".

*THE MATRIMONIAL CAUSES ACT 1967 (c. 56)*

- 26 In section 4 of the Matrimonial Causes Act 1967 (county court proceedings in High Court divorce registry), for the words " principal probate registry", in each place where they occur, substitute the words " divorce registry ".
- 27 In section 7 of the said Act of 1967 (matrimonial causes rules), in subsection (1).—  
(a) for the words " Probate, Divorce and Admiralty Division " substitute the words " Family Division "; and

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- (b) for the words " principal probate registry" substitute the words " divorce registry ".
- 28 In section 10 of the said Act of 1967 (interpretation), in subsection (1), after the definition of " divorce county court" insert—  
    " divorce registry " means the principal registry of the Family Division of the High Court".

### SCHEDULE 3

Section 4.

#### APPLICATION OF ARBITRATION ACT 1950 TO JUDGE-ARBITRATORS

- 1 In this Schedule—
- (a) " the Act" means the Arbitration Act 1950 ;
- (b) " arbitration agreement" has the same meaning as in the Act; and
- (c) " judge-arbitrator" and " judge-umpire " mean a judge of the Commercial Court appointed as arbitrator or, as the case may be, as umpire by or by virtue of an arbitration agreement.
- 2 In section 1 of the Act (authority of arbitrator to be irrevocable except by leave of the court), in its application to a judge-arbitrator or judge-umpire, the Court of Appeal shall be substituted for the High Court.
- 3 The power of the High Court under section 7 of the Act (vacancy among arbitrators supplied by parties) to set aside the appointment of an arbitrator shall not be exercisable in the case of the appointment of a judge-arbitrator.
- 4 Section 8(3) of the Act (power of High Court to order umpire to enter immediately on reference as sole arbitrator) shall not apply to a judge-umpire ; but a judge-umpire may, on the application of any party to the reference and notwithstanding anything to the contrary in the arbitration agreement, enter on the reference in lieu of the arbitrators and as if he were the sole arbitrator.
- 5 (1) The powers conferred on the High Court or a judge thereof by section 12(4), (5) and (6) of the Act (summoning of witnesses, interlocutory orders, etc.) shall be exercisable in the case of a reference to a judge-arbitrator or judge-umpire as in the case of any other reference to arbitration, but shall in any such case be exercisable also by the judge-arbitrator or judge-umpire himself.
- (2) Anything done by an arbitrator or umpire in the exercise of powers conferred by this paragraph shall be done by him in his capacity as judge of the High Court and have effect as if done by that court; but nothing in this paragraph prejudices any power vested in the arbitrator or umpire in his capacity as such.
- 6 Section 13(2) and (3) of the Act (extension of time for making award; provision for ensuring that reference is conducted with reasonable dispatch) shall not apply to a reference to a judge-arbitrator or judge-umpire ; but a judge-arbitrator or judge-umpire may enlarge any time limited for making his award (whether under the Act or otherwise), whether that time has expired or not.
- 7 (1) Section 18(4) of the Act (provision enabling a party in an arbitration to obtain an order for costs) shall apply, in the case of a reference to a judge-arbitrator, with the omission of the words from " within fourteen days " to " may direct".

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- (2) The power of the High Court to make declarations and orders for the purposes of section 18(5) of the Act (charging order for solicitor's costs) shall be exercisable in the case of an arbitration by a judge-arbitrator or judge-umpire as in the case of any other arbitration, but shall in any such case be exercisable also by the judge-arbitrator or judge-umpire himself.
- (3) A declaration or order made by an arbitrator or umpire in the exercise of the power conferred by the last foregoing sub-paragraph shall be made by him in his capacity as judge of the High Court and have effect as if made by that court.
- 8 (1) Section 19 of the Act (power of High Court to order delivery of award on payment of arbitrators' fees into court) shall not apply with respect to the award of a judge-arbitrator or judge-umpire.
- (2) A judge-umpire may withhold his award until the fees payable to the arbitrators have been paid into the High Court.
- (3) Arbitrators' fees paid into court under this paragraph shall be paid out in accordance with rules of court, subject to the right of any party to the reference to apply (in accordance with the rules) for any fee to be taxed, not being a fee which has been fixed by written agreement between him and the arbitrator.
- (4) A taxation under this paragraph may be reviewed in the same manner as a taxation of the costs of an award.
- (5) On a taxation under this paragraph, or on a review thereof, an arbitrator shall be entitled to appear and be heard.
- 9 (1) In sections 21(1) and (2), 22 and 23 of the Act (special case, remission and setting aside of awards, etc.), in their application to a judge-arbitrator or judge-umpire, and to a reference to him and to his award thereon, the Court of Appeal shall be substituted for the High Court.
- (2) A decision of the Court of Appeal on a case stated by a judge-arbitrator or judge-umpire under section 21 of the Act (as amended by this paragraph) shall be deemed to be a judgment of that court for the purposes of section 3 of the Appellate Jurisdiction Act 1876 (appeal to House of Lords) ; but no appeal shall lie from any such decision without the leave of the Court of Appeal or the House of Lords.
- 10 (1) Section 24(2) of the Act (removal of issue of fraud for trial in the High Court) shall not apply to an agreement under or by virtue of which a judge-arbitrator or judge-umpire has been appointed ; nor shall leave be given by the High Court under that subsection to revoke the authority of a judge-arbitrator or judge-umpire.
- (2) Where, on a reference of a dispute to a judge-arbitrator or judge-umpire, it appears to the judge that the dispute involves the question whether a party to the dispute has been guilty of fraud, he may, so far as may be necessary to enable that question to be determined by the High Court, order that the agreement by or by virtue of which he was appointed shall cease to have effect and revoke his authority as arbitrator or umpire.
- (3) An order made by a judge-arbitrator or judge-umpire under this paragraph shall have effect as if made by the High Court.
- 11 Section 25 of the Act (powers of court on removal of arbitrator or revocation of arbitration agreement) shall be amended as follows:—

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- (a) after the words "the High Court" where they first occur in subsection (1), where they occur for the first and second time in subsection (2), and in subsections (3) and (4), there shall be inserted the words " or the Court of Appeal "; and
  - (b) after those words where they occur for the second time in subsection (1) and for the third time in subsection (2) there shall be inserted the words " or the Court of Appeal, as the case may be ".
- 12 The leave required by section 26 of the Act (enforcement in High Court) for an award on an arbitration agreement to be enforced as mentioned in that section may, in the case of an award by a judge-arbitrator or a judge-umpire, be given by the judge-arbitrator or judge-umpire himself.

#### SCHEDULE 4

Sections 11, 12 and 14.

##### TAXES, SOCIAL INSURANCE CONTRIBUTIONS, ETC. SUBJECT TO SPECIAL ENFORCEMENT PROVISIONS IN PART II

- 1 Income tax or any other tax or liability recoverable under section 65, 66 or 68 of the Taxes Management Act 1970.
- 2 Selective employment tax under section 44 of the Finance Act 1966.
- 3 Contributions under—  
section 3 (flat-rate) or section 4 (graduated) of the National Insurance Act 1965;  
section 1 of the National Health Service Contributions Act 1965 ; or  
section 2 of the National Insurance (Industrial Injuries) Act 1965.
- 4 Redundancy Fund contributions under section 27 of the Redundancy Payments Act 1965.

#### SCHEDULE 5

Sections 15 and 16.

##### DEDUCTIONS BY EMPLOYER UNDER ATTACHMENT OF EARNINGS ORDER

### PART I

#### SCHEME OF DEDUCTIONS

##### *Preliminary definitions*

- 1 The following three paragraphs have effect for defining and explaining, for purposes of this Schedule, expressions used therein.
- 2 " Pay-day ", in relation to earnings paid to a debtor, means an occasion on which they are paid.
- 3 " Attachable earnings", in relation to a pay-day, are the earnings which remain payable to the debtor on that day after deduction by the employer of—  
(a) income tax ;

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- (b) contributions under any of the following enactments—  
     the National Insurance Act 1965,  
     the National Insurance (Industrial Injuries) Act 1965, or  
     the National Health Service Contributions Act 1965 ;
- (c) amounts deductible under any enactment, or in pursuance of a request in writing by the debtor, for the purposes of a superannuation scheme within the meaning of the Wages Councils Act 1959.

4

On any pay-day—

- (a) "the normal deduction" is arrived at by applying the normal deduction rate (as specified in the relevant attachment of earnings order) with respect to the period since the last pay-day or, if it is the first pay-day of the debtor's employment with the employer, since the employment began; and
- (b) " the protected earnings" are arrived at by applying the protected earnings rate (as so specified) with respect to the said period.

*Employer's deduction (judgment debts and administration orders)*

5

In the case of an attachment of earnings order made to secure the payment of a judgment debt or payments under an administration order, the employer shall on any pay-day—

- (a) if the attachable earnings exceed the protected earnings, deduct from the attachable earnings the amount of the excess or the normal deduction rate, whichever is the less ;
- (b) make no deduction if the attachable earnings are equal to, or less than, the protected earnings.

*Employer's deduction (other cases)*

6

- (1) The following provision shall have effect in the case of an attachment of earnings order to which paragraph 5 above does not apply.
- (2) If on a pay-day the attachable earnings exceed the sum of—
  - (a) the protected earnings ; and
  - (b) so much of any amount by which the attachable earnings on any previous pay-day fell short of the protected earnings as has not been made good by virtue of this sub-paragraph on another previous pay-day,
 then, in so far as the excess allows, the employer shall deduct from the attachable earnings the amount specified in the following sub-paragraph.
- (3) The said amount is the sum of—
  - (a) the normal deduction ; and
  - (b) so much of the normal deduction on any previous pay-day as was not deducted on that day and has not been paid by virtue of this sub-paragraph on any other previous pay-day.
- (4) No deduction shall be made on any pay-day when the attachable earnings are equal to, or less than, the protected earnings.

## PART II

### PRIORITY AS BETWEEN ORDERS

- 7 Where the employer is required to comply with two or more attachment of earnings orders in respect of the same debtor, all or none of which orders are made to secure either the payment of judgment debts or payments under an administration order, then on any pay-day the employer shall, for the purpose of complying with Part I of this Schedule.—
- (a) deal with the orders according to the respective dates on which they were made, disregarding any later order until an earlier one has been dealt with ;
  - (b) deal with any later order as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with any earlier order.
- 8 Where the employer is required to comply with two or more attachment of earnings orders, and one or more (but not all) of those orders are made to secure either the payment of judgment debts or payments under an administration order, then on any pay-day the employer shall, for the purpose of complying with Part I of this Schedule—
- (a) deal first with any order which is not made to secure the payment of a judgment debt or payments under an administration order, (complying with paragraph 7 above if there are two or more such orders); and
  - (b) deal thereafter with any order which is made to secure the payment of a judgment debt or payments under an administration order as if the earnings to which it relates were the residue of the debtor's earnings after the making of any deduction to comply with an order having priority by virtue of sub-paragraph (a) of this paragraph ; and
  - (c) if there are two or more orders to which sub-paragraph (b) of this paragraph applies, comply with paragraph 7 above in respect of those orders.

## SCHEDULE 6

Section 26.

### ENACTMENTS PROVIDING BENEFITS WHICH ARE NOT TO BE TREATED AS DEBTOR'S EARNINGS

The National Insurance Act 1965.

The National Insurance (Industrial Injuries) Act 1965.

The Family Allowances Act 1965.

The Ministry of Social Security Act 1966.

The Industrial Injuries and Diseases (Old Cases) Act 1967.

## SCHEDULE 7

Section 27.

### PROVISIONS OF MAINTENANCE ORDERS ACT 1958 AS AMENDED

#### PART I

##### AMENDMENTS OF SECTIONS 9 AND 20

- 1 In this Part of this Schedule " the Act" means the Maintenance Orders Act 1958.
- 2 In section 9(2) of the Act—
- (a) after " order " (where that word first occurs) insert " made to secure maintenance payments "; and
  - (b) after " order " (where that word first occurs after paragraph (e)) insert " so made ".
- 3 In section 9(4) and (5) of the Act, for " defendant" (wherever that word occurs) substitute " debtor ".
- 4 In section 9(4) of the Act—
- (a) for the words from the beginning to " a county court" substitute " Where, in the case of an attachment of earnings order made by the High Court or a county court to secure maintenance payments, it appears to the collecting officer of the court ".
  - (b) for the words from " which made that order " to the end of paragraph (ii) substitute " shall make the appropriate variation order, unless the debtor requests it to discharge the attachment of earnings order, or to vary it in some other way, and the court thinks fit to comply with the request ".
- 5 In section 9(5) of the Act—
- (a) for the words from the beginning to " a magistrates' court" substitute " Where, in the case of an attachment of earnings order made by a magistrates' court to secure maintenance payments, it appears to the collecting officer ".
  - (b) for the words from " proceed under the following paragraph " to the end of the subsection substitute " discharge the attachment of earnings order, or to vary it in some other way, and the court thinks fit to comply with the request ".
- 6 In section 20 of the Act—
- (a) in subsection (1), after " anything in this Act" insert " or Part II of the Administration of Justice Act 1970 " and for paragraph (b) substitute—
    - “(b) apply for an attachment of earnings order to secure payments under the maintenance order or (except as required by section 9(5) of this Act) an order discharging or varying such an attachment of earnings order ; or
    - (c) apply for a determination under section 22 of the Administration of Justice Act 1970”;
  - (b) at the beginning of subsection (2) insert " Subject to rules of court made by virtue of section 18(3)(c) of the Administration of Justice Act 1970 ".
  - (c) in subsection (3), after " magistrates' court" (where those words occur for the second time) insert " to secure maintenance payments ".
  - (d) for subsection (4)(a) substitute—

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- “(a) the power to make an order in pursuance of a complaint by the debtor for an attachment of earnings order, or the discharge or variation of such an order, shall be deemed to be a power to make an order against the person to whom payment under the relevant adjudication is required to be made (whether directly or through an officer of any court)”;
- (e) in subsection(4)(b), for " paragraph (b) of section seven of this Act " substitute " section 14(4)(b) of the Administration of Justice Act 1970 " and for " defendant " substitute " debtor " ; and
- (f) for subsection (5) substitute—
  - “(5) An application to a magistrates' court for a determination under section 22 of the Administration of Justice Act 1970 shall be made by complaint; and on making a determination under that section a magistrates' court may in its discretion make such order as it thinks just and reasonable for the payment by any of the persons mentioned in subsection (2) of that section of the whole or any part of the costs of the determination (but subject to subsection (1)(ii) of this section); and costs ordered to be paid under this subsection shall—
    - (a) in the case of costs to be paid by the debtor to the person in whose favour the attachment of earnings order in question was made, be deemed to be—
      - (i) if the attachment of earnings order was made to secure maintenance payments, a sum due under the related maintenance order, and
      - (ii) otherwise, a sum due to the clerk of the court; and
    - (b) in any other case, be enforceable as a civil debt.”

## PART II

### SECTIONS 9 AND 20 AS AMENDED

- “9 (2) An attachment of earnings order made to secure maintenance payments 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;

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- (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 so made 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.

- (4) Where, in the case of an attachment of earnings order made by the High Court or a county court to secure maintenance payments, it appears to the collecting officer of the court that—

- (a) the aggregate of the payments made for the purposes of the related maintenance order by the debtor (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 debtor, and the court shall make the appropriate variation order, unless the debtor requests it to discharge the attachment of earnings order, or to vary it in some other way, and the court thinks fit to comply with the request.

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, in the case of an attachment of earnings order made by a magistrates' court to secure maintenance payments, it appears to the collecting officer 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 debtor appears at the hearing thereof and requests the court to discharge the attachment of earnings order, or to vary it in some other way, and the court thinks fit to comply with the request.”

“20 (1) Notwithstanding anything in this Act or Part II of the Administration of Justice Act 1970, the clerk of a magistrates' court who is entitled to receive payments under a maintenance order for transmission to another person shall not—

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- (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 to secure payments under the maintenance order or (except as required by section 9(5) of this Act) an order discharging or varying such an attachment of earnings order ; or
- (c) apply for a determination under section 22 of the Administration of Justice Act 1970,

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) Subject to rules of court made by virtue of section 18(3)(c) of the Administration of Justice Act 1970, 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 to secure maintenance payments ; 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
  - (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 debtor for an attachment of earnings order, or the discharge or variation of such an order, shall be deemed to be a power to make an order against the person to whom payment under the relevant adjudication is required to be made (whether directly or through an officer of any court); and

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- (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 section 14(4)(b) of the Administration of Justice Act 1970 applies) shall be deemed to be a power to make an order against the debtor.
- (5) An application to a magistrates' court for a determination under section 22 of the Administration of Justice Act 1970 shall be made by complaint; and on making a determination under that section a magistrates' court may in its discretion make such order as it thinks just and reasonable for the payment by any of the persons mentioned in subsection (2) of that section of the whole or any part of the costs of the determination (but subject to subsection (1)(ii) of this section) ; and costs ordered to be paid under this subsection shall—
- (a) in the case of costs to be paid by the debtor to the person in whose favour the attachment of earnings order in question was made, be deemed to be—
- (i) if the attachment of earnings order was made to secure maintenance payments, a sum due under the related maintenance order, and
- (ii) otherwise, a sum due to the clerk of the court; and
- (b) in any other case, be enforceable as a civil debt.
- (6) . . . . .
- (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.”

## SCHEDULE 8

Section 28.

### MAINTENANCE ORDERS FOR PURPOSES OF 1958 ACT AND PART II OF THIS ACT

- 1        An order for alimony, maintenance or other payments made, or having effect as if made, under Part II of the Matrimonial Causes Act 1965 (ancillary relief in actions for divorce etc.).
- 2        An order for payments to or in respect of a child being an order made, or having effect as if made, under Part III of the said Act of 1965 (maintenance of children following divorce, etc.).
- 3        An order for maintenance or other payments to or in respect of a spouse or child being an order made, or having effect as if made, under the Matrimonial Proceedings (Magistrates' Courts) Act 1960.
- 4        An order under—
- (a) section 3(2), 5(4) or 6 of the Guardianship of Infants Act 1925 (payments for maintenance of minor in care of guardian);
- (b) section 4(2) of the Family Law Reform Act 1969 (payments for maintenance of person who has been in guardianship and has come of age, but is not yet twenty-one); or

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- (c) section 6 of the said Act of 1969 (payments for maintenance of ward of court).
- 5 An affiliation order (that is to say an order under section 4 of the Affiliation Proceedings Act 1957, section 44 of the National Assistance Act 1948, section 26 of the Children Act 1948 or section 24 of the Ministry of Social Security Act 1966).
- 6 An order under section 87 of the Children and Young Persons Act 1933, section 30 of the Children and Young Persons Act 1963 or section 23 of the Ministry of Social Security Act 1966 (various provisions for obtaining contributions from a person whose dependants are assisted or maintained out of public funds).
- 7 An order under section 43 of the National Assistance Act 1948 (recovery of costs of maintaining assisted person).
- 8 An order to which section 16 of the Maintenance Orders Act 1950 applies by virtue of subsection (2)(b) or (c) of that section (that is to say an order made by a court in Scotland or Northern Ireland and corresponding to one of those specified in the foregoing paragraphs) and which has been registered in a court in England and Wales under Part II of that Act.
- 9 A maintenance order within the meaning of the Maintenance Orders (Facilities for Enforcement) Act 1920 (Commonwealth orders enforceable in the United Kingdom) registered in, or confirmed by, a court in England and Wales under that Act.

## SCHEDULE 9

Section 41.

### ENFORCEMENT OF ORDERS FOR COSTS, COMPENSATION, ETC.

#### PART I

##### CASES WHERE PAYMENT ENFORCEABLE AS ON SUMMARY CONVICTION

###### *Costs awarded by magistrates*

- 1 Where a magistrates' court, on the summary trial of an information, makes an order as to costs to be paid by the accused to the prosecutor.
- 2 Where an appellant to quarter sessions against conviction or sentence by a magistrates' court abandons his appeal and the magistrates' court orders him to pay costs to the other party to the appeal.

###### *Costs awarded by assizes and quarter sessions*

- 3 Where a person appeals to quarter sessions against conviction or sentence by a magistrates' court, and quarter sessions makes an order as to costs to be paid by him.
- 4 Where a person is prosecuted or tried on indictment or inquisition before a court of assize or quarter sessions and is convicted, and the court orders him to pay the whole or part of the costs incurred in or about the prosecution and conviction.
- 5 Where the accused is ordered by quarter sessions to pay costs, under powers exercisable by virtue of section 14 of the Costs in Criminal Cases Act 1952

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(committal to quarter sessions for sentence and other purposes ; appeal under Vagrancy Act 1824).

*Costs awarded by Court of Appeal (criminal division) or House of Lords*

- 6 Where the criminal division of the Court of Appeal dismisses an appeal or application for leave to appeal and orders the appellant or applicant to pay the whole or part of the costs of the appeal or application.
- 7 Where the criminal division of the Court of Appeal or the House of Lords dismisses an application for leave to appeal to that House (being an application made by the person who was the appellant before the criminal division) and orders him to pay the whole or part of the costs of the application.

*Criminal costs awarded by High Court*

- 8 Where a person is tried at bar in the Queen's Bench Division of the High Court and is convicted, and the High Court orders him to pay the whole or part of the costs incurred in or about the prosecution and conviction.

*Miscellaneous orders for costs, compensation, damages etc.*

- 9 Where a court makes an order for the payment of costs by an offender and does so under the Costs in Criminal Cases Act 1952 as applied by section 31(1) or (2) of the Criminal Justice Act 1967 (proceedings in which a person is dealt with for a further offence after being put on probation, conditionally discharged, bound over or given a suspended sentence).
- 10 Where under section 4 of the Forfeiture Act 1870 or section 34 of the Magistrates' Courts Act 1952 a court awards a sum of money by way of satisfaction or compensation for damage to, or loss of, property suffered through or by means of an indictable offence.
- 11 Where under section 11(2) of the Criminal Justice Act 1948 a court, on making a probation order or an order for conditional discharge, or on discharging an offender absolutely, orders the offender to pay damages for injury or compensation for loss.
- 12 Where under section 55 of the Children and Young Persons Act 1933 a court orders any fine, damages, compensation or costs, or any sum awarded by way of satisfaction or compensation to be paid by the parent or guardian of a child or young person.

## PART II

### CASES WHERE COSTS ENFORCEABLE SUMMARILY AS CIVIL DEBT

*Costs awarded by magistrates*

- 13 Where a magistrates' court, on the summary trial of an information, makes an order as to costs to be paid by the prosecutor to the accused.
- 14 Where an appellant to quarter sessions from a magistrates' court (otherwise than against conviction or sentence) abandons his appeal and the magistrates' court orders him to pay costs to the other party to the appeal.

- 15 Where examining justices determine not to commit a person for trial and order the prosecutor to pay the whole or part of the costs incurred in or about the defence.

*Costs awarded by assizes and quarter sessions*

- 16 Where a person convicted by a magistrates' court appeals to quarter sessions against conviction or sentence, and quarter sessions makes an order as to costs to be paid by the respondent to the appellant.
- 17 Where a person appeals to quarter sessions from a magistrates' court (otherwise than against conviction or sentence) and quarter sessions makes an order as to costs to be paid by the appellant or respondent.
- 18 Where a person is prosecuted or tried on indictment or inquisition before a court of assize or quarter sessions and is acquitted, and the court orders the prosecutor to pay the whole or part of the costs incurred in or about the defence.
- 19 Where a person is committed for trial and is not ultimately tried, and the court to which he is committed orders the prosecutor to pay to him the whole or part of the costs incurred in or about the defence.
- 20 Where the prosecutor is ordered by quarter sessions to pay costs, under powers exercisable by virtue of section 14(2) or (3) of the Costs in Criminal Cases Act 1952 (committal or appeal to quarter sessions under Vagrancy Act 1824).

*Criminal costs awarded by High Court*

- 21 Where a person is tried at bar in the Queen's Bench Division of the High Court and is acquitted, and the High Court orders the prosecutor to pay the whole or part of the costs incurred in or about the defence.

SCHEDULE 10

Section 43.

ENFORCEMENT BY MAGISTRATES' COURT OF LEGAL AID CONTRIBUTION ORDER

*General provisions as to enforcement*

- 1 In this Schedule "collecting court" and "legal aid contribution order" have the same meaning as in section 43 of this Act.
- 2 The collecting court may, in relation to a legal aid contribution order, exercise the powers of section 63 of the Magistrates' Courts Act 1952 (power to dispense with immediate payment); and for the purposes of that section any provision made by the court which made the order as to time for payment, or payment by instalments, shall be treated as made by the collecting court.
- 3 Sections 74 (complaint for arrears), 75 (effect of committal on arrears) and 76 (power to remit arrears) of the Magistrates' Courts Act 1952 shall apply as if a legal aid contribution order were enforceable as an affiliation order.
- 4 Any costs awarded, under section 55 of the Magistrates' Courts Act 1952, on the hearing of a complaint for the enforcement of a legal aid contribution order shall be enforceable as a sum required to be paid by that order.

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- 5 Sections 17 and 18 of the Maintenance Orders Act 1958 (not more than one committal for same arrears, and power to review committals) shall apply as if a legal aid contribution order were a maintenance order.
- 6 Section 68 of the Magistrates' Courts Act 1952 (application of money found on defaulter to satisfy sum adjudged) shall apply as if a legal aid contribution order were enforceable as an affiliation order.

*Transfer of enforcement proceedings to different court*

- 7 (1) Where it appears to the collecting court that a person subject to a legal aid contribution order is residing in a petty sessions area other than that for which the court acts, the court may make a transfer order under this paragraph, that is to say an order making payment under the legal aid contribution order enforceable in that other petty sessions area (which area shall be specified in the transfer order).
- (2) As from the date of a transfer order under this paragraph the court which made the order shall cease to be the collecting court for the purposes of the legal aid contribution order and of section 43 of this Act and this Schedule and be replaced as such by a magistrates' court acting for the petty sessions area specified in the transfer order.

SCHEDULE 11

Section 54.

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
33 & 34 Vict. c. 23.	The Forfeiture Act 1870.	In section 4, the words from " and the amount" onwards.
49 & 50 Vict. c. 27.	The Guardianship of Infants Act 1886.	In section 5 the words from " and in every case " onwards. In section 6, the words " in any division thereof ". In section 9, the words from " Any application " to " Rules of Court". In section 10, the words " before a judge of the Chancery Division " and the words from " and, subject to any " to " as he shall direct". In section 11, paragraph (a), and, in paragraph (c), the words " England or ".
4 & 5 Geo. 5. c. 59.	The Bankruptcy Act 1914	Section 107(1) to (3).

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Chapter	Short Title	Extent of Repeal
15 & 16 Geo. 5 c. 23.	The Administration of Estates Act 1925	In section 30(3), the words " the Probate, Divorce and Admiralty Division of".
15 & 16 Geo. 5. c. 49.	The Supreme Court of Judicature (Consolidation) Act 1925.	In section 5(1), the words " report or".  In section 58, the words from "and (4) Subject to rules of court" onwards.  In section 63, in paragraph (b) of the proviso to subsection (6), the words " with the concurrence of the other judges of the Division or a majority thereof, or in the case of the King's Bench Division ".  In section 225, the definition of " Probate Division ".
23 & 24 Geo. 5. c. 12.	The Children and Young Persons Act 1933	Section 55(4).
23 & 24 Geo. 5 c. 38.	The Summary Jurisdiction (Appeals) Act 1933	Section 5(2).
11 & 12 Geo. 6 c. 58.	The Criminal Justice Act 1948	Section 11(3).
12, 13 and 14 Geo. 6. c. 87.	The Patents Act 1949.	Section 85(6).
12, 13 and 14 Geo. 6. c. 88.	The Registered Designs Act 1949.	Section 28(6).
15 & 16 Geo. 6. & 1 Eliz. 2 c. 48.	The Costs in Criminal Cases Act 1952.	Section 10(1) to (3); and in section 10(5) the words " under this section ", wherever occurring.
15 & 16 Geo. 6. & 1 Eliz. 2. c. 55.	The Magistrates' Courts Act 1952.	In section 34, the words from " and any sum " onwards.  In section 74(6)(a), the words " under the Maintenance Orders Act 1958 ".
6 & 7 Eliz. 2. c. 39.	The Maintenance Orders Act 1958.	Section 85(3).  Section 4(3).  Sections 6 to 8.  Section 9(1), (3) and (6).  Sections 10 to 15.

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Chapter	Short Title	Extent of Repeal
		In section 21(1), the definitions of " attachment of earnings order," " earnings "," employer "," excepted sums " and " maintenance order"; and section 21(5).
1959 c. 22.	The County Courts Act 1959.	The Schedule.
		Section 153(a).
		Section 154.
1964 c. 42.	The Administration of Justice Act 1964.	Section 5(2).
		In Schedule 3, paragraph 25(2).
1965 c. 72.	The Matrimonial Causes Act 1965.	In section 38(1), the words from " and any order " onwards.
1966 c. 20.	The Ministry of Social Security Act 1966.	In section 23(6), the words from " and the Maintenance Orders Act 1958 " onwards.
		In section 24(9), the words from " and the Maintenance Orders Act 1958 " onwards.
1966 c. 31.	The Criminal Appeal Act 1966.	Section 1(4) and (6)(b).
		Section 2(2).
1967 c. 80.	The Criminal Justice Act 1967.	Section 46.
		Section 79(3) to (7).
		In section 84, the definition of " appropriate authority ".
		Schedule 1.
1968 c. 19.	The Criminal Appeal Act 1968.	In Section 45(2), the words " of the Queen's Bench Division of ".
		In Schedule 5, the entry relating to section 10(2) of the Costs in Criminal Cases Act 1952.
1968 c. 36.	The Maintenance Orders Act 1968.	In the Schedule, the entry relating to section 4 of the Maintenance Orders Act 1958.
1969 c. 46.	The Family Law Reform Act 1969.	In section 4(5)(b), the words from " and be deemed " onwards.

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Chapter	Short Title	Extent of Repeal
1969 c. 54.	The Children and Young Persons Act 1969.	In section 6(7) the words from " and be deemed " onwards. In section 3(6), the word " and " at the end of paragraph (b), and paragraph (c).