

SCHEDULE 2

Rule 20

“PART 89
ATTACHMENT OF EARNINGS

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SECTION 1 - GENERAL

Interpretation

89.1. In this Part—

- (a) “the 1971 Act” means the Attachment of Earnings Act 1971⁽¹⁾ and unless the context otherwise requires or this Part otherwise provides, expressions used in that Act have the same meanings as in that Act;
- (b) “creditor” means the person who has obtained or is entitled to enforce a judgment or order;
- (c) “debtor” means the person against whom a judgment or order was given or made;
- (d) “debtor’s employer” means any person appearing to be the debtor’s employer;
- (e) “debtor’s home court” means the County Court hearing centre for the district in which the debtor resides or carries on business.

Search of court records

89.2. If requested to do so by any person having a judgment or order against a debtor, the court officer must –

- (a) cause a search to be made in the court records to determine whether there is an attachment of earnings order in force in relation to that debtor; and
issue a certificate of the result of the search.

SECTION 2 – APPLICATIONS FOR ATTACHMENT OF EARNINGS ORDERS

Where to make applications

89.3. An application to the County Court for an attachment of earnings order must be made to the County Court Money Claims Centre.

Mode of applying

89.4.—(1) An application for an attachment of earnings order must include a certificate of the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid.

(2) Where an attachment of earnings order is sought to enforce an order of a magistrates’ court, the applicant must also file with the application—

- (a) a certified copy of the order; and
- (b) a witness statement verifying the amount due under the order or, if payments under the order are required to be made to the designated officer for the magistrates’ court, a certificate by that designated officer to the same effect.

(1) 1971 c. 32.

Service and reply

89.5.—(1) Notice of the application together with Form N56 (“the reply form”), must be served on the debtor by the court.

(2) The notice of application must include an instruction to the debtor to complete and file the reply form within 8 days after service, and that instruction constitutes a requirement under section 14(4) of the 1971 Act(2).

(3) Within 8 days after service of the documents listed in paragraph (1), the debtor must file a completed reply form.

(4) On receipt of a reply from the debtor, the court officer must send a copy of the reply to the creditor.

(5) No proceedings may be brought for an alleged offence under section 23(2)(c) or (f) of the 1971 Act(3) in relation to the requirement to reply, unless—

- (a) the notice of application and reply form have been served personally on the debtor; or
- (b) the court is satisfied that the notice and reply form came to the debtor’s knowledge in sufficient time for the debtor to comply with the requirement; and
- (c) by the end of the time for filing the reply, the debtor has not paid to the creditor the money remaining due under the judgment or order.

(6) If the debtor pays the money remaining due under the judgment or order, the creditor must inform the court officer that the payment has been made.

Notice to debtor’s employer

89.6.—(1) Without prejudice to the power conferred by section 14(1) of the 1971 Act(4), the court officer may at any stage of the proceedings, send to the debtor’s employer a notice requesting them to give to the court a statement of the debtor’s earnings.

(2) The statement of debtor’s earnings must—

- (a) state the debtor’s earnings;
- (b) state the debtor’s anticipated earnings;
- (c) include such particulars as requested in the notice from the court; and
- (d) be given to the court within such period as is specified in the notice.

Attachment of earnings order

89.7.—(1) If the court officer—

- (a) receives the debtor’s reply form; and
- (b) has sufficient information to make an attachment of earnings order,

the court officer may make such an order.

(2) The court must send a copy of any attachment of earnings order made to the parties and to the debtor’s employer.

(2) **1971 c. 32.** There are amendments to section 14(4) in **S.I. 2006/1737**, articles 34 and 41(1) & (4). There are further amendments to subsection (4) that are not yet in force (see the Tribunals, Courts and Enforcement Act 2007, sections 91 and 148(5) and Schedule 15, Part 1, paragraph 1, and Part 2, paragraph (13)).

(3) There are amendments to section 23(2)(c) & (f) that are not yet in force (see the Tribunals, Courts and Enforcement Act 2007, sections 91 and 148(5) and Schedule 15, Part 1, paragraph 1, and Part 2, paragraphs 19 and 22).

(4) There are amendments to section 14(1) in **S.I. 2006/1737**, articles 34 and 41(1) & (2). There are further amendments to subsection (1) that are not yet in force (see the Tribunals, Courts and Enforcement Act 2007, sections 91 and 148(5) and Schedule 15, Part 1, paragraph 1, and Part 2, paragraph 9).

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(3) Where an order is made under paragraph (1), the creditor or the debtor may, within 14 days of service of the order and giving reasons, apply on notice for the order to be re-considered.

(4) Following receipt of an application in accordance with paragraph (3), the court officer must transfer the application to the debtor's home court for the hearing of the application.

(5) The creditor and the debtor must be given not less than 2 days' notice of any hearing fixed pursuant to paragraph (4).

(6) On hearing an application under paragraph (3), the District Judge may confirm the order or set it aside and make such new order as the District Judge thinks fit.

(7) Where an order is not made under paragraph (1), the court officer must refer the application to the District Judge who may—

- (a) determine the application without a hearing; or
- (b) transfer the application to the debtor's home court for hearing.

(8) The creditor and the debtor must be given not less than 8 days' notice of any hearing fixed pursuant to paragraph (7)(b).

(9) Where an order is made under paragraph (7)(a), the creditor or the debtor may, within 14 days of service of the order and giving reasons, apply on notice for the order to be re-considered.

(10) Following receipt of a notice in accordance with paragraph (9), the court officer must transfer the application to the debtor's home court for hearing.

(11) The creditor and the debtor must be given not less than 2 days' notice of any hearing fixed pursuant to paragraph (10).

(12) On hearing an application under paragraph (10), the District Judge may confirm the order or set it aside and make such new order as the District Judge thinks fit.

(13) If the creditor does not appear at the hearing of the application under paragraph (7)(b) the court may proceed to hear the application and to make an order in the creditor's absence if—

- (a) the court has received a witness statement from the creditor; or
- (b) the creditor requests the court in writing to proceed in any event.

(14) No attachment of earnings order may be made to secure the payment of a judgment debt if—

- (a) the debt is of less than £50; or
- (b) the amount remaining payable under a judgment is less than £50.

Failure by debtor

89.8.—(1) In this rule, “statement of means” means a statement given under section 14(1) of the 1971 Act.

(2) If the debtor has failed to comply with rule 89.5(3) or to make payment to the creditor, the court officer may issue an order under section 14(1) of the 1971 Act which must, in addition to meeting the requirements of rule 89.16(1), direct that any payments made thereafter must be paid into the court and not direct to the creditor.

(3) If the person served with an order made under paragraph (2) fails—

- (a) to obey the order;
- (b) to file a statement of means; or
- (c) to make payment,

the court officer must transfer the application to the debtor's home court.

(4) Upon receipt of an application transferred under paragraph (3), the court officer must issue a notice calling on the debtor to show good reason why they should not be imprisoned.

(5) Any notice under paragraph (4) must be served on the debtor personally not less than 5 days before the hearing.

Suspended committal order

89.9.—(1) If the debtor fails to attend at an adjourned hearing of an application for an attachment of earnings order and a committal order is made, the court making the committal order may also order that its execution will be suspended for such period or on such terms or conditions as it may specify.

(2) Unless the court otherwise directs, the creditor must serve on the debtor a copy of any order made under paragraph (1).

(3) Where a committal order is suspended under paragraph (1) and the debtor fails to attend at the time and place specified in the committal order, a certificate to that effect given by the court officer is sufficient authority for the issue of a warrant of committal.

(4) If execution of a committal order is suspended under paragraph (1), the debtor may apply for a further suspension.

(5) The debtor may apply for a further suspension by attending at, or writing to, the court office and explaining why they have been unable to comply with the terms of the original suspension.

(6) If the debtor applies for a further suspension in accordance with paragraph (5), the court must—

- (a) fix a date for the hearing of the application by the judge; and
- (b) give the debtor and creditor at least 3 days' notice of the hearing.

(7) The District Judge may suspend execution of the committal order pending the hearing of the application under paragraph (5).

Costs

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

- (a) a charge of a legal representative for attending the hearing and, if the court so directs, for serving the application; and
- (b) the court fee on the issue of the application.

(2) For the purpose of paragraph (1)(a) a legal representative who has prepared on behalf of the creditor a witness statement or request under rule 89.7(13) is treated as having attended the hearing.

(3) The costs may be fixed and allowed without detailed assessment under Part 47.

Contents and service of order

89.11.—(1) An attachment of earnings order must contain such of the following information about the debtor as is known to the court—

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

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and that information will be the prescribed particulars for the purposes of section 6(3) of the 1971 Act⁽⁵⁾.

(2) An attachment of earnings order and any order varying or discharging such an order must be served on the parties and the debtor's employer.

(3) Where—

- (a) the order is directed to a corporation; and
- (b) that corporation has requested that the court serve on the corporation documents relating to the debtor or to the class of persons to whom they belong at a particular address,

service may be effected on the corporation at that address, if the District Judge thinks fit.

(4) 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 must be sent by the court officer of the County Court to the court officer of the High Court, or, as the case may be, the designated officer for the magistrates' court.

Application to determine whether particular payments are earnings

89.12.—(1) 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 must be made to the debtor's home court.

(2) Upon receipt of an application under paragraph (1), the court officer must—

- (a) fix a date and time for the hearing of the application; and
- (b) give notice of the hearing to the persons mentioned in section 16(2)(a), (b) and (c) of the 1971 Act⁽⁶⁾.

Notice of order having ceased to have effect

89.13. Where an attachment of earnings order ceases to have effect under section 8(4) of the 1971 Act, the court officer of the court or centre in which the matter is proceeding must give notice to the person to whom the order was directed that the order has ceased to have effect.

Variation and discharge by court of own initiative

89.14.—(1) Subject to paragraph (11), the powers conferred by section 9(1) of the 1971 Act⁽⁷⁾ may be exercised by the court of its own initiative 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 that person does not have the debtor in their employment, the court may discharge the order.

(3) Where an attachment of earnings order which has lapsed under section 9(4) of the 1971 Act⁽⁸⁾ is again directed to a person who appears to the court to have the debtor in their employment, the court may make such consequential variations in the order as it thinks fit.

(4) Paragraph (5) applies where—

- (a) the court makes an attachment of earnings order (“the first order”); and

(5) 1971 c. 32.

(6) Section 16(2) was amended by the Crime and Courts Act 2013, section 17(6) and Schedule 10, Part 2, paragraphs 20 and 29.

(7) Section 9(1) was amended by S.I. 2006/1737, articles 34 and 40.

(8) Section 9(4) was amended by S.I. 2006/1737, articles 34 and 40.

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- (b) the court makes or is notified of the making of another attachment of earnings order (“the second order”)—
 - (i) which is against the same debtor; and
 - (ii) which is not to secure the payment of a judgment debt or payments under an administration order.
- (5) The court may discharge or vary the first order, having regard to the priority accorded to the second order by paragraph 8 of Schedule 3 of the 1971 Act⁽⁹⁾.
- (6) Paragraph (7) applies where the court makes an attachment of earnings order and then makes—
 - (a) an administration order; or
 - (b) an order under section 4(1)(b) of the 1971 Act⁽¹⁰⁾.
- (7) The court may—
 - (a) discharge the attachment of earnings order; or
 - (b) if it exercised the power conferred by section 5(3) of the 1971 Act⁽¹¹⁾, vary the order as it thinks fit.
- (8) On making a consolidated attachment order the court may discharge any earlier attachment of earnings order made to secure the payment of a judgment debt by the same debtor.
- (9) Where it appears to the court that a bankruptcy order 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.
- (10) Where an attachment of earnings order has been made to secure the payment of a judgment debt and the court grants permission to issue execution for the recovery of the debt, the court may discharge the order.
- (11) Before varying or discharging an attachment of earnings order of its own initiative under this rule, the court must, 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 court officer may transfer the application to the debtor’s home court.
- (12) Upon transfer of the application under paragraph (11) the court officer must give the debtor and the person on whose application the order was made notice of the date, time and place fixed for the hearing.

Transfer of attachment order

89.15.—(1) This rule applies where the question of making a consolidated attachment order is being considered at one County Court hearing centre, but the relevant attachment of earnings order was originally made at another County Court hearing centre, or was made at the County Court Money Claims Centre.

(2) The court officer may transfer the attachment proceedings in which the attachment of earnings order was made to the County Court hearing centre where the question of making a consolidated attachment order is being considered.

⁽⁹⁾ 1971 c. 32.

⁽¹⁰⁾ Section 4(1) was amended by the Crime and Courts Act 2013, section 17(5) and Schedule 9, Part 2, paragraph 25(1) & (3) (a) and the Insolvency Act 1976 (c. 60), section 13(2).

⁽¹¹⁾ Section 5(3) was amended by the Crime and Courts Act 2013, section 17(5) and Schedule 9, Part 2, paragraphs 25(1) & (3) (a). There are further amendments that are not yet in force (see the Tribunals, Courts and Enforcement Act 2007, section 91 and Schedule 15, Part 1, paragraph 1, and Part 2, paragraph 8).

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(3) Without prejudice to paragraph (2), the Judge or District Judge may transfer the attachment proceedings to a different County Court hearing centre if that judge considered that the attachment proceedings could more conveniently proceed at that different centre.

Exercise of power to obtain statement of earnings etc.

89.16.—(1) An order under section 14(1) of the 1971 Act(**12**) must—

- (a) be indorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobedience to the order; and
- (b) be served on them personally.

(2) Rule 81.36(**13**) applies, with the necessary modifications, in relation to any penalty for failure to comply with an order under the section 14(1) of the 1971 Act as it applies in relation to a fine under section 55 of the County Courts Act 1981(**14**).

Offences

89.17.—(1) Paragraph (2) applies where—

- (a) 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(**15**) in relation to proceedings in, or to an attachment of earnings order made by, the County Court; and
- (b) the alleged offender is not being proceeded against summarily.

(2) The District Judge may issue a notice to the alleged offender to show cause why that alleged offender should not be punished for the alleged offence.

(3) The notice must be served on the alleged offender personally not less than 14 days before the hearing.

(4) Rules 81.37 and 81.38(**16**) 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 1984.

SECTION 3 - CONSOLIDATED ATTACHMENT ORDERS

Cases in which consolidated attachment order may be made

89.18. Subject to the provisions of rules 89.19 to 89.21, 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

(12) *1971 c.32.* There are amendments to section 14(1) in *SI 2006/1737*, articles 34 and 41(1) & (2). There are further amendments to subsection (1) that are not yet in force (see the Tribunals, Courts and Enforcement Act 2007, sections 91 and 148(5) and Schedule 15, Part 1, paragraph 1, and Part 2, paragraph 9).

(13) *S.I. 1998/3132.* Rule 81.36 was inserted by *SI 2012/2208*, rules 2 and 16 and the Schedule.

(14) *CCA 1984 (c. 28).* Section 55(1) was amended by the Civil Procedure Act 1997, section 10 and Schedule 2, paragraph 2(2) and the Crime and Courts Act 2013, section 17(5) and Schedule 9, Part 1, paragraphs 1 and 10. Section 55(2): was amended by the Criminal Justice Act 1991, sections 17(3) and 101(1) and Schedule 4, Part I and Schedule 12, paragraph 6. Section 55(3) was amended by the Civil Procedure Act 1997, section 10 and Schedule 2, paragraph 2(2) and by the Crime and Courts Act 2013, section 17(5) and Schedule 9, Part 1, paragraphs 1 and 10(1)(b). Section 55(4) was amended by the Crime and Courts Act 2013, section 17(5), and Schedule 9, Part 1, paragraphs 1 and 10. Section 55(4A) was inserted by the Courts and Legal Services Act 1990, section 74(5), and then repealed by the Crime and Courts Act 2013, section 17(5) and Schedule 9, Part 1, paragraphs 1 and 10(12)(d).

(15) *1971 c.32.* In relation to section 23(2)(f), there are amendments that are yet to come into force (see the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 91 and Schedule 15, Part 1, paragraph 1, and Part 2, paragraphs 19 and 22(b)).

(16) *S.I. 1998/3132.* Rule 81.37 was inserted by *SI 2012/2208*, rules 2 and 16 and the Schedule, and was amended by *S.I. 2014/867*, rule 15. Rule 81.38 was inserted by *SI 2012/2208*, rules 2 and 16 and the Schedule.

- (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 attachment order

- 89.19.**—(1) In this rule, “a party affected by the application” means—
- (a) where the application is made by the debtor, 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;
 - (b) where the application is made by the creditor, 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.
- (2) 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.
- (3) An application under paragraph (2) may be made in the proceedings in which any attachment of earnings order is in force and rules 89.3, 89.4 and 89.5 do not apply.
- (4) Where an attachment of earnings order has been made—
- (a) at the County Court Money Claims Centre an application under paragraph (2) must be made to the debtor’s home court;
 - (b) at a County Court hearing centre, an application under paragraph (2) must be made to that hearing centre.
- (5) An application under paragraph (2)(b) must—
- (a) include a certificate as to the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid; and
 - (b) be supported by a statement of truth.
- (6) Where an application for a consolidated attachment order is made, the court officer must—
- (a) notify any party who may be affected by the application of its terms; and
 - (b) require them to notify the court in writing, within 14 days of service of notification upon them, giving their reasons for any objection they may have to the granting of the application.
- (7) If notice of any objection is not given within the time stated, the court officer must make a consolidated attachment order.
- (8) If any party objects to the making of a consolidated attachment order, the court officer must refer the application to the District Judge who may grant the application after considering the objection made and the reasons given.
- (9) 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.
- (10) On receipt by the court of a request under paragraph (9), paragraphs (1) and (6) to (8) apply, with the necessary modifications, as if the request were an application by the creditor.

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Making of consolidated attachment order by court of its own initiative

89.20. Where—

- (a) 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
- (b) no application is made for a consolidated attachment order,

the court officer may make such an order of that officer's own initiative after giving all persons concerned an opportunity of submitting written objections.

Extension of consolidated attachment order

89.21.—(1) This rule applies where—

- (a) a consolidated attachment order is in force to secure the payment of two or more judgment debts (“the original debts”); and
- (b) a further judgment debt (“the additional debt”) is owed by the same debtor.

(2) The creditor of the additional debt may apply for the consolidated attachment order to be extended so as to secure the payment of the additional debt as well as the original debts.

(3) If the application to extend the consolidated attachment order is granted, the court may—

- (a) vary the order accordingly; or
- (b) discharge the order and make a new consolidated attachment order to secure payment of all the judgment debts.

(4) An application under this rule must be made to the court that made the consolidated attachment order and is treated for the purposes of rules 89.19 and 89.20 as an application for a consolidated attachment order.

Payments under consolidated attachment order

89.22.—(1) If a court officer receives payment in compliance with a consolidated attachment order, the court officer must—

- (a) first deduct any court fees due in respect of proceedings for or arising out of the order that are permitted to be deducted; and
- (b) then divide the remainder of the payment to satisfy the relevant judgments falling within the ambit of the consolidated attachment order, in proportion with the amounts payable under each judgment.

(2) For the purpose of satisfying those relevant judgments, dividends may from time to time be declared and distributed among the creditors so entitled.”