



# Debtors Act 1869

1869 CHAPTER 62 32 and 33 Vict

## PART I **E+W**

### *ABOLITION OF IMPRISONMENT FOR DEBT*

#### **4 Abolition of imprisonment for debt, with exceptions. **E+W****

With the exceptions herein-after mentioned, no person shall be arrested or imprisoned for making default in payment of a sum of money.

There shall be excepted from the operation of the above enactment:

- (1) Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract:
- (2) Default in payment of any sum recoverable summarily before a justice or justices of the peace:
- (3) Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control:
- (4) Default by [<sup>F1</sup>a solicitor] in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order:
- (5) Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorized to make an order:
- (6) Default in payment of sums in respect of the payment of which orders are in this Act authorized to be made:

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and, secondly, that nothing in this section shall alter the effect of any judgment or order of any court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money.

*Changes to legislation: There are currently no known outstanding effects for the Debtors Act 1869, Part I. (See end of Document for details)*

**Textual Amendments**

F1 Words substituted by virtue of Solicitors Act 1974 (c. 47), s. 89(6)

**Modifications etc. (not altering text)**

- C1 S. 4 extended with modification by Crown Proceedings Act 1947 (c. 44), s. 26(2)
- C2 S. 4 amended as to exceptions (3) (4) by Debtors Act 1878 (c. 54), s. 1

**5 Saving of power of committal for small debts. E+W**

Subject to the provisions herein-after mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court.

Provided—

- (1) That the jurisdiction by this section given of committing a person to prison shall, in the case of [F2the county court— ]
  - (a) Be exercised only by a judge [F3of the court], and by an order made in open court and showing on its face the ground on which it is issued:
  - (b) . . . . . F4
  - F5(c) . . . . .
- (2) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

[F6Proof of the means of the person making default may be given in such manner as the court thinks just.

For the purpose of considering whether to commit a debtor to prison under this section, the debtor may be summoned in accordance with the prescribed rules.]

Any jurisdiction by this section given to the [F7High Court or family court may] be exercised by a judge sitting in chambers, or otherwise, in the prescribed manner.

F8 . . . . .

Persons committed under this section [F9by the High Court or family court] may be committed to the prison in which they would have been confined if arrested on a writ of *capias ad satisfaciendum*, and every order of committal [F9by the High Court or family court] shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ.

This section, so far as it relates to [F10the county court], shall be deemed to be substituted for sections ninety-eight and ninety-nine of the M1County Courts Act 1846, and that Act and the Acts amending the same shall be construed accordingly, and shall extend to orders made by the county court with respect to sums due in pursuance of any order or judgment of any court [F11other than the] county court.

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out

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execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place.

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).

[<sup>F12</sup>Section 31E(1)(b) of the Matrimonial and Family Proceedings Act 1984 (family court has county court's powers) does not apply in relation to the powers given by this section to the county court.]

### Textual Amendments

- F2** Words in s. 5 substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 2(1)(a)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F3** Words in s. 5 substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 78(a)**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F4** S. 5 proviso (1)(b) repealed by [Bankruptcy Act 1883 \(c. 52\)](#), **Sch. 5**
- F5** Words in s. 5 omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 2(1)(b)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F6** S. 5: the sentence after the second proviso is substituted (25.3.2002) by S.I. 2002/439, **art. 3**
- F7** Words in s. 5 substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 2(2)(a)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F8** Words in s. 5 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), **Sch. 1 Pt. 17** Group 6
- F9** Words in s. 5 substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 2(2)(b)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F10** Words in s. 5 substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 78(b)**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F11** Words in s. 5 substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 78(c)**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F12** Words in s. 5 inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 2(2)(c)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

### Modifications etc. (not altering text)

- C3** S. 5 extended by [Crown Proceedings Act 1947 \(c. 44\)](#), **s. 26(2)** and [Administration of Justice Act 1956 \(c. 46\)](#), **s. 40**; restricted by S.I. 1952/2113 (1952 I, p. 213), rr. 377, 378, [National Insurance \(Industrial Injuries\) Act 1965 \(c. 52\)](#), **s. 28(2)**, [Family Allowances Act 1965 \(c. 53\)](#), **s. 10(2)**, [Administration of Justice Act 1970 \(c. 31\)](#), **s. 11** and [Social Security Act 1975 \(c. 14\)](#), **s. 87(3)**; modified by [Attachment of Earnings Act 1971 \(c. 32\)](#), **s. 3(4)–(7)**
- C4** S. 5 modified (1.7.1992) by [Social Security Administration Act 1992 \(c. 5\)](#), **ss. 187(3)**, 192(4)

### Marginal Citations

- M1** 1846 c. 95.

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**6 Power under certain circumstances to arrest defendant about to quit England. E+W**

F13

Where the plaintiff in any action in [F14the High Court] in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, proves at any time before final judgment by evidence on oath, to the satisfaction of a judge of [F14the High Court], that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action such judge may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the court.

Where the action is for a penalty or sum in the nature of a penalty other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

**Textual Amendments**

- F13 Words repealed by Statute Law Revision (No. 2) Act 1893 (c. 54)
- F14 Words substituted by virtue of Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s. 224(1)

**7 ..... F15 E+W**

**Textual Amendments**

- F15 S. 7 repealed by Statute Law Revision Act 1883 (c. 39)

**8 Saving for sequestration against property. E+W**

Sequestration against the property of a debtor may be issued by any court of equity in the same manner as if such debtor had been actually arrested.

**9 ..... F16 E+W**

**Textual Amendments**

- F16 S. 9 repealed by Statute Law Revision (No. 2) Act 1893 (c. 54)

XI

[F17In this part of this Act—

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“prescribed”, where it appears other than as part of the expression “the prescribed rules”, means prescribed by rules of court; and  
“the prescribed rules” means rules of court.]

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**Textual Amendments**

**F17** Words substituted for s. 10 by virtue of [S.I. 2002/439](#), **art. 4**

**Changes to legislation:**

There are currently no known outstanding effects for the Debtors Act 1869, Part I.