

SCHEDULE 1

Rule 8(a)

NEW PART 39 OF THE FAMILY PROCEDURE RULES 2010

“PART 39

ATTACHMENT OF EARNINGS

CHAPTER I

GENERAL

**Application of this Part**

**39.1.**—(1) Chapter 2 of this Part applies where an attachment of earnings order is sought in the family court to secure payments under a family court or High Court maintenance order whether or not arrears have accrued.

(2) Chapter 3 of this Part applies where an attachment of earnings order is sought in the High Court to secure payments under a High Court maintenance order whether or not arrears have accrued.

(Section 1 of the 1971 Act<sup>(1)</sup> makes provision for when the family court or the High Court may make an attachment of earnings order.)

**Interpretation of this Part**

**39.2.** In this Part—

“the 1971 Act” means the Attachment of Earnings Act 1971 and unless the context otherwise requires or this Part otherwise provides, expressions used in that Act, including the term “maintenance order”, have the same meaning as in that Act;

“creditor” means the person who is entitled to enforce a maintenance order; and

“debtor” means the person against whom a maintenance order was made.

**Search of court records**

**39.3.** If requested to do so by any person having a maintenance 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

(b) issue a certificate of the result of the search.

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(1) Section 1 was amended by paragraph 6 of Part 1 of Schedule 5 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), paragraph 25 of Part 2 of Schedule 9 and paragraphs 20 and 21 of Part 2 of Schedule 10 to the Crime and Courts Act 2013 and S.I. 2006/1737.

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## CHAPTER 2

### SECURING PAYMENTS UNDER A MAINTENANCE ORDER IN THE FAMILY COURT – ATTACHMENT OF EARNINGS ORDER

#### **Where to apply**

**39.4.** An application for an attachment of earnings order to which this Chapter applies must be sent to the family court.

(Her Majesty’s Courts and Tribunals Service publishes information to identify the appropriate location to which an application for an attachment of earnings order should be sent.)

#### **Application for an attachment of earnings order**

**39.5.—**(1) Where an application is made for an attachment of earnings order on the making of the maintenance order or of an order varying the maintenance order, the remainder of this rule and rule 39.6 do not apply.

(2) A creditor who wishes to apply for an attachment of earnings order must file—

- (a) an application in accordance with rule 33.3(1); and
- (b) a copy of the sealed <sup>(GL)</sup> maintenance order.

(3) When the documents mentioned in paragraph (2) are filed with the court, the court officer must fix a day for the hearing of the application.

#### **Service and reply**

**39.6.—**(1) Notice of the application and a reply form must be served by the court on the debtor in accordance with Chapter 3 of Part 6.

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

(3) No proceedings may be brought for an alleged offence under section 23(2)(c) or (f) of the 1971 Act(2) 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 those documents came to the debtor’s knowledge in sufficient time to comply with the requirement.

(4) The court officer must send to the creditor a copy of any reply form received from the debtor.

#### **Notice to the debtor’s employer**

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

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(2) Section 23 was amended by paragraph 6 of Part III of Schedule 2 to the Contempt of Court Act 1981 (c. 49), section 53 of the Administration of Justice Act 1982, sections 37 and 38 of the Criminal Justice Act 1982 (c. 48), paragraph 41 of Schedule 2 to the County Courts Act 1984 (c. 28), paragraph 6 of Schedule 17 to the Courts and Legal Services Act 1990 (c. 41), Part 1 of Schedule 4 and paragraph 6 of Schedule 12 to the Criminal Justice Act 1991 (c. 53), paragraph 1 of Part 1 of and paragraphs 19 to 22 of Part 2 of Schedule 15 to the Tribunals, Courts and Enforcement Act 2007 and paragraph 25 of Schedule 9 and paragraph 33 of Schedule 10 to the Crime and Courts Act 2013.

- (2) The statement of the 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**

**39.8.** An application for an attachment of earnings order to secure payments under a maintenance order must be heard in private, unless the court directs otherwise.

(Rule 39.21 modifies this rule and sets out steps for a court officer of the family court to take when an attachment of earnings order made by the High Court designates the court officer of the family court as the collecting officer.)

#### **Failure by debtor**

**39.9.—**(1) If the debtor has failed to comply with rule 39.6(2) 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 39.18(1), direct that any payments made after the date of service of the order must be paid to the court and not direct to the creditor.

(2) Without prejudice to rule 39.19, if the person served with an order referred to in paragraph (1) fails—

- (a) to obey the order;
- (b) to complete and file the form of reply, including the statement of means; or
- (c) make payment,

the court officer must issue a notice to the person to attend a hearing at which the court will consider whether an offence has been committed under section 23(2)(c) of the 1971 Act and whether the person should be imprisoned or fined as a result.

(3) A notice of a type referred to in paragraph (2) must be served on the debtor personally not less than 5 days before the hearing.

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

#### **Enforcement under section 23(1) of the 1971 Act**

**39.10.—**(1) An order under section 23(1) of the 1971 Act for the attendance of the debtor at an adjourned hearing for an attachment of earnings order to secure payments under a maintenance order—

- (a) must be served on the debtor personally not less than 5 days before the day fixed for the adjourned hearing; and
- (b) may direct that any future payments made after the date of service of the order under section 23(1) of the 1971 Act must be paid into the court and not direct to the creditor.

(2) An application by a debtor for the revocation of an order committing the debtor to prison and (if already in custody) for discharge under section 23(7) of the 1971 Act must—

- (a) be made to court in writing without notice to any other party, stating the reasons for the debtor’s failure to attend the court or refusal to be sworn or to give evidence (as the case may be) and containing an undertaking by the debtor to attend the court or be sworn or to give evidence when required to do so; and

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- (b) if the debtor has already been lodged in prison, be attested by the governor of the prison (or any other officer of the prison not below rank of principal officer), and in any other case be made in a witness statement or affidavit,

and before dealing with the application the court may, if it thinks fit, cause notice to be given to the creditor that the application has been made and of a date and time when the creditor may attend and be heard.

### **Suspended committal order**

**39.11.**—(1) If the debtor fails to attend 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 direct that its execution 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 personally 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; and
- (b) give the debtor and creditor at least 3 days' notice of the hearing.

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

### **Costs**

**39.12.**—(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 preparing the application, attending the hearing and, if applicable, for serving the application; and
- (b) the court fee for issuing the application.

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

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

**39.13.**—(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;
- (c) the nature of the debtor's work and works number, if any.

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(3) [S.I. 1998/3132](#). Relevant amending instruments are [S.I. 2013/262](#), [407](#), [534](#), [1695](#) and [1974](#), [2014/3299](#) and [2015/1569](#).

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(2) That information will be the prescribed particulars for the purposes of section 6(3) of the 1971 Act.

(3) An attachment of earnings order and any order varying or discharging such an order must be served on the parties and on the person to whom the order is directed.

(4) 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 the debtor belongs at a particular address,

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

(5) Where an attachment of earnings order is made by the family court to secure payments under a maintenance order made by the High Court, a copy of the attachment of earnings order and of any order discharging or varying it must be sent by the court officer of the family court to the court officer of the High Court.

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

**39.14.**—(1) An application to the court under section 16 of the 1971 Act to determine whether payments to the debtor of a particular class or description are earnings for the purposes of an attachment of earnings order may be made to the court in accordance with Part 18.

(2) If such an application is made, the court officer must fix a date for the hearing of the application by the court and give notice of that hearing to the persons mentioned in section 16(2)(a), (b) and (c) of the 1971 Act(4).

#### **Notice that an order has ceased to have effect**

**39.15.** Where an attachment of earnings order made by the family court to secure payments under a maintenance order ceases to have effect under section 8(3) of the 1971 Act(5) and—

- (a) the related maintenance order was made by that court; or
- (b) the related maintenance order was made by the High Court; and—
  - (i) the court officer has received notice of the cessation from the court officer of the High Court; or
  - (ii) a committal order has been made in the family court for the enforcement of the related maintenance order,

the court officer of the family court must give notice of the cessation to the person to whom the attachment of earnings order was directed.

#### **Variation and discharge by the court of its own initiative**

**39.16.**—(1) The powers conferred by section 9(1) of the 1971 Act may be exercised by the court of its own initiative in the circumstances specified in this rule.

(2) Where it appears to the court that a person served with an attachment of earnings order does not employ the debtor, the court must discharge the order.

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(4) Section 16 was amended by paragraph 29 of Part 2 of Schedule 10 to the Crime and Courts Act 2013.

(5) Section 8 was amended by paragraph 25 of Part 2 of Schedule 9 and paragraph 25 of Part 2 of Schedule 10 to the Crime and Courts Act 2013 and by [S.I. 2006/1737](#).

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

(4) Where the court has made an attachment of earnings order and it appears to the court that the related maintenance order has ceased to have effect (whether by virtue of the terms of the maintenance order or under section 28 of the 1973 Act<sup>(6)</sup> or otherwise), the court may discharge or vary the attachment of earnings order.

(5) The court may discharge the attachment of earnings order where an attachment of earnings order has been made to secure payments under a maintenance order and—

- (a) the court makes an order for another form of enforcement for the recovery of payments under the maintenance order; or
- (b) there is no further sum payable under the maintenance order.

(6) Before varying or discharging an attachment of earnings order of its own initiative under any of the paragraphs of 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 of whether the order should be varied or discharged.

(7) The court officer must give those people mentioned in paragraph (6) notice of the date, time and place fixed for the hearing.

### **Change of Designated Family Judge area**

**39.17.** If, in the opinion of the family court sitting in a Designated Family Judge area in which an attachment of earnings order has been made, the matter could more conveniently proceed in another Designated Family Judge area (whether by reason of the debtor having become resident in that other Designated Family Judge area or otherwise), the court may order that the matter should proceed in that other area.

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

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

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

(2) Rule 37.35 applies, with the necessary modifications in relation to any penalty for failure to comply with an order under section 14(1) of the 1971 Act as it applies in relation to a fine under section 31G of the 1984 Act.

### **Offences**

**39.19.—**(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 1971 Act in relation to proceedings in, or to an attachment of earnings order made by, the family court; and
- (b) the alleged offender is not being proceeded against summarily.

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(6) The Matrimonial Causes Act 1973 (c. 18). Section 28 was amended by section 5 of the Matrimonial and Family Proceedings Act 1984, paragraph 43 of Schedule 27 to the Civil Partnership Act 2004 and paragraph 7 of Schedule 2, paragraph 14 of Schedule 8 and Schedule 10 to the Family Law Act 1996 (c. 27). Those provisions in Schedules 8 and 10 of the Family Law Act 1996 were repealed by section 18 of the Children and Families Act 2014 (c. 6).

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(2) The court may issue a notice to the alleged offender to attend a hearing at which the court will consider whether the alleged offence has been committed and whether the alleged offender should be imprisoned or fined as a result.

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

(4) Rules 37.36 and 37.37 apply to proceedings for an offence under section 23(2) of the 1971 Act as they apply to proceedings for offences under the County Courts Act 1984.

(5) Where a person other than a debtor is committed for an offence under section 23(2) of the 1971 Act, rule 37.30 applies to an application by that person to be discharged from custody.

### **Permission to enforce arrears**

**39.20.**—(1) This rule applies where a creditor applies for an attachment of earnings order to enforce the payment of arrears which became due more than 12 months before the date of the application for an attachment of earnings order.

(2) Where the creditor requires the permission of the court under—

- (a) section 32 of the 1973 Act(7);
- (b) section 32(4) of the 1978 Act(8); or
- (c) paragraph 63 of Schedule 5 to the 2004 Act(9),

to enforce the payment of such arrears, the permission application must be made in the application for the attachment of earnings order.

(3) Notice of the application, together with a form of reply in the appropriate form, must be served on the debtor in the manner set out in rule 6.23 and the notice must be served not less than 14 days before the hearing.

## **CHAPTER 3**

### **SECURING PAYMENTS UNDER A MAINTENANCE ORDER IN THE HIGH COURT – ATTACHMENT OF EARNINGS ORDER**

**39.21.** Where an application is made to the High Court under this Chapter, the rules in Chapter 2 apply with the following modifications—

(a) for rule 39.4 there is substituted—

“(1) Subject to paragraph (2), an application for an attachment of earnings order must be sent to the District Registry of the High Court for the district in which the debtor resides.

(2) If the debtor resides outside of England and Wales, or if the debtor’s place of residence is not known to the creditor, an application for an attachment of earnings order must be sent to the District Registry of the High Court for the district in which the proceedings which resulted in the maintenance order being made took place.”;

(b) for rule 39.8 there is substituted—

“(1) An application for an attachment of earnings order to secure payments under a maintenance order must be heard in private, unless the court directs otherwise.

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(7) Section 32 was amended by paragraph 60 of Schedule 11 to the Crime and Courts Act 2013.

(8) The Domestic Proceedings and Magistrates’ Courts Act 1978 (c. 22). Section 32 was amended by sections 37 and 46 of the Criminal Justice Act 1982, paragraph 195 of Schedule 8 to the Courts Act 2003 and paragraph 83 of Schedule 11 to the Crime and Courts Act 2013.

(9) The Civil Partnership Act 2004 (c. 33). Paragraph 63 of Schedule 5 was amended by paragraph 170 of Schedule 11 to the Crime and Courts Act 2013.

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

(c) rule 39.13(5) is omitted;

(d) for rule 39.15 there is substituted—

“Where an attachment of earnings order made by the High Court to secure payments under a High Court maintenance order ceases to have effect under section 8(3) of the 1971 Act, the court officer of the High Court must give notice of the cessation to the person to whom the attachment of earnings order was directed.”;

(e) for rule 39.17, including the heading to that rule, there is substituted—

**“Change of District Registry**

**39.17.** If, in the opinion of the High Court sitting in a District Registry in which an attachment of earnings order has been made, the matter could more conveniently proceed in another District Registry (whether by reason of the debtor having become resident in the area of that District Registry or otherwise), the court may order that the matter should proceed in that other District Registry.”;

(f) in rule 39.19(1)(a), for “family court” there is substituted “High Court”; and

(g) in rule 39.20(2), sub-paragraph (b) is omitted.”