
STATUTORY INSTRUMENTS

1981 No. 226

Judgments Enforcement (Northern Ireland) Order 1981

PART VIII

POWERS OF COURTS

Attachment of earnings by order of court

Interpretation of Articles 98 to 105

97.—(1) In Articles 98 to 105—

“the court” means a court such as is mentioned in paragraph (a) or (b) of Article 98;

“debtor” and “creditor” include respectively, in relation to an attachment of earnings order which is, or is to be, made to secure payments under a maintenance order, the person liable to make payments under the maintenance order and the person entitled to those payments;

“maintenance order” means an order such as is mentioned in Article 98(a).

(2) Where an attachment of earnings order is, or is to be, made to secure payments under a maintenance order, Article 3(5)(f) (exclusion of seamen's wages, with certain exceptions) shall not apply (and accordingly^{F1} section 34(1)(a) of the Merchant Shipping Act 1995] (prohibition on attachment of certain seamen's wages) shall not apply).

F1 1995 c.21

Power of courts to make attachment of earnings orders

98. An attachment of earnings order may be made—

(a) by the High Court for the enforcement of an order for the periodical payment of money—

(i) made by the High Court in the exercise of its matrimonial^{F2} or civil partnership] jurisdiction,

(ii) made by a ^{F3}... county court in the exercise of its matrimonial jurisdiction^{F2} or a ^{F3}... county court in the exercise of its civil partnership jurisdiction] where, by virtue of rules of court made under^{F4} Article 12(3)(f) of the Family Law (Northern Ireland) Order 1993], the order is enforceable as if it were an order of the High Court,

(iii) made by a court of summary jurisdiction and registered in the High Court under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 ,

(iv) made in another part of the United Kingdom and registered in the High Court under Part II of the Maintenance Orders Act 1950 ,^{F5} but not subsequently registered in a court of summary jurisdiction under section 36 of the Civil Jurisdiction and Judgements Act 1982] or

(v) made outside the United Kingdom and registered in the High Court under the Maintenance Orders (Facilities for Enforcement) Act 1920 but not subsequently transferred to a court of summary jurisdiction under section 23 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 ,

including such an order which has been rescinded, revoked or discharged, if any arrears are recoverable under it;

(b) by any court in circumstances (other than any involving default in complying with orders referred to in paragraph (a)) where the court has power to commit to prison under Article 107 a person who could have paid the amount due or recoverable on foot of a judgment, or an instalment, but has refused or neglected to do so (and the court may treat an application for an order of committal under that Article as an application for an attachment of earnings order).

F2 2004 c. 33

F3 Words in art. 98(a)(ii) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 84(6), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

F4 1993 NI 6

F5 1982 c.27

Making of attachment of earnings order

99.—(1) Where it appears to the court that a debtor is a person to whom earnings fall to be paid, the court may make an attachment of earnings order requiring the person to whom the order is directed to make out of those earnings, or part thereof, such payments as may be specified in the order.

(2) An attachment of earnings order may be made—

(a) otherwise than for the enforcement of a maintenance order, on the application of the creditor;

(b) for the enforcement of a maintenance^{F6} order, in accordance with Article 96A(1) or (3).]

(3) The person to whom an attachment of earnings order is directed shall be a person who appears to the court to have the debtor in his employment; and the order 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 1; and

(b) at such times as the order may require, or as the court may allow, to pay the amounts deducted to the person entitled to the payments for which the order to be enforced provides, as specified in the order.

(4) An attachment of earnings order shall contain particulars prescribed by rules of court enabling the debtor to be identified by the employer.

(5) Except where an attachment of earnings order is made to secure payments under a maintenance order, the order shall specify the whole amount recoverable on foot of the relevant judgment (or so much of that amount as remains unpaid).

(6) 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 judgment; 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 (including the needs of any person for whom he must,

or reasonably may, provide), the court thinks it reasonable that the earnings actually paid to him should not be reduced;

so however that, where the order is, or is to be, made to secure payments under a maintenance order, the normal deduction rate for the purposes of sub-paragraph (a)—

- (i) shall be determined after taking account of any right or liability of the debtor to deduct income tax when making the payments, and
- (ii) shall not exceed the rate which appears to the court necessary for the purposes of securing payment of the sums falling due from time to time under the maintenance order and securing payment within a reasonable period of any sums already due and unpaid under the maintenance order.

(7) Where an attachment of earnings order has been made by the court to secure the payment of any money no proceedings for committal or distress by reason of failure to pay that money which were begun before the making of the order shall be continued.

F6 1993 NI 6

Compliance with order by employer

100.—(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 non-compliance 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 10 days from the date of service or, as the case may be, the cesser, give notice in writing of that fact to such officer of the court as may be prescribed by rules of court.

(3) Part II of Schedule 1 shall have effect with respect to the priority to be accorded as between two or more attachment of earnings orders directed to a person either by the Office and a court, or by a court, (including, in either case, a court of summary jurisdiction) in respect of the same debtor.

(4) Where an attachment of earnings order is made to secure payments under a maintenance order any sums paid by the employer under the order shall be treated as sums paid by the person liable to make payments under the maintenance order.

(5) 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, 50p or such other sum as may be prescribed by rules 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.

(6) Any sum deducted by the employer from the debtor's earnings in compliance with the order, but not yet paid to the person entitled to the payments for which the order to be enforced provides, shall in the bankruptcy or winding-up of the employer be treated as money held by the employer on trust for that person.

Persons employed under the Crown

101.—(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 Articles 99, 100 and 102 to 105 and Schedule 1—

- (a) the chief officer for the time being of the government 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, a Minister of the Crown or a government department, or out of the public revenue of the United Kingdom or Northern Ireland, shall be treated as paid by the said chief officer.

(3) In accordance with Article 3(2), the reference in paragraph (2)(a) to the department, office or other body in which the debtor is employed shall, in the case of a debtor who is not employed for the purposes of, but whose earnings are paid in the capacity of principal by, such a body, be construed as a reference to the department, office or other body by which any earnings of his are paid in that capacity.

(4) 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 Article, or as to who for those purposes is the chief officer thereof, the question shall be referred to and determined by the Department of the Civil Service or, as the case may require, the Minister for the Civil Service; but the Department or Minister shall not be under any obligation to consider a reference under this paragraph unless it is made by the court.

(5) A document purporting to set out a determination of the Department of the Civil Service under paragraph (4) and to be signed by an officer of that Department, or to set out a determination of the Minister for the Civil Service under that paragraph and to be signed on behalf of the Minister shall, in any such proceedings as are mentioned in that paragraph, be admissible in evidence and be deemed to contain an accurate statement of such a determination unless the contrary is shown.

(6) In this Article “government department” includes a department of the Government of the United Kingdom.

Variation, lapse, discharge and termination of orders

102.—(1) The court may make an order varying (including suspending or reviving) or discharging an attachment of earnings order.

(2) Where an attachment of earnings 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 non-compliance before seven days have elapsed since the service.

(3) Where an attachment of earnings order is discharged, the employer shall be under no liability in consequence of his treating the order as still in force at any time before the expiration of seven days from the date on which notice of the discharging order is served on him.

(4) Rules of court may make provision as to circumstances in which an attachment of earnings order may be varied or discharged by the court of its own motion.

(5) 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 person entitled to the payments for which the order to be enforced provides of amounts deducted at any time) and be of no effect unless and until the court revives it by again directing it to a person (whether the same as before or another) who appears to the court to have the debtor in his employment.

(6) The lapse of an order under paragraph (5) shall not prevent its being treated as remaining in force for other purposes.

(7) An attachment of earnings order made by a court to secure the payment of any money shall cease to have effect upon the making of an order of committal or the issue of a warrant of distress in respect of that money.

(8) An attachment of earnings order made by a court to secure payments under a maintenance order shall cease to have effect—

- (a) upon the grant of an application for registration of the maintenance order in a court of summary jurisdiction under Part II of the Maintenance and Affiliation Orders Act (Northern Ireland) 1966 (whether or not the grant subsequently becomes void under section 11(2) of that Act);
- (b) where the maintenance order is registered under the said Part II, upon the giving of notice with respect to it under section 14 of that Act of 1966 with a view to cancellation of its registration;
- (c) upon the rescission or revocation of the maintenance order, or upon its being discharged while it is not registered under the said Part II, unless the court otherwise orders with a view to recovering arrears under the maintenance order;
- (d) upon the maintenance order ceasing to be registered in a court in Northern Ireland, or becoming registered in a court in another part of the United Kingdom, under Part II of the Maintenance Orders Act 1950 .

(9) Where an attachment of earnings order ceases to have effect under paragraph (7) or (8), such officer of such court as may be prescribed by rules of court shall give notice of the cesser to the employer.

(10) Where an attachment of earnings order ceases to have effect under paragraph (7) or (8), paragraph (3) shall apply as it applies in a case where such an order is discharged.

(11) Except where the attachment of earnings order is made to secure payments under a maintenance order, where the whole amount recoverable on foot of the relevant judgment has been paid the court shall give notice to the employer that no further compliance with the attachment of earnings order is required.

Statement of earnings, etc.

103.—(1) Where an attachment of earnings order is about to be made or revived the court may at any time before making or reviving the order—

- (a) direct the debtor to furnish 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 of his earnings and anticipated earnings, and of his resources and needs (including the needs of any person for whom he must, or reasonably may, provide);
 - (iii) specified particulars of any matters which are, or may be, relevant under Article 99(6) to the determination of the normal deduction rate and the protected earnings rate to be specified in the order;
 - (iv) specified particulars for the purpose of enabling the debtor to be identified by any employer of his;
- (b) direct any person appearing to the court to be an employer of the debtor to furnish 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 while the order is in force give any direction it is authorised by paragraph (1)(a) or (b) to give.

(3) A document purporting to be a statement such as is mentioned in paragraph (1)(a) or (b) shall, in proceedings before the court, be received in evidence and be deemed to be such a statement without further proof, unless the contrary is shown.

Obligation of debtor and his employers to notify changes of employment and earnings

104.—(1) While an attachment of earnings order is in force—

- (a) the debtor shall notify the prescribed officer 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 sub-paragraph (a) 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 that it was made by the court shall, within seven days of his becoming the debtor's employer or of acquiring that knowledge (whichever is the later) notify the prescribed officer in writing that he is the debtor's employer, and include in his notification a statement of the debtor's earnings and anticipated earnings.

(2) In paragraph (1)(a) and (c) “the prescribed officer” means such officer of the court as may be prescribed by rules of court.

Power of court to determine whether particular payments are earnings

105.—(1) Where an attachment of earnings order is in force the court shall, on the application of either the employer or the debtor, 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 give effect to any determination for the time being in force under this Article.

(2) Where an application under this Article 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 is pending; but this paragraph shall not, unless the court otherwise orders, apply as respects such payments if the employer subsequently withdraws the application.

Changes to legislation:

There are currently no known outstanding effects for the Judgments Enforcement (Northern Ireland) Order 1981, Attachment of earnings by order of court.