



# Administration of Justice Act 1970

## 1970 CHAPTER 31

### 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
  - (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

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- (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

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- (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 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—

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- (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

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- (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



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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

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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 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

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- (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:—
- (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),

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*Status: This is the original version (as it was originally enacted).*

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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;
  - " 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.
- (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.