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## STATUTORY INSTRUMENTS

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# 1981 No. 1687

## The County Court Rules 1981

### ORDER 27

#### ATTACHMENT OF EARNINGS

##### PART I

##### GENERAL

#### Interpretation

1. In this Order “the Act of 1971” means the Attachment of Earnings Act 1971 and, unless the context otherwise requires, expressions used in that Act have the same meanings as in that Act.

#### Index of orders

2.—(1) The proper officer of every court shall keep a nominal index of the debtors residing within the district of his court in respect of whom there are in force attachment of earnings orders which have been made by that court or of which the proper officer has received notice from another court.

(2) Where a debtor in respect of whom a court has made an attachment of earnings order resides within the district of another court, the proper officer of the first-mentioned court shall send a copy of the order to the proper officer of the other court for entry in his index.

(3) The proper officer of a court shall, on the request of any person having a judgment or order against a person believed to be residing within the district of the court, cause a search to be made in the index of the court and issue a certificate of the result of the search.

#### Appropriate court

3.—(1) Subject to paragraphs (2) and (3), an application for an attachment of earnings order may be made to the court for the district in which the debtor resides.

(2) If the debtor does not reside within England or Wales, or the creditor does not know where he resides, the application may be made to the court in which, or for the district in which, the judgment or order sought to be enforced was obtained.

(3) Where the creditor applies for attachment of earnings orders in respect of two or more debtors jointly liable under a judgment or order, the application may be made to the court for the district in which any of the debtors resides, so however that if the judgment or order was given or made by any such court, the application shall be made to that court.

#### Mode of applying

4.—(1) A judgment creditor who desires to apply for an attachment of earnings order shall file his application together with a copy for service on the debtor and, where it is sought to enforce an order of magistrates' court,—

- (a) a certified copy of the order, and
- (b) an affidavit verifying the amount due under the order or, if payments under the order are required to be made to the clerk to the magistrates' court, a certificate by that clerk to the same effect.

(2) On the filing of the documents mentioned in paragraph (1) the proper officer shall fix a day for the hearing of the application.

### **Service and reply**

5.—(1) A copy of the application, together with a notice to the debtor and a form of reply, shall be served on the debtor in the manner prescribed by these rules for the service of a fixed date summons.

(2) The debtor shall, within 8 days after service on him of the documents mentioned in paragraph (1), file a reply in the form provided, and the instruction to that effect in the notice to the debtor shall constitute a requirement imposed by virtue of section 14(4) of the Act of 1971:

Provided that no proceedings shall be taken for an offence alleged to have been committed under section 23(2)(c) or (f) of the Act of 1971 in relation to the requirement unless the said documents have been served on the debtor personally or the court is satisfied that they came to his knowledge in sufficient time for him to comply with the requirement.

(3) On receipt of a reply the proper officer shall send a copy to the applicant.

### **Notice to employer**

6. Without prejudice to the powers conferred by section 14(1) of the Act of 1971, the proper officer may, at any stage of the proceedings, send to any person appearing to have the debtor in his employment a notice requesting him to give to the registrar, within such period as may be specified in the notice, a statement of the debtor's earnings and anticipated earnings with such particulars as may be so specified.

### **Hearing of application**

7.—(1) An application for an attachment of earnings order may be heard and determined by the registrar, and Order 1, rule 8, shall apply in relation to any power conferred by the Act of 1971 as it applies in relation to any power conferred by these rules.

(2) The application may be heard and determined in chambers.

(3) Where the registrar has information which in his opinion is sufficient to enable an attachment of earnings order to be made without the attendance of the parties, he may cause notice to be given to the parties, not less than 10 days before the return day, that he will, 10 days after the date of such notice, make an order in the terms specified therein, unless either party objects in accordance with paragraph (4).

(4) If either party objects to the order proposed or to the terms specified in a notice given under paragraph (3), he shall, within 5 days after the receipt by him of such notice, give notice of his objection to the other party and to the proper officer and thereupon the application shall be dealt with on the return day.

(5) If the creditor does not appear at the hearing of the application but—

- (a) the court has received an affidavit of evidence from him, or
- (b) the creditor requests the court in writing to proceed in his absence,

the court may, notwithstanding anything in Order 21, rule 1, proceed to hear the application and to make an order thereon.

(6) An attachment of earnings order may be made to secure the payment of a judgment debt if the debt is—

- (a) of not less than £15, or
- (b) for the amount remaining payable under a judgment for a sum of not less than £15.

(7) Where the judgment debt or the balance thereof in respect of which the application is made is paid into court before the day fixed for the hearing of the application, the proper officer shall, if time permits, give the creditor notice of the payment.

### **Enforcement of debtor's attendance**

**8.—**(1) An order made under section 23(1) of the Act of 1971 for the attendance of the debtor at an adjourned hearing of an application for an attachment of earnings order shall be served on the debtor personally not less than 5 days before the day fixed for the adjourned hearing.

(2) An application by a debtor for the revocation of an order committing him to prison and, if he is already in custody, for his discharge under subsection (7) of the said section 23 shall be made to the judge ex parte in writing showing the reasons for the debtor's failure to attend the court or his refusal to be sworn or to give evidence, as the case may be, and containing an undertaking by the debtor to attend the court or to be sworn or to give evidence when next ordered or required to do so.

(3) The application shall, if the debtor has already been lodged in prison, be attested by the governor of the prison (or any other officer of the prison not below the rank of principal officer) and in any other case be made on affidavit.

(4) Before dealing with the application the judge may, if he thinks fit, cause notice to be given to the judgment creditor that the application has been made and of a day and hour when he may attend and be heard.

### **Costs**

**9.—**(1) Where costs are allowed to the judgment creditor on an application for an attachment of earnings order, there may be allowed—

- (a) a charge of a solicitor for attending the hearing and, if the court so directs, for serving the application;
- (b) if the court certifies that the case is fit for counsel, a fee to counsel, and
- (c) the court fee on the issue of the application.

(2) For the purposes of paragraph (1)(a) a solicitor who has prepared on behalf of the judgment creditor an affidavit or request under rule 7(5) shall be treated as having attended the hearing.

(3) The costs may be fixed and allowed without taxation and the scale shall be determined by the amount payable under the relevant adjudication (or so much of that amount as remains unpaid), including any relevant costs.

### **Contents and service of order**

**10.—**(1) An attachment of earnings order shall contain such of the following particulars relating to the debtor as are known to the court, namely—

- (a) his full name and address,
- (b) his place of work and
- (c) the nature of his work and his works number, if any,

and those particulars shall be the prescribed particulars for the purposes of section 6(3) of the Act of 1971.

(2) An attachment of earnings order and any order varying or discharging such an order shall be served on the debtor and on the person to whom the order is directed, and Order 7, rule 1, shall apply with the modification contained in Order 22, rule 1(5), and with the further modification that where the order is directed to a corporation which has requested the court that any communication relating to the debtor or to the class of persons to whom he belongs shall be directed to the corporation at a particular address, service may, if the registrar thinks fit, be effected on the corporation at that address.

(3) Where an attachment of earnings order is made to enforce a judgment or order of the High Court or a magistrates' court, a copy of the attachment of earnings order and of any order discharging it shall be sent by the proper officer of the county court to the proper officer of the High Court or, as the case may be, the clerk of the magistrates' court.

### **Application to determine whether particular payments are earnings**

**11.** An application to the court under section 16 of the Act of 1971 to determine whether payments to the debtor of a particular class or description are earnings for the purpose of an attachment of earnings order may be made to the registrar in writing and the proper officer shall thereupon fix a date and time for the hearing of the application by the court and give notice thereof to the persons mentioned in the said section 16(2)(a), (b) and (c).

### **Notice of cesser**

**12.** Where an attachment of earnings order ceases to have effect under section 8(4) of the Act of 1971, the proper officer of the court in which the matter is proceeding shall give notice of the cesser to the person to whom the order was directed.

### **Variation and discharge by court of own motion**

**13.—(1)** Subject to paragraph (9), the powers conferred by section 9(1) of the Act of 1971 may be exercised by the court of its own motion in the circumstances mentioned in the following paragraphs.

(2) Where it appears to the court that a person served with an attachment of earnings order directed to him has not the debtor in his employment, the court may discharge the order.

(3) Where an attachment of earnings order which has lapsed under section 9(4) of the Act of 1971 is again directed to a person who appears to the court to have the debtor in his employment, the court may make such consequential variations in the order as it thinks fit.

(4) Where, after making an attachment of earnings order, the court makes or is notified of the making of another such order in respect of the same debtor which is not to secure the payment of a judgment debt or payments under an administration order, the court may discharge or vary the first-mentioned order having regard to the priority accorded to the other order by paragraph 8 of Schedule 3 to the Act of 1971.

(5) Where, after making an attachment of earnings order, the court makes an order under section 4(1)(b) of the Act of 1971 or makes an administration order, the court may discharge the attachment of earnings order or, if it exercises the power conferred by section 5(3) of the said Act, may vary the order in such manner as it thinks fit.

(6) On making a consolidated attachment of earnings order the court may discharge any earlier attachment of earnings order made to secure the payment of a judgment debt by the same debtor.

(7) Where it appears to the court that a receiving order or an order of adjudication in bankruptcy has been made against a person in respect of whom an attachment of earnings order is in force to secure the payment of a judgment debt, the court may discharge the attachment of earnings order.

(8) Where an attachment of earnings order has been made to secure the payment of a judgment debt and the court grants leave to issue execution for the recovery of the debt, the court may discharge the order.

(9) Before varying or discharging an attachment of earnings order of its own motion under any of the foregoing paragraphs of this rule, the court shall, unless it thinks it unnecessary in the circumstances to do so, give the debtor and the person on whose application the order was made an opportunity of being heard on the question whether the order should be varied or discharged, and for that purpose the proper officer may give them notice of a date, time and place at which the question will be considered.

### **Transfer of attachment order**

**14.—**(1) Where the court by which the question of making a consolidated attachment order falls to be considered is not the court by which any attachment of earnings order has been made to secure the payment of a judgment debt by the debtor, the registrar of the last-mentioned court shall, at the request of the registrar of the first-mentioned court, transfer to that court the matter in which the attachment of earnings order was made.

(2) Without prejudice to paragraph (1), if in the opinion of the judge or registrar of any court by which an attachment of earnings order has been made, the matter could more conveniently proceed in some other court, whether by reason of the debtor having become resident in the district of that court or otherwise, he may order the matter to be transferred to that court.

(3) The court to which proceedings arising out of an attachment of earnings are transferred under this rule shall have the same jurisdiction in relation to the order as if it has been made by that court.

### **Exercise of power to obtain statement of earnings etc**

**15.—**(1) An order under section 14(1) of the Act of 1971 shall be indorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobedience to the order and shall be served on him personally.

(2) Order 34, rule 2, shall apply, with the necessary modifications, in relation to any penalty for failure to comply with an order under the said section 14(1) or, subject to the proviso to rule 5(2), any penalty for failure to comply with a requirement mentioned in that rule, as it applies in relation to a fine under section 84 of the County Courts Act 1959.

### **Offences**

**16.—**(1) Where it is alleged that a person has committed any offence mentioned in section 23(2) (a), (b), (d), (e) or (f) of the Act of 1971 in relation to proceedings in, or to an attachment of earnings order made by, a county court, the registrar shall, unless it is decided to proceed against the alleged offender summarily, issue a summons calling upon him to show cause why he should not be punished for the alleged offence.

The summons shall be served on the alleged offender personally not less than 14 days before the return day.

(2) Order 34, rules 3 and 4, shall apply, with the necessary modifications, to proceedings for an offence under section 23(2) of the Act of 1971 as they apply to proceedings for offences under the County Courts Act 1959.

### **Maintenance orders**

**17.—**(1) The foregoing rules of this Order shall apply in relation to maintenance payments as they apply in relation to a judgment debt, subject to the following paragraphs.

(2) An application for an attachment of earnings order to secure payments under a maintenance order made by a county court shall be made to that county court.

(3) Any application under section 32 of the Matrimonial Causes Act 1973 for leave to enforce the payment of arrears which became due more than 12 months before the application for an attachment of earnings order shall be made in that application.

(4) An application by the debtor for an attachment of earnings order to secure payments under a maintenance order may be made on the making of the maintenance order or an order varying the maintenance order, and rules 4 and 5 shall not apply.

(5) Rule 7 shall apply with the omission of paragraphs (3) and (4).

(6) Rule 9 shall apply as if for the reference to the amount payable under the relevant adjudication there were substituted a reference to the arrears due under the related maintenance order.

(7) Where an attachment of earnings order made by the High Court designates the proper officer of a county court as the collecting officer, that officer shall, on receipt of a certified copy of the order from the proper officer of the High Court, send to the person to whom the order is directed a notice as to the mode of payment.

(8) Where an attachment of earnings order made by a county court to secure payments under a maintenance order ceases to have effect and—

(a) the related maintenance order was made by that court, or

(b) the related maintenance order was an order of the High Court and—

(i) the proper officer of the county court has received notice of the cessation from the proper officer of the High Court, or

(ii) a committal order has been made in the county court for the enforcement of the related maintenance order,

the proper officer of the county court shall give notice of the cessation to the person to whom the attachment of earnings order was directed.

(9) Where an attachment of earnings order has been made by a county court to secure payments under a maintenance order, notice under section 10(2) of the Act of 1971 to the debtor and to the person to whom the registrar is required to pay sums received under the order shall be in the form provided for that purpose, and if the debtor wishes to request the court to discharge the attachment of earnings order or to vary it otherwise than by making the appropriate variation, he shall apply to the court, within 14 days after the date of the notice, for the relief desired.

(10) Rule 13 shall have effect as if for paragraphs (4) to (7) there were substituted the following paragraph:—

“(4) Where it appears to the court by which an attachment of earnings order has been made that the related maintenance order has ceased to have effect, whether by virtue of the terms of the maintenance order or under section 28 of the Matrimonial Causes Act 1973 or otherwise, the court may discharge or vary the attachment of earnings order.”

(11) Rule 7(6) shall not apply.

## PART II

### CONSOLIDATED ATTACHMENT OF EARNINGS ORDERS

#### Cases in which consolidated order may be made

**18.** Subject to the provisions of rules 19 to 21, the court may make a consolidated attachment order where—

(a) two or more attachment of earnings orders are in force to secure the payment of judgment debts by the same debtor, or

- (b) on an application for an attachment of earnings order to secure the payment of a judgment debt, or for a consolidated attachment order to secure the payment of two or more judgment debts, it appears to the court that an attachment of earnings order is already in force to secure the payment of a judgment debt by the same debtor.

### **Application for consolidated order**

**19.**—(1) An application for a consolidated attachment order may be made—

- (a) by the debtor in respect of whom the order is sought, or
  - (b) by any person who has obtained or is entitled to apply for an attachment of earnings order to secure the payment of a judgment debt by that debtor.
- (2) An application by the debtor for a consolidated attachment of earnings order may be made—
- (a) in the proceedings in which any attachment of earnings order is in force to secure the payment of a judgment debt by the debtor, or
  - (b) at the hearing of any application for such an order.

The application shall be made in accordance with Order 13, rule 1, on notice to the creditor in the proceedings in which the application is made and any other creditor who has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor, and rules 3, 4 and 5 of this Order shall not apply.

(3) An application by a creditor for a consolidated attachment order may—

- (a) if the judgment which he seeks to enforce was given by the court to which the application is made, be made in accordance with Order 13, rule 1, in the proceedings in which the judgment was obtained, and rules 4 and 5 of this Order shall not apply;
- (b) in any other case, be made by originating application, and rules 4(1) and 5 shall not apply.

The debtor and every person who, to the knowledge of the applicant, has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor shall be given notice of the application or, as the case may be, made a respondent to the originating application.

(4) A person to whom two or more attachment of earnings orders are directed to secure the payment of judgment debts by the same debtor may request the court in writing to make a consolidated attachment order to secure the payment of those debts, and on receipt of such a request the proper officer shall fix a date, time and place at which the request will be considered and give notice thereof to the debtor and the persons who obtained the attachment of earnings orders.

### **Making of consolidated order by court of its own motion**

**20.** Where an application is made for an attachment of earnings order to secure the payment of a judgment debt by a debtor in respect of whom an attachment of earnings order is already in force to secure the payment of another judgment debt and no application is made for a consolidated attachment order, the court may make such an order of its own motion after giving all persons concerned an opportunity of being heard.

### **Extension of consolidated order**

**21.**—(1) Where a consolidated attachment order is in force to secure the payment of two or more judgment debts, any creditor to whom another judgment debt is owed by the same judgment debtor may apply to the court by which the order was made for it to be extended so as to secure the payment of that debt as well as the first-mentioned debts and, if the application is granted, the court may either vary the order accordingly or may discharge it and make a new consolidated attachment order to secure payment of all the aforesaid judgment debts.

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(2) An application under this rule shall be treated for the purposes of rules 19 and 20 as an application for a consolidated attachment order.

#### **Payments under consolidated order**

**22.** Instead of complying with section 13 of the Act of 1971, a proper officer who receives payments made to him in compliance with a consolidated attachment 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 as he would if they had been paid by the debtor to satisfy the relevant adjudications in proportion to the amounts payable thereunder, and for that purpose dividends may from time to time be declared and distributed among the creditors entitled thereto.