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## STATUTORY INSTRUMENTS

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# 1981 No. 226

## Judgments Enforcement (Northern Ireland) Order 1981

### PART I INTRODUCTORY

#### Title and commencement

- 1.—(1) This Order may be cited as the Judgments Enforcement (Northern Ireland) Order 1981.
- (2) Part VII shall come into operation on such day as the Lord Chancellor may by order appoint<sup>F1</sup>, and the remaining provisions of this Order shall come into operation on 19th March 1981.

**F1** partly exercised by SR 1985/77

#### General interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

- “administration order” has the meaning given by Article 80;
- “amount due on foot of a judgment” means the outstanding balance of all moneys due and payable under the judgment at the date when application is made under Article 22 to enforce the judgment;
- “amount recoverable on foot of a judgment” means the amount recoverable under Article 126;
- “appropriate county court” means the county court having jurisdiction in the division where the original judgment was given;
- “assignees in bankruptcy” has the same meaning as in the Bankruptcy Acts (Northern Ireland) 1857 to 1980;
- “attachment of earnings order” in Articles 73 to 79 means an order under Article 73, in Articles 97 to 105 means an order under Article 99 and elsewhere, unless the context otherwise requires, means an order under Article 73 or Article 99;
- “bankrupt” has the same meaning as in the Bankruptcy Acts (Northern Ireland) 1857 to 1980;
- “certificate of unenforceability” means a certificate granted under Article 19;
- “charging order on funds, stock or shares” means an order under Article 58;
- “the Chief Enforcement Officer” means such officer of the Northern Ireland Court Service as the Lord Chancellor may designate for the purposes of this Order;
- “company” means—
- (a) any association of persons (whether incorporated or not) capable of being wound up under the<sup>F2</sup> Insolvency (Northern Ireland) Order 1989<sup>F3</sup> or which would be so capable

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but for Article 43 of the Water and Sewerage Services (Northern Ireland) Order 2006];  
and

(b) except in Part VI, any other association of persons which is a company to which<sup>[F4]</sup> Part XXIII of the Companies (Northern Ireland) Order 1986] applies;

“court” includes the Court of Appeal, the High Court, a county court and a magistrates' court;

“creditor”, except in Part VII, means a person entitled to enforce a money judgment;

“custody warrant” means a warrant issued under Article 25;

“debenture” has the same meaning as in the<sup>[F5]</sup> Companies Act 2006];

“debenture order” means an order under Article 61(1);

“debtor”, except in Part VII, means a person liable under a money judgment;

“enforcement officer” means the Chief Enforcement Officer and any other officer of the Northern Ireland Court Service designated by the Lord Chancellor for the purposes of this Order;

“enforcement order” means any such order as is specified in Article 16(1);

“firm” has the same meaning as in the Partnership Act 1890 ;

“garnishee” has the meaning given by Article 69;

“Government funds or stocks” means securities of which the principal and interest, if any, are charged directly or by way of guarantee on the Consolidated Fund of Northern Ireland, or of the United Kingdom, being inscribed or registered in Northern Ireland, and funds or stocks on the National Savings Stock Register maintained by trustee savings banks in Northern Ireland;

<sup>[F6]</sup>“insolvency administration” means the administration in bankruptcy of the insolvent estate of a deceased person;

“insolvency administration order” means an order for the administration in bankruptcy of the insolvent estate of a deceased debtor (being an individual at the date of his death);

“insolvency administration petition” means a petition for an insolvency administration order;]

“judgment” includes a decree, order, award which has been made a rule of court and dismiss made or given or having effect in Northern Ireland;

“Judicial Officer” means a Judicial Officer (Enforcement of Judgments) appointed under section 70 of the Judicature (Northern Ireland) Act 1978 ;

<sup>[F6]</sup>“the Land Registration Act” means the Land Registration Act (Northern Ireland) 1970;]

“life policy” has the meaning given by section 85(1) of the Insurance Companies Act 1974 ;

“the Master” means the Master (Enforcement of Judgments) appointed under section 70 of the Judicature (Northern Ireland) Act 1978;

“money” includes banknotes;

“money judgment” means a judgment under or by virtue of which any sum of money is payable;

“notice of unenforceability” means a notice issued under Article 18;

“the Office” means the Enforcement of Judgments Office;

“Official Assignee” has the same meaning as in the Bankruptcy Acts (Northern Ireland) 1857 to 1980;

<sup>[F6]</sup>“the Order” means the Insolvency (Northern Ireland) Order 1989;]

“order charging land” has the meaning given by Article 46(1);

“order for delivery of goods” means an order under Article 57;

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- “order for delivery of possession of land” means an order under Article 53(1);
- “order of seizure” means an order under Article 31;
- “partnership order” means an order made by the Office under section 23(2) of the Partnership Act 1890 charging a partner's interest in the partnership property;
- “perform” in relation to functions includes discharge and exercise;
- “private company” has the meaning assigned to it by<sup>F4</sup> Article 12 of the Companies (Northern Ireland) Order 1986];
- “proceeds of sale” means the sum, if any, realised, whether by means of sale or otherwise, after deduction of the costs of sale or realisation;
- “public company” means a company other than a private company;
- <sup>F6</sup>“the Registration of Deeds Act” means the Registration of Deeds Act (Northern Ireland) 1970;]
- “restraining order” means an order under Article 66(1);
- “rules” means Judgment Enforcement Rules made pursuant to Article 141;
- “rules of court”, in relation to any court, means rules made by the authority having for the time being power to make rules regulating the procedure and practice of that court;
- “securities” means shares, stock, debentures, debenture stock, loan stock, bonds, units of a unit trust scheme, or other shares of the investments subject to the trusts of such a scheme, and other securities of any description;
- “sequestration order” has the meaning given by Article 111;
- “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 ;
- “stock or shares” includes—
- (a) units of a unit trust scheme;
  - (b) other shares of the investments subject to the trusts of such a scheme.

(3) For the purposes of Articles 25(2), 32, 33 and 38, any person ordinarily residing with a debtor shall, until the contrary is shown, be deemed to be a dependant of the debtor.

(4) For the purposes of section 42(2) of the Northern Ireland Constitution Act 1973 (validity of Acts of the Parliament of Northern Ireland), provisions of this Order which re-enact provisions of an Act of the Parliament of Northern Ireland shall be deemed to be provisions of such an Act.

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| <b>F2</b> | 1989 NI 19   |
| <b>F3</b> | Words in art. 2(2) in definition of "company" inserted (1.4.2007) by <a href="#">Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))</a> , arts. 1(2), 308(1), <b>Sch. 12 para. 17(1)</b> (with arts. 8(8), 121(3), 307); S.R. 2007/194, <b>art. 2(2)</b> , Sch. 1 Pt. II (subject to art. 3, Sch. 2) |
| <b>F4</b> | 1986 NI 9  |
| <b>F5</b> | Words in art. 2(2) in definition of "debenture" substituted (6.4.2008) by <a href="#">Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948)</a> , arts. 2(2), 3(1)(b), <b>Sch. 1 para. 53(2)</b> (with arts. 6, 11, 12)   |
| <b>F6</b> | SR 1991/365  |

### Interpretation (attachment of earnings)

3.—(1) This Article has effect for the purposes of Articles 73 to 79 and 97 to 105 and Schedule 1 (orders made by the Office or a court for attachment of earnings).

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(2) 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 paragraphs (4) to (6).

(3) The “employer” means the person who is required by an attachment of earnings order to make deductions from earnings paid by him to the debtor.

(4) Subject to paragraph (5), “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).

[<sup>F7</sup>(c) by way of statutory sick pay.]

(5) The following shall not be treated as earnings—

- (a) sums payable by any public department of a territory outside the United Kingdom;
- (b) pay or allowances payable to the debtor as a member of Her Majesty's forces;

[<sup>F8</sup>(ba) a tax credit (within the meaning of the Tax Credits Act 2002);]

- (c) pension, allowances or benefit payable under any [<sup>F9</sup> enactment relating to social security;]
- (d) guaranteed minimum pension within the meaning of the Social Security Pensions (Northern Ireland) Order 1975 provided by an occupational pension scheme;
- (e) pension or allowances payable in respect of disablement or disability;
- (f) subject to Article 97(2), wages such as are mentioned in [<sup>F10</sup> section 34(1) of the Merchant Shipping Act 1995] (wages due or accruing to a seaman employed in a ship registered in the United Kingdom), other than wages payable to a person as a seaman of a fishing vessel.

(6) In paragraph (5)(f), expressions used in the [<sup>F10</sup> Merchant Shipping Act 1995] have the same meaning as in that Act.

<b>F7</b>	1985 NI 16
<b>F8</b>	2002 c. 21
<b>F9</b>	1986 NI 18
<b>F10</b>	1995 c.21

#### **Judgments to which this Order applies**

4. Subject to Articles 5 and 6 the judgments to which this Order applies are—

- (a) money judgments;
- (b) judgments under which a person is entitled to possession of any land, including a writ of restitution made upon a conviction for forcible entry or detainer and a warrant issued under [<sup>F11</sup> Article 10(4) of the Criminal Justice (Northern Ireland) Order 1986] (warrant for possession of land after conviction of squatter);
- (c) judgments under which a person is entitled to the delivery of any goods;
- (d) judgments requiring any person to pay any money into court or to do any act within a limited time, and judgments against a company, so far as Articles 111 to 113 (and so much of Part XI as is applicable to those Articles) relate to such judgments;

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- (e) orders under Article 4(1)( *b*) or ( *d*), 8(5), 13(2)( *b*) or (3)( *b*) or 22(2) or (8) of the Domestic Proceedings (Northern Ireland) Order 1980 <sup>[F12]</sup> or Part 1, 2 or 6 of Schedule 16 to the Civil Partnership Act 2004] for the payment of lump sums;
- (f) other judgments to which this Order may be applied by any statutory provision; and
- (g) money judgments given outside Northern Ireland and enforceable in Northern Ireland under any statutory provision.

**F11** 1986 NI 15

**F12** 2004 c. 33

### **Power to apply Order to other judgments**

5.—(1) Without prejudice to Article 4, the Lord Chancellor may by order apply this Order, with such modifications as the circumstances may require, to any judgment or award of any court or tribunal given or made or having effect or capable of being made effective in Northern Ireland.

(2) An order under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

### **Judgments to which this Order does not apply**

6. This Order does not apply—

- (a) without prejudice to Article 4( *b*), to judgments in criminal proceedings, including proceedings for the recovery of fines, or of costs, compensation or other sums adjudged payable on a conviction unless it is provided by any statutory provision that a judgment in any such proceedings is to be enforceable in the same manner as a judgment of the High Court or a county court in a civil case or, as the case may be, of a court of summary jurisdiction for a civil debt;
- (b) except Part II of Schedule 1 (priority as between attachment of earnings orders) and without prejudice to Article 4( *e*), to judgments enforceable pursuant to<sup>[F13]</sup> Articles 98, 99 and 109 of the Magistrates' Courts (Northern Ireland) Order 1981];
- (c) except—
  - (i) Articles 3, 97 to 105 and 122 and Schedule 1 (attachment of earnings orders), and
  - (ii) Articles 107 and 108 and so much of Parts X and XI as relates thereto (instalment orders and committal orders),

to orders for the periodical payment of money made by the High Court or a divorce county court in the exercise of its matrimonial jurisdiction<sup>[F14]</sup> or by the High Court or a civil partnership proceedings county court in the exercise of its civil partnership jurisdiction].

**F13** 1981 NI 26

**F14** 2004 c. 33

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## PART II

### THE ENFORCEMENT OF JUDGMENTS OFFICE

#### The Enforcement of Judgments Office

7.—(1) The Lord Chancellor shall continue to maintain the Office within the Northern Ireland Court Service.

(2) Subject to the provisions of this Order (and in particular Part VIII) all judgments to which this Order applies shall be enforced by or through the Office.

(3) Paragraph (2) does not prejudice the power to make a complaint under<sup>[F15]</sup> Article 99 of the Magistrates' Courts (Northern Ireland) Order 1981] (lump sum in domestic<sup>[F16]</sup> or civil partnership] proceedings), where no proceedings have been taken in the Office as mentioned in<sup>[F15]</sup> paragraph (4) of Article 99 of that Order of 1981].

F15 1981 NI 26

F16 2004 c. 33

#### Exercise of functions of Office

8. The functions of the Office shall, subject to and in accordance with rules and with directions given by the Lord Chancellor, be exercisable by—

- (a) the Master;
- (b) a Judicial Officer; and
- (c) the Chief Enforcement Officer or any other member of the Northern Ireland Court Service.

#### Seal of Office

9.—(1) The Office shall have an official seal of which judicial notice shall be taken.

(2) Any document purporting to be sealed with the seal shall be admissible in evidence.

(3) Where a document purporting to be so sealed is a copy of another document, the copy shall be admissible in evidence in like manner as the original.

#### Records of Office

10. The records of the Office shall be preserved in such manner and for such period as the Lord Chancellor may direct.

## PART III

### JURISDICTION OF ENFORCEMENT OF JUDGMENTS OFFICE

#### General jurisdiction of Office

11. Subject to the provisions of this Order, the jurisdiction relating to the enforcement of judgments which immediately before 15th February 1971 was exercised by any court, and which, by virtue of section 8 of the Judgments (Enforcement) Act (Northern Ireland) 1969, became vested in the Office, shall continue to be vested in the Office.

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## **Limitations on jurisdiction of Office**

**12.** Nothing in this Order enables the Office—

- (a) to make or enforce any order of sequestration or any order of committal; or
- (b) to perform any functions relating to the enforcement of judgments which were, immediately before 15th February 1971, performed by the Admiralty Marshal.

## **Power of Office to make orders, etc.**

**13.** Without prejudice to the generality of Article 11 and to any powers conferred by this Order but subject to Article 12, the Office may—

- (a) make enforcement orders;
- (b) issue custody warrants;
- (c) issue processes for the attendance and examination—
  - (i) of debtors as to their means; and
  - (ii) of any other persons appearing to the Office to be in possession of any information relevant to the means of debtors;
- (d) conduct the examinations referred to in paragraph (c);
- (e) receive moneys in respect of payments of the whole or parts of amounts recoverable on foot of judgments;
- (f) subject to any other statutory provision, stay enforcement of any judgment, whether before or after an application has been made under Article 22 or Article 23(1) and either absolutely or on such terms and conditions as it may consider proper;
- (g) set aside, discharge or vary, either of its own motion or upon the application of a party to the proceedings or of any other person affected—
  - (i) any enforcement order; or
  - (ii) any custody warrant issued by it or any seizure made pursuant to an authorisation given under Article 43; or
  - (iii) subject to Article 21, any certificate of unenforceability; or
  - (iv) any notice or direction issued or given by it; or
  - (v) any order under Article 136(2)(a) dismissing an application for enforcement of a judgment or any order under Article 136(2)(b) or Article 137(2)(b) declaring that a priority attaching to such an application is forfeited; or
  - (vi) any administration order;
- (h) issue notices of unenforceability and grant certificates of unenforceability;
- (i) dismiss an application under Article 22 or 23.

## **Stay of enforcement in cases of insolvency**

**14.—(1)** Without prejudice to Articles 80 to 87 (administration orders) the power conferred by Article 13(f) shall include power to stay enforcement on the ground that, having regard to the liabilities of the debtor (in addition to the amount recoverable on foot of the judgment), the property of the debtor ought in the opinion of the Office to be administered for the benefit of all his creditors.

(2) Subject to paragraph (3), an order staying enforcement on the ground mentioned in paragraph (1) shall cease to have effect on the expiration of a period of six weeks from the date of the order.

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(3) The Office may by order extend the period for which such an order staying enforcement has effect if it considers there is a reasonable likelihood that, within the extended period,—

- (a) where the debtor is an individual—
  - Head (i) rep. by 1989 NI 19*
  - (ii) he will enter into an arrangement with his creditors generally, or
  - (iii) a petition to the court to adjudge him bankrupt will be presented by or against him, or
- (b) where the debtor is a company—
  - (i) an application will be made to the court for an order under<sup>[F17]</sup> section 896 of the Companies Act 2006] summoning a meeting of the company's creditors to consider a proposed compromise or arrangement with them, or
  - (ii) a petition for the winding-up of the company will be presented to the court, or
  - (iii) a resolution for the voluntary winding-up of the company will be passed <sup>[F18]</sup> or
  - (iv) an application will be made to the court for a special administration order under Article 42 of the Water and Sewerage Services (Northern Ireland) Order 2006.]
  - <sup>[F19]</sup>(iv) the directors of the company will make a proposal to the company and its creditors for a voluntary arrangement under Part II of the Insolvency (Northern Ireland) Order 1989, or
  - (v) an application will be made to the court for an administration order under Part III of that Order of 1989, or]

**F17** Words in art. 14(3)(b)(i) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 53(3)** (with arts. 6, 11, 12)

**F18** Art. 14(3)(b)(iv) and preceding word inserted (1.4.2007) by virtue of Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 17(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

**F19** 1989 NI 19

### Effect of orders made by Office

**15.** Any order of the Office shall have the like force and effect as an order of the High Court.

### Methods of enforcement by Office

**16.—(1)** Subject to the provisions of this Order, the Office may enforce a judgment by all or any of the following methods—

- (a) an instalment order under Article 30;
- (b) an order of seizure under Article 31 or an authorisation given under Article 43;
- (c) an order charging land under Article 46;
- (d) an order for delivery of possession of land under Article 53;
- (e) an order for the delivery of goods under Article 57;
- (f) a charging order on funds, stock or shares under Article 58;
- (g) the disposal of funds, stock or shares by the Chief Enforcement Officer under Article 60 following an order vesting them in him under that Article;
- (h) a debenture order under Article 61;
- (i) a stop order under Article 62;



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- (j) a restraining order under Article 66;
- (k) a partnership order;
- (l) an order appointing a receiver under Article 67;
- (m) an attachment of debts order under Article 69;
- (n) an order for payment by a garnishee under Article 70;
- (o) an attachment of earnings order under Article 73.

(2) The method of enforcement of a money judgment shall be in the discretion of the Office and an applicant for enforcement may not require the use of any particular method.

(3) Without prejudice to any liability for the payment of stamp duty on any document executed to give effect to any such order as is specified in paragraph (1), stamp duty shall not be payable on any such order.

### **Limitation on enforcement**

17.—(1) An application under Article 22 or 23 shall not be accepted by the Office—

- (a) in respect of a judgment—
  - (i) which may be enforced only by leave of a court, without leave of that court;
  - (ii) enforcement of which has been stayed or postponed, so long as the stay or postponement remains in force; or
- (b) without the leave of the Office, after the expiration of six years from the date on which the judgment became enforceable; or
- (c) after the expiration of 12 years from the date on which the judgment became enforceable; or
- (d) in such other circumstances as may be prescribed by rules.

(2) An application under Article 22 shall not be proceeded with where it is withdrawn by the creditor.

(3) Subject to paragraph (1), the creditor may, notwithstanding such withdrawal, make a fresh application under Article 22 if he thinks fit so to do.

(4) A judgment against a firm shall not be enforced otherwise than against property of the firm except by leave of the court, and, upon such leave being granted, may be enforced against the person or persons named in the grant of leave as if the judgment had been given against him or them personally.

(5) A judgment against a person in a name or style other than his own shall not be enforced without leave of the court, and, upon such leave being granted, may be enforced against the person named in the grant of leave as if the judgment had been given against him personally.

(6) In paragraphs (4) and (5) “the court” means the court by which the judgment was given or, where that court was a county court or a court of summary jurisdiction, any similar court sitting for the same county court division or petty sessions district.

### **Notice of unenforceability**

18. Where it appears to the Office that a money judgment for the enforcement of which an application has been made under the succeeding provisions of this Order cannot be enforced within a reasonable time by any enforcement order, the Office shall issue to the creditor and to the debtor a notice of unenforceability; or where it appears to the office that such a judgment can be partially enforced, the judgment shall be enforced to the extent that appears to the Office to be reasonably practicable and a notice of unenforceability shall be issued for the balance remaining due.

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### **Certificate of unenforceability**

**19.** Where the Office has issued a notice of unenforceability it shall give the debtor and the creditor to whom the notice has been issued an opportunity of being heard as to why a certificate of unenforceability should not be granted; and if, after giving the debtor and the creditor such an opportunity, the Office is satisfied that the money judgment in respect of which the notice of unenforceability has been issued cannot within a reasonable time be enforced, or that it is not reasonably practicable to enforce it further within such a time, the Office shall forthwith—

- (a) grant a certificate of unenforceability in respect of that judgment or in respect of so much of it as cannot reasonably be enforced; and
- (b) publish notice of the grant of that certificate in such manner as may be prescribed by rules;

but if not so satisfied shall refuse to grant a certificate.

### **Effect of certificate of unenforceability**

**20.** Where a certificate of unenforceability is granted in respect of a money judgment against a debtor—

- (a) no further action shall be taken by the Office in relation to—
  - (i) the application for enforcement of that judgment, or
  - (ii) any application for enforcement of any other money judgment against that debtor, where the application bears a serial number later than that of the application mentioned in head (i); and
- (b) no further application under Article 22 or 23(1) in relation to that debtor shall be accepted by the Office without the leave of the Chief Enforcement Officer;

unless the certificate is set aside under Article 13( g)(iii).

### **Setting aside of certificate of unenforceability**

**21.—**(1) A certificate of unenforceability may be set aside only on an application of a creditor who is entitled to enforce a judgment on an application mentioned in Article 20( a) or ( b) showing that the debtor has or is about to have assets or income in relation to which, having regard to the priority attaching by virtue of Article 24 to any other application for enforcement, an enforcement order can, or might be able to, be made for the enforcement of the judgment which is the subject of that creditor's application.

(2) An application under paragraph (1) must be made within 12 years from the date on which the certificate of unenforceability was granted and may be made during the last six years of that period only by leave of the Office.

## **PART IV**

### **COMMENCEMENT OF ENFORCEMENT**

#### **Applications**

#### **Application for enforcement**

**22.** Subject to Article 17(1), any person entitled to enforce a judgment may on payment of the appropriate fee apply to the Office for enforcement of that judgment.

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### **Preliminary application for custody warrant and report**

**23.**—(1) Where the outstanding balance of all moneys due and payable under the judgment exceeds<sup>F20</sup> £3,000] or such other amount as may be fixed by rules, the creditor may, in the first instance, upon payment of the appropriate fee apply to the Office for—

- (a) the issue of a custody warrant; and
- (b) a report as to the means of the debtor following—
  - (i) a requirement for information under Article 26, or
  - (ii) an examination under Article 27 or 28.

(2) If the creditor to whom the report referred to in paragraph (1)( b) is delivered fails to apply for enforcement of the judgment in accordance with the provisions of Article 22 within 10 days or such longer period as the Office may allow after such delivery, the Office shall forthwith discharge the custody warrant, and thereupon the application under paragraph (1) shall cease to have effect.

**F20** SR 1993/334

### **Priority of applications**

**24.**—(1) When the Office accepts an application under Article 22 or Article 23(1), it shall assign to that application a serial number.

(2) Where a creditor who has made an application under Article 23(1) makes, in accordance with Article 23(2), an application under Article 22 for the enforcement of the same judgment, the last-mentioned application shall be assigned the same serial number as the application under Article 23(1).

(3) Where applications are made in respect of more than one money judgment against the same debtor, the enforcement of such judgments shall, subject to paragraph (4), be effected so that a pending application bearing an earlier serial number is dealt with in priority to any such application bearing a later serial number.

- (4) Nothing in paragraph (3) shall—
  - (a) prejudice Articles 80 to 87 (administration orders); or
  - (b) prevent an enforcement order being made on a pending application bearing a later serial number, if by virtue of Article 138(1)( a) the priority of a pending application bearing an earlier serial number is postponed to that of the pending application bearing the later serial number.

### **Custody of goods**

#### **Taking custody of goods under a money judgment**

**25.**—(1) A custody warrant shall be issued by the Office forthwith after an application has been duly made—

- (a) under Article 22 for the enforcement of a money judgment, where no custody warrant is in force under Article 23 in respect of the same judgment against the same debtor;
- (b) under Article 23(1);

and the Office shall cause the warrant to be served on the debtor.

(2) On the service of a custody warrant, all goods (save as may be specified in the warrant or exempted by rules)—

- (a) upon all premises occupied by the debtor;

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(b) in any other place, being goods under the sole control of the debtor or under the joint control of the debtor and his spouse<sup>F21</sup> or civil partner] or any of his dependants; shall, as from the service of the warrant, be deemed to be in the custody and possession of the Office.

(3) Without prejudice to paragraph (2), when an enforcement officer serves a custody warrant on a debtor he may—

(a) serve also a list of specific goods which are liable to be seized under an order of seizure; and

(b) label or otherwise identify those goods as a safeguard against their disposal.

(4) Upon payment by or on behalf of the debtor of the amount recoverable on foot of the judgment or in discharge of the custody warrant, the custody and possession of the goods of the debtor by the Office pursuant to the warrant shall terminate.

**F21** 2004 c. 33

#### Examination of debtor and witnesses

#### **Examination of debtor following service of custody warrant**

**26.** The debtor shall after service of a custody warrant give to the enforcement officer such information as to the means of the debtor as that officer may require.

#### **Examination of debtor as to his means**

**27.—**(1) A debtor other than a company may be summoned by the Office—

(a) to attend in person, at a time and place specified in the summons, for examination by the Office as to his means; and

(b) to produce all books, documents and things in his possession or under his control relating to his means.

(2) Where—

(a) without reasonable excuse—

(i) a debtor does not attend in pursuance of a summons under paragraph (1), or

(ii) a debtor does not answer, or answer satisfactorily, any question as to his means put to him by an enforcement officer under Article 26 and his default is certified by the enforcement officer; or

(b) the Office has reason to suspect—

(i) that a debtor is evading service of such a summons, or

(ii) that he will attempt to evade such service, if a summons is issued, or that he will not attend in pursuance of such a summons, if served;

the Office may make an order—

(A) for the attendance of the debtor in person, at a time and place specified in the order, for examination by the Office as to his means and for the production by him of all books, documents and things in his possession or under his control relating to his means; and

(B) for the issue by the Office of a warrant for his arrest in the event of his failing to attend in pursuance of the order.

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### **Examination of third parties as to means, etc., of debtor**

**28.**—(1) Where a debtor is a company, any person who is a director, officer or servant of the company may be summoned by the Office—

- (a) to attend in person, at a time and place specified in the summons, for examination by the Office as to the assets or liabilities of the company; and
- (b) to produce all books, documents and things in his possession or under his control relating to those assets and liabilities.

(2) Where—

- (a) it appears to the Office that any person is or may be able to give information as to the means of a debtor other than a company or, as the case may be, the assets or liabilities of a debtor company or firm; and
- (b) that person without lawful excuse refuses or neglects to provide such information within a reasonable time after being required in writing by the Office to do so;

that person may be summoned by the Office—

- (i) to attend in person, at a time and place specified in the summons, for examination by the Office as to those means or assets and liabilities; and
- (ii) to produce all books, documents and things in his possession or under his control relating to those means or assets and liabilities.

(3) Where without reasonable excuse a person does not attend in pursuance of a summons under paragraph (1) or (2), the Office may make an order directing him to attend in person for examination by the Office as mentioned in paragraph (1)(a) or (2)(i) (whichever is applicable) and to produce the books, documents and things mentioned in, respectively, paragraph (1)( b) or (2)(ii).

(4) If it appears to the Office that a person—

- (a) is evading service of a summons under paragraph (1) or (2) or an order under paragraph (3); or
- (b) without reasonable excuse has not attended before the Office in pursuance of an order under paragraph (3),

the Office may, on application in writing by or on behalf of the creditor, issue a warrant for that person's arrest.

### **Provisions consequent on execution of warrant of arrest**

**29.**—(1) Upon the execution of a warrant of arrest issued in pursuance of an order under Article 27(2)(B) or of such a warrant issued under Article 28(4), the debtor or other person shall, subject to paragraph (2), be brought before the Office and shall there be examined on oath as to the matters mentioned in Article 27(2)(A) or, as the case requires, Article 28(1) or (2).

(2) Where a person has been taken into custody in pursuance of such a warrant as is referred to in paragraph (1) he shall, if it is not practicable to bring him before the Office within 24 hours after he was so taken into custody, be brought as soon as practicable before a justice of the peace who may—

- (a) discharge him upon his entering into a recognizance in a reasonable amount to appear before the Office at the time and place named in the recognizance; or
- (b) where he refuses to enter into such a recognizance, commit him to prison and direct that he be brought as soon as practicable thereafter and, in any event, not later than eight days from the date of such committal before the Office, there to be examined on oath as to the matters referred to in paragraph (1).

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## PART V

### ENFORCEMENT ORDERS

#### Payment by instalments

##### Instalment order

**30.** Where it appears that a debtor has or will have the means to satisfy by instalments within a reasonable time the whole or any part of the amount recoverable on foot of a judgment, the Office may make an instalment order for the payment by the debtor of the whole or part of that amount.

#### Seizure and sale of goods

##### Order of seizure

**31.** The Office may make an order of seizure authorising, subject to Article 33, the seizure by an enforcement officer of property of any description mentioned in Article 32 which is sufficient to satisfy all or any part of the amount recoverable on foot of the judgment.

##### Property which may be seized

**32.** Subject to Article 33, an order of seizure shall be authority for the seizure of property of any of the following descriptions:—

- (a) goods in which the debtor has a saleable interest in his own right;
- (b) money, bills of exchange, bonds and promissory notes and any other securities for money, belonging to the debtor;
- (c) any life policy in which the debtor has a sole beneficial interest, if the amount assured by the policy is not less than £100 and the surrender value of the policy exceeds £25;
- (d) goods of the debtor's spouse<sup>F22</sup> or civil partner], where it appears to the Office that the judgment debt relates to—
  - (i) goods obtained or services rendered; or
  - (ii) the rent of, or rates due in respect of the occupation of, premises;

for the general use or enjoyment of the debtor, his spouse<sup>F22</sup> or civil partner] and his dependants residing with him.

**F22** 2004 c. 33

##### Property exempt from seizure

**33.** An order of seizure shall not be authority for the seizure of property of any of the following descriptions:—

- (a) such wearing apparel, furniture, bedding and household equipment of the debtor and his spouse<sup>F23</sup> or civil partner] as appear to the Office to be essential for the domestic purposes of the debtor, his spouse<sup>F23</sup> or civil partner] and his dependants residing with him, or any of them;
- (b) the tools and implements of the debtor's trade to the value of<sup>F24</sup> £200] or of such greater amount as may be fixed by rules;

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- (c) any property which has, at the date when the order takes effect, been seized under any other statutory provision;
- (d) any property held by the debtor in trust for or on behalf of any other person or body;
- (e) any property in the hands of a receiver appointed by a court, except with the leave of the court which appointed the receiver;
- (f) any property exempted from seizure by any other statutory provision.

**F23** [2004 c. 33](#)  
**F24** [SR 1983/150](#)

### Effect of order of seizure

**34.**—(1) Subject to paragraph (2), an order of seizure shall have the effect of placing any property which is liable to be seized in pursuance thereof in the custody and possession of the Office and charging it with the amount recoverable on foot of the judgment in favour of the creditor for whose benefit the order is made.

(2) An order of seizure shall not prejudice the title to property acquired by any person in good faith and for valuable consideration unless that person had, at the time when he acquired the title, notice that the order of seizure had been made.

### Power to defer removal of property seized

**35.** An enforcement officer executing an order of seizure may label or otherwise identify any property seized in pursuance of the order and may defer the removal of the property upon his receiving in writing—

- (a) an admission by the debtor that the property in question is in his possession, and
- (b) an undertaking by the debtor to pay the amount recoverable on foot of the judgment, or a substantial part of it, by a date specified in the undertaking.

### Where seizure may be effected

**36.** An enforcement officer may under an order of seizure seize any property liable to be seized in pursuance thereof if that property—

- (a) is in or upon any land occupied or used—
  - (i) by the debtor or his spouse<sup>[F25]</sup> or civil partner] or any of his dependants; or
  - (ii) by any other person, where notice of the order has been given to that person; or
- (b) is on the highway or in any public place.

**F25** [2004 c. 33](#)

### Cesser of effect of order of seizure

**37.** An order of seizure shall cease to have effect after the expiration of such period or in such circumstances as may be prescribed by rules.

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### **Power of entry under order of seizure**

**38.** During the continuance in force of an order of seizure any land occupied or used by the debtor or his spouse<sup>F26</sup> or civil partner] or any of his dependants or by any other person such as is mentioned in Article 36( a)(ii) may at any reasonable time be entered, by force if necessary, by an enforcement officer on production, if required, of his credentials for the purpose of identifying or of removing for sale or to a place of safety any property which is liable to be seized in pursuance of the order or of ascertaining whether or not any such property has been interfered with.

F26 2004 c. 33

### **Special provisions as to bills of exchange, policies of assurance, etc.**

**39.**—(1) Where any bills of exchange, bonds or promissory notes or any other securities for money have been seized under an order of seizure, the Office shall hold them as security for the amount recoverable on foot of the judgment.

(2) When the time arrives for the recovery of the sum secured or made payable by virtue of any bill of exchange, bond, promissory note or other security held by the Office under paragraph (1), a creditor or the Chief Enforcement Officer may sue in the name of the debtor for the recovery of any sum so secured or made payable and still outstanding (and, where the Chief Enforcement Officer sues, on a change in the person who is that Officer the proceedings shall not abate but may be continued by his successor in office).

(3) Where any life policy has been seized under an order of seizure the Office may surrender the policy to the assurer, and thereupon the assurer shall, notwithstanding anything contained in the policy, pay to the Office such moneys as would have been payable to the assured if he had surrendered the policy to the assurer; and a receipt of the Office in respect of any moneys so paid shall be as effective as if given to the assurer by the assured.

### **Sale of property seized**

**40.**—(1) Any property seized under an order of seizure shall be sold or otherwise disposed of under the direction of the Office and in accordance with rules.

(2) Save as otherwise fixed by rules, the Office shall appoint a valuer or broker to value any property which is seized in pursuance of an order of seizure and which is to be sold and to sell it in accordance with rules.

(3) There shall be paid to any valuer or broker appointed under paragraph (2) charges fixed by rules.

### **Title to property sold under order of seizure**

**41.** A purchaser of any property seized under an order of seizure and sold to him under the direction of the Office shall receive a good title to the property.

### **Retention of proceeds of sale**

**42.** The proceeds of the sale of any property sold pursuant to Article 40 shall in any event be retained by the Office for 21 days from the date of sale.

### **Authorisation of seizure, in certain cases, on service of custody warrant**

**43.** Without prejudice to Articles 31 to 42, if the amount of a judgment debt does not exceed £100 an enforcement officer authorised in that behalf in writing by the Office may, upon service



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of a custody warrant and of a copy of the authorisation, seize sufficient property of a description mentioned in Article 32 (but not of a description mentioned in Article 33) to meet the amount recoverable on foot of the judgment; and Articles 31 to 42 (except the power under Article 38 to enter by force) shall apply as if an order of seizure had been made.

## Interpleader

44.—(1) Where property of a debtor—

- (a) is liable to be, or has been, seized in pursuance of an order of seizure; or
- (b) has been sold under Article 40 or otherwise realised; or
- (c) has been seized in pursuance of an authorisation given under Article 43;

any person claiming to have or to have had an interest in the property (other than the debtor or, where Article 32( d) applies, the debtor's spouse<sup>F27</sup> or civil partner]) may apply to the Office to have his interest determined.

(2) If it appears on the hearing of an application under paragraph (1) that the claimant has or had a sole interest in the whole or a severable part of the property, then—

- (a) if the property has not been sold or otherwise realised an order may be made for the delivery to the claimant of the property or the part so claimed;
- (b) if the property has been sold or otherwise realised and the proceeds thereof are held by the Office, an order may be made that there be paid to the claimant the proceeds of sale or realisation of the property or of the part so claimed.

(3) If it appears on the hearing of an application under paragraph (1) that the claimant has or had any interest other than that specified in paragraph (2) in any such property, then—

- (a) if the property has not been sold or otherwise realised, an order may be made that—
  - (i) the property be delivered to the claimant upon payment by him to the Office of such amount representing the value of the debtor's interest in the property as may be specified in the order; or
  - (ii) if the claimant does not seek possession of such property or does not make payment pursuant to an order under head (i), the property be sold or otherwise realised and out of the proceeds thereof there be paid to the claimant such amount representing the value of the claimant's interest in the property as may be specified in the order;
- (b) if the property has been sold or otherwise realised, an order may be made that out of the proceeds of the sale or realisation there be paid to the claimant such amount representing the value of the claimant's interest in the property as may be specified in the order.

(4) On the hearing of any application under this Article an order may be made—

- (a) referring the claim for hearing and determination by the High Court or by the county court; or
- (b) directing that the proceeds of the sale of the property be lodged either in the<sup>F28</sup> Supreme Court or in the county court.

**F27** 2004 c. 33

**F28** prosp. subst. by 2005 c. 4

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## Enforcement against land

### Restrictions on enforcement of money judgments against land

45. A money judgment shall be enforceable against land only in accordance with Articles 46 to 52.

### Order charging land

46.—(1) The Office may by order (in this Order referred to as an order charging land) impose on any such land or estate in land of the debtor as may be specified in the order a charge for securing the payment of the amount recoverable on foot of the judgment or so much thereof as may be so specified.

(2) An order charging land may be made either absolutely or subject to such conditions as to notifying the debtor or as to the time when the charge is to become enforceable, or as to such other matters, as may be specified in the order.

(3) An order charging registered land shall not have effect until the charge thereby imposed or, where Article 48<sup>F29</sup> or paragraph 4 of Part IV of Schedule 2 to the Land Registration Act (Northern Ireland) 1970] applies, a notice of the order is registered by or on behalf of the creditor in the Land Registry, and<sup>F29</sup> subject to Part IV of that Schedule 2] an order charging unregistered land shall not have effect until the order is registered by or on behalf of the creditor in the Registry of Deeds.

F29 1992 NI 7

### Duration of order charging land

47. An order charging land and any charge imposed thereby or any notice relating to any such order shall cease to have effect on the expiration of 12 years from the date of the judgment.

### Registration of notice of order charging registered land

48.—(1) An order charging any estate of a debtor in registered land of which the debtor is not the registered owner shall not be registered in the Land Registry, but the creditor may cause notice of the order to be so registered.

(2) So long as such a notice as is referred to in paragraph (1) subsists on the appropriate register, the debtor or any person claiming under him shall not be registered as owner of the land unless the charge has been satisfied or has ceased to have effect or is entered on that register as a burden; and the entry relating to such notice shall state the restrictive effect thereof.

### Effect of order charging land

49. Subject to Articles 46(3), 47, 48 and 52, an order charging any land shall have the like effect as a charge on that land created by the debtor in favour of the creditor.

### Registration of charge against land

50.—(1) Unless and until Land Registry rules otherwise provide, a person seeking to register a charge imposed by an order charging registered land shall lodge in the Land Registry, together with such other documents as may be required by law, one certified copy or, where the debtor is a company, three certified copies of the order charging that land.

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(2) Unless and until regulations made by the Department of Finance under the Registration of Deeds Acts otherwise provide, a person seeking to register an order charging unregistered land shall lodge in the Registry of Deeds two or, where the debtor is a company, four copies of that order of which one, or, where the debtor is a company, three, shall be certified copies; and for the purposes of the Registration of Deeds Act (Northern Ireland) 1970 the certified copy (or one of the certified copies) of the order shall be treated as the document to be registered and the uncertified copy shall, subject to section 12 of that Act and any regulations made thereunder (type of paper, etc., to be used for registration purposes), be treated for those purposes as the memorial of that document.

### **Charges in respect of rates**

**51.**—(1) Notwithstanding anything contained in this Order or any other statutory provision, a charge under Article 46 shall, if it is founded on a judgment in respect of rates payable in respect of the land which is the subject of the charge, have priority over all other charges and incumbrances whatever affecting that land except—

- (a) Crown rents, quit rents and rent charges in lieu of tithes; and
  - (b) any (or any other) charge or incumbrance whatsoever securing money due to the Crown.
- (2) In this Article “rates” includes regional rate and district rate.

### **Order charging land to confer power of sale, etc.**

**52.**—(1) Subject to the provisions of this Article and of Article 93, the owner of a charge under Article 46 shall, subject to the terms of the order, have, for the purpose of enforcing his charge, the powers of sale of a mortgagee under a mortgage by deed, within the meaning of the Conveyancing Acts 1881 to 1911, where the principal sum under the mortgage has become due and the power of sale has become exercisable; and, without prejudice to those powers,—

- (a) he shall have the power to convey by deed the estate of the debtor in the land freed from all estates in the land inferior to the charge, but subject to all estates in the land having priority to the charge; and
- (b) subject as aforesaid and to paragraph (3), he may, for the purposes of sale, apply to the High Court or, subject to Article 12 of the County Courts (Northern Ireland) Order 1980, to the appropriate county court for possession of the land or any part thereof; and on such application the court may order possession of the land or that part thereof to be delivered to the applicant;

and section 21(2) of the Conveyancing and Law of Property Act 1881 and section 5(1) of the Conveyancing Act 1911 shall have effect for the protection of the purchaser of any such land as aforesaid.

(2) Where the owner of such a charge on registered land has exercised his power of sale under this Article, the charge and any estate in the land inferior thereto shall upon registration of the purchaser be discharged.

(3) Except with the leave of the High Court or, subject to Article 12 of the County Courts (Northern Ireland) Order 1980, the appropriate county court, this Article shall not confer any power of sale on the owner of a charge of which notice has been registered under Article 48(1).

(4) Nothing in this Article shall operate so as to discharge any entry on any register in the Land Registry relating to a right conferred or defined by regulations under section 4 of the Turbary (Ireland) Act 1891 or under section 21 of the Irish Land Act 1903 as extended by section 26 of the Northern Ireland Land Act 1925 (which relate to turbary).

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### **Order for delivery of possession of land**

**53.**—(1) Where under a judgment any person is entitled to the possession of any land, the Office may make an order for delivery of possession of that land to that person.

(2) An order for delivery of possession of land shall be executed by the Office, in the presence of the person entitled to possession or his agent and at his peril, delivering to that person or his agent possession of the land (as indicated to the Office by that person or his agent) in accordance with the judgment.

### **Notice of eviction; removal of goods to place of safety; notice to Health and Social Services Board**

**54.**—(1) For the purpose of delivering vacant possession of land, the Office shall, upon giving to every person in occupation or possession of the land or any part thereof such notice as may be prescribed by rules, evict all persons in occupation or possession of the land and shall remove the goods of all such persons to a place of safety.

(2) Before proceeding to eviction from land which contains a building or structure used as a dwelling, the Office shall give to the Health and Social Services Board for the area in which the land is situated notice of not less than seven days or such longer period as may be prescribed by rules.

### **Release of goods removed**

**55.**—(1) The owner of any goods removed under Article 54(1) shall, subject to any other enforcement order, be entitled to have the goods released to him by the Office upon payment by him to the Office of the cost of their removal and storage.

(2) If the owner of any goods removed to a place of safety under Article 54(1) fails to claim and remove his goods from that place within one month from the date of their removal to that place, the Office may, after giving to the person appearing to be entitled to the goods not less than seven days' notice in writing of his intention so to do, sell the goods and, after deducting from the proceeds of sale the cost of removal and storage, shall, subject to any other enforcement order, pay any balance to that person.

(3) Any question arising under this Article as to the ownership of goods shall be determined by an order made by the Office.

### **Wrongful delivery of possession of land**

**56.**—(1) Any person who claims that possession of land has been wrongly delivered under an order for delivery of possession may apply to the Office claiming possession of the land.

(2) Any claim under paragraph (1) shall be determined by an order made by the Office, or, if the Office thinks fit, be referred for hearing and determination by the High Court.

Delivery of goods

### **Order for delivery of goods**

**57.**—(1) Where under a judgment a person is entitled to the delivery of ascertained or specified goods, the Office may, save as otherwise provided by any statutory provision, make an order for the delivery to that person of those goods.

(2) Where under a judgment to which paragraph (1) applies a defendant has the option, in lieu of delivering the goods to the person entitled to enforce that judgment, of paying to that person the assessed value of those goods, the person so entitled may, at the time when he applies for the enforcement of the judgment, apply for an order for delivery to him of those goods; and the Office

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may, save as otherwise provided by any statutory provision, make such an order, and thereupon the option shall cease to have effect.

(3) Where the person to whom an order for delivery of goods is directed fails to comply with the order, the Office may cause the goods specified in the order to be seized and delivered to the person who is entitled to them under the order.

(4) For the purposes of paragraph (3) an enforcement officer may, on production, if so required, of his credentials, at any reasonable time enter, by force if necessary, any land on which he reasonably believes the goods to be.

Enforcement against Government funds, stocks, etc.

### **Order charging certain funds, stock, etc.**

**58.** Where a debtor has a beneficial interest in—

- (a) Government funds or stock; or
- (b) funds or stock of any local authority or public undertaking in Northern Ireland; or
- (c) stock or shares registered in Northern Ireland of any public company incorporated in Northern Ireland or of any public company incorporated elsewhere to which<sup>F30</sup> Part XXIII of the Companies (Northern Ireland) Order 1986] applies;

the Office may make an order charging such funds, stock or shares with the whole or any part of the amount recoverable on foot of the judgment.

**F30** [1986 NI 9](#)

### **Effect of order made under Article 58**

**59.**—(1) An order made under Article 58 shall from the time of service of a copy thereof have effect so as to—

- (a) require that all dividends or interest accruing be paid to the owner of the charge or to the Office as the order may direct;
- (b) restrain the registrar of Government funds or stock, or the local authority, public undertaking or public company, as the case may require, from dealing with such funds, stock or shares, or the produce thereof, save in accordance with the provisions of this Article.

(2) Service under paragraph (1) shall be effected on the registrar of Government funds or stock or, as the case may require, on the local authority, public undertaking or public company.

### **Vesting order leading to disposal of certain funds, stock, etc.**

**60.**—(1) Where after the expiration of three months from the making of an order under Article 58 charging any funds, stock or shares the amount recoverable on foot of the judgment has not been paid, the Office may make an order vesting in the Chief Enforcement Officer all or any part of the funds, stock or shares.

- (2) Upon the making of a vesting order under this Article the Chief Enforcement Officer shall—
  - (a) forthwith serve a copy of the order on the registrar, authority, undertaking or company (as the case may require), who shall give effect to the order; and
  - (b) proceed to dispose of the funds, stock or shares in accordance with rules.

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## Enforcement against debentures

### Debenture order

**61.**—(1) Where it appears to the Office that a debtor has a beneficial interest in any debenture of or mortgage by any local authority or other public undertaking in Northern Ireland or in any debenture of any public or private company incorporated in Northern Ireland, the Office may make a debenture order requiring the payment to the creditor or the Office, as the order may direct, of the principal or interest or both when the principal or so often as the interest becomes due on the debenture or mortgage, in full or part satisfaction of the amount recoverable on foot of the judgment.

(2) A debenture order shall, from the time of service of a copy thereof on a local authority, public undertaking or company specified in the order, operate so as to restrain that local authority, public undertaking or company, as the case may be, from dealing with any such debenture or mortgage save as provided by this Article.

## Enforcement against funds in court

### Stop order in respect of funds in court, etc.

**62.** Where it appears to the Office that a debtor has a beneficial interest in any funds, shares or stock, or is entitled to the payment of any money, being funds, shares, stock or money standing—

- (a) to the credit of any proceeding in the High Court or in a county court; or
- (b) in the name of the Accountant General of the<sup>F31</sup> Supreme Court;

the Office may make a stop order.

**F31** prosp. subst. by [2005 c. 4](#)

### Effect of stop order

**63.** A stop order shall have effect so as to prohibit any dealing with the debtor's interest in the funds, shares or stock or the payment out of any money specified in the order so long as the order remains in force.

### Stop order on money standing to credit of pending proceeding

**64.** Where any money stands to the credit of any proceeding to which the debtor is a party in any court, the Office may pending the determination of that proceeding make a stop order under Article 62 prohibiting the payment of any such money to the debtor.

### Power of court to discharge stop order or order sale or payment out

**65.** The court having jurisdiction over any funds, stock, shares or money subject to a stop order may—

- (a) upon the application of any person interested, discharge the stop order; or
- (b) upon the application of the creditor, order the sale of all or any part of the funds, stock or shares, or the payment of all or part of the money, in order to satisfy the amount recoverable on foot of the judgment.

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## Enforcement against shares in private companies

### Restraining order

**66.**—(1) Where a debtor has a beneficial interest in any shares in a private company incorporated in Northern Ireland, the Office may make a restraining order restraining the company from—

- (a) paying to the debtor or to any other person any dividends or director's emoluments which would otherwise be payable to the debtor;
- (b) dealing in any way with the shares without the consent of the Office.

(2) Where a copy of a restraining order has been served on the private company specified in the order, the Office may require that company—

- (a) to inform the Office of any dividends or director's emoluments which are being withheld by the company in compliance with the restraining order; and
- (b) to produce to the Office such accounts of the company for the three financial years immediately preceding the date of the requirement as may be specified in the requirement.

(3) Where the Office is satisfied that any moneys have been withheld or are likely to be withheld pursuant to a restraining order, it may make an order appointing a receiver or an attachment of debts order or both such orders in respect of those moneys, and the provisions of Articles 67 and 68 and of Articles 69 to 72 shall have effect accordingly.

(4) If a private company, after service on it of a copy of a restraining order, fails to comply with the order or with any requirement made in relation to it pursuant to paragraph (2), the company shall, without prejudice to the continuing liability of the debtor, become liable for the payment of the amount recoverable on foot of the judgment in respect of which the restraining order was made, and the Office may proceed to recover that amount from the company as if the judgment had been given against the company.

### Appointment of receiver by way of enforcement

### Order appointing receiver by way of enforcement

**67.** The power of a court immediately before 15th February 1971 to appoint a receiver by way of equitable execution against a debtor shall be exercised by the Office by order, and shall—

- (a) extend to operate in relation to all estates in land; and
- (b) include a power to appoint a receiver in respect of any payments (whether ascertained or not) to which the debtor is or may become entitled, other than—
  - (i) earnings attachable by an attachment of earnings order;
  - (ii) future earnings or salary unless assigned or charged;
  - (iii) any payments excepted by section 27(1) of the Crown Proceedings Act 1947 (whether in its application to the Crown in right of Her Majesty's Government in Northern Ireland or in its application to the Crown in right of Her Majesty's Government of the United Kingdom); and
  - (iv) any income payable at the discretion of trustees.

### Effect of order appointing receiver

**68.**—(1) An order appointing a receiver under Article 67 shall operate so as to restrain—

- (a) the debtor from receiving the subject-matter of the order or dealing therewith to the prejudice of the creditor;

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- (b) any person who has been served with a copy of the order from dealing with the subject-matter of the order except by payment, transfer or delivery to the receiver appointed by the order.

(2) Subject to rules, where a person claims that he has a right, superior to the rights and obligations conferred or imposed by an order appointing a receiver under Article 67, to the whole or any part of the subject-matter of that order, his claim may be determined by an order made by the Office on his application.

#### Attachment of debts

##### Attachment of debts order

**69.** The Office may make an order attaching all debts due or accruing to a judgment debtor from any person ( “the garnishee”) within the jurisdiction for the purpose of satisfying the amount recoverable on foot of the judgment or any part of it; and any such order shall operate so as to bind all such debts.

##### Liability of garnishee

**70.—**(1) If the garnishee, upon service on him of a copy of the attachment of debts order, does not, within the period specified in the order, either—

- (a) pay to the Office the proper amount (that is to say, the amount due by him to the debtor or, as the case requires, so much thereof as is required to satisfy the amount recoverable on foot of the judgment); or
- (b) show cause why an order should not be made for the payment by him to the creditor of that amount;

the Office may make an order for payment by the garnishee to the creditor of the proper amount and the creditor may proceed to enforce that order as if it were a judgment given in his favour against the garnishee.

(2) If the garnishee disputes his liability for the debt due or claimed to be due by him to the debtor, the Office may determine the dispute or may direct that any issue or question necessary for determining the liability of the garnishee be tried and determined by the High Court.

##### Effect of payment by garnishee

**71.** Any payment made by or recovered from the garnishee under an attachment of debts order shall be a valid discharge to the garnishee as against the debtor in respect of the amount so paid or recovered.

##### [<sup>F32</sup> Attachment of moneys in a bank or other deposit-taking institution

**72.—**(1) Subject to any order for the time being in force under paragraph (4), this Article applies to the following accounts, namely—

- (a) any deposit account with a bank or other deposit-taking institution; and
- (b) any withdrawable share account with any deposit-taking institution.

(2) In determining whether, for the purposes of the jurisdiction of the Office to attach debts for the purpose of satisfying judgements or orders for the payment of money, a sum standing to the credit of a person in an account to which this Article applies is a sum due or accruing to that person and, as such, attachable in accordance with rules, any condition mentioned in paragraph (3) which applies to the account shall be disregarded.

- (3) Those conditions are—



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- (a) any condition that notice is required before any money or share is withdrawn;
  - (b) any condition that a personal application must be made before any money or share is withdrawn;
  - (c) any condition that a deposit book or share#account book must be produced before any money or share is withdrawn; or
  - (d) any other condition prescribed by rules.
- (4) The Lord Chancellor may by order make such provision as he thinks fit, by way of amendment of this Article or otherwise, for all or any of the following purposes, namely—
- (a) including in, or excluding from, the accounts to which this Article applies accounts of any description specified in the order;
  - (b) excluding from the accounts to which this Article applies all accounts with any particular deposit#taking institution in the order specified or with any deposit#taking institution of a description specified in the order.
- (5) Any order under paragraph (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.
- (6) In this Article “deposit#taking institution” means any person carrying on a business which is a deposit#taking business for the purposes of the Banking Act 1979.]

**F32** 1983 NI 22

### [<sup>F33</sup>[<sup>F34</sup>Clerical and administrative costs of garnishees]

#### 72A.—[

<sup>F34</sup>(1) Where an order made in the exercise of the jurisdiction mentioned in Article 72(2) is served on any deposit#taking institution, the institution may, subject to the provisions of this Article, deduct from the relevant debt or debts an amount not exceeding the prescribed sum towards the clerical and administrative costs of the institution in complying with the order.

(1A) In paragraph (1) “the relevant debt or debts”, in relation to an order served on any such institution as is mentioned in that paragraph, means the amount, as at the time the order is served on the institution, of the debt or debts of which the whole or a part is expressed to be attached by the order.

(1B) A deduction may be made under paragraph (1) in a case where the amount referred to in paragraph (1A) is insufficient to cover both the amount of the deduction and the amount of the judgement debt and costs in respect of which the attachment was made, notwithstanding that the benefit of the attachment to the creditor is reduced as a result of the deduction.]

(2) In this Article—

“deposit#taking institution” has the meaning assigned to it by Article 72(6); and

“prescribed” means prescribed by an order made by the Lord Chancellor.

(3) Without prejudice to section 17(5) of the Interpretation Act (Northern Ireland) 1954, an order under this Article may prescribe sums differing according to the amount due under the judgement or order to be satisfied]<sup>F34</sup> and may provide for this Article not to apply to deposit#taking institutions of any prescribed description].

(4) Any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of Statutory Instruments Act 1946 shall apply accordingly.]

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**F33** 1983 NI 22

**F34** 1986 NI 11

## Attachment of earnings

### Attachment of earnings order

**73.**—(1) Without prejudice to Article 81(2) and (3), where it appears to the Office that a debtor is a person to whom earnings fall to be paid, the Office may, on the application of the creditor, make an attachment of earnings order requiring the person to whom the order is directed to make out of those earnings, or part thereof, such payments as may be specified in the order.

(2) The person to whom an attachment of earnings order is directed shall be a person who appears to the Office to have the debtor in his employment; and the order shall operate as an instruction to that person—

- (a) to make periodical deductions from the debtor's earnings in accordance with Part I of Schedule 1; and
- (b) at such times as the order may require, or as the Office may allow, to pay the amounts deducted to the Office, as specified in the order.

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

(4) The order shall specify the whole amount recoverable on foot of the relevant judgment (or so much of that amount as remains unpaid).

(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 Office thinks it reasonable for the debtor's earnings to be applied to meeting his liability under the relevant judgment; and
- (b) the protected earnings rate, that is to say the rate (so expressed) below which, having regard to the debtor's resources and needs (including the needs of any person for whom he must, or reasonably may, provide), the Office thinks it reasonable that the earnings actually paid to him should not be reduced.

### Compliance with order by employer

**74.**—(1) Where an attachment of earnings order has been made, the employer shall, if he has been served with the order, comply with it; but he shall be under no liability for non-compliance before seven days have elapsed since the service.

(2) Where a person is served with an attachment of earnings order directed to him and he has not the debtor in his employment, or the debtor subsequently ceases to be in his employment, he shall (in either case), within 10 days from the date of service or, as the case may be, the cesser, give notice in writing of that fact to the Office.

(3) Part II of Schedule 1 shall have effect with respect to the priority to be accorded as between two or more attachment of earnings orders directed to a person either by the Office and a court, or by a court, 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, [<sup>F35</sup> £1] or such other sum as may be prescribed by rules towards his clerical and administrative costs; and
- (b) he shall give to the debtor a statement in writing of the total amount of the deduction.

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(5) Any sum deducted by the employer from the debtor's earnings in compliance with the order, but not yet paid to the Office, shall in the bankruptcy or winding-up of the employer be treated as money held by the employer on trust for the Office.

F35 SR 1993/334

### **Persons employed under the Crown**

**75.**—(1) The fact that an attachment of earnings order is made at the suit of the Crown shall not prevent its operation at any time when the debtor is in the employment of the Crown.

(2) Where a debtor is in the employment of the Crown and an attachment of earnings order is made in respect of him, then for the purposes of Articles 73, 74 and 76 to 79 and Schedule 1—

- (a) the chief officer for the time being of the government department, office or other body in which the debtor is employed shall be treated as having the debtor in his employment (any transfer of the debtor from one department, office or body to another being treated as a change of employment); and
- (b) any earnings paid by the Crown, a Minister of the Crown or a government department, or out of the public revenue of the United Kingdom or Northern Ireland, shall be treated as paid by the said chief officer.

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

(4) If any question arises, in proceedings for or arising out of an attachment of earnings order, as to what department, office or other body is concerned for the purposes of this Article, or as to who for those purposes is the chief officer thereof, the question shall be referred to and determined by the Department of the Civil Service or, as the case may require, the Minister for the Civil Service; but the Department or Minister shall not be under any obligation to consider a reference under this paragraph unless it is made by the Office.

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

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

### **Variation, lapse, discharge and termination of orders**

**76.**—(1) The power of the Office, conferred by Article 13(g)(i), to vary an attachment of earnings order includes power to suspend and revive it.

(2) Paragraphs (3) to (8) shall have effect where the Office varies or discharges an attachment of earnings order.

(3) 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 non-compliance before seven days have elapsed since the service.

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

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

(6) 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 Office of amounts deducted at any time) and be of no effect unless and until the Office revives it by again directing it to a person (whether the same as before or another) who appears to the Office to have the debtor in his employment.

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

(8) Where the whole amount recoverable on foot of the relevant judgment has been paid the Office shall give notice to the employer that no further compliance with the attachment of earnings order is required.

#### **Statement of earnings, etc.**

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

- (a) direct the debtor to furnish within a specified period a statement signed by him of—
  - (i) the name and address of any person by whom earnings are paid to him;
  - (ii) specified particulars of his earnings and anticipated earnings, and of his resources and needs (including the needs of any person for whom he must, or reasonably may, provide);
  - (iii) specified particulars of any matters which are, or may be, relevant under Article 73(5) to the determination of the normal deduction rate and the protected earnings rate to be specified in the order;
  - (iv) specified particulars for the purpose of enabling the debtor to be identified by any employer of his;
- (b) direct any person appearing to the Office to be an employer of the debtor to furnish within a specified period a statement signed by him or on his behalf of specified particulars of the debtor's earnings and anticipated earnings.

(2) Where an attachment of earnings order has been made, the Office may at any time while the order is in force give any direction it is authorised by paragraph (1)( a) or ( b) to give.

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

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

78. While an attachment of earnings order is in force—

- (a) the debtor shall notify the Office 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) particulars of his earnings and anticipated earnings from the relevant employment; and

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- (c) any person who becomes the debtor's employer and knows that the order is in force and that it was made by the Office shall, within seven days of his becoming the debtor's employer or of acquiring that knowledge (whichever is the later) notify the Office in writing that he is the debtor's employer, and include in his notification a statement of the debtor's earnings and anticipated earnings.

### **Power of Office to determine whether particular payments are earnings**

79.—(1) Where an attachment of earnings order is in force the Office shall, on the application of either the employer or the debtor, determine whether payments to the debtor of a particular class or description specified by the application are earnings for the purposes of the order; and the employer shall give effect to any determination for the time being in force under this Article.

(2) Where an application under this Article is made by the employer, he shall not incur any liability for non-compliance with the order as respects any payments of the class or description specified by the application which are made by him to the debtor while the application is pending; but this paragraph shall not, unless the Office otherwise orders, apply as respects such payments if the employer subsequently withdraws the application.

## **PART VI**

### **MULTIPLE DEBT, INSOLVENCY AND WINDING-UP**

#### Administration orders

### **Power to make administration order on application of debtor**

80.—(1) Where a debtor who is an individual—

- (a) is unable to pay forthwith the amount recoverable on foot of a money judgment for an unsecured debt; and
- (b) alleges that all his unsecured debts amount in the aggregate to a sum not exceeding<sup>F36</sup> £5,000] or such other amount as may be prescribed, by rules (inclusive of the debt for which the judgment was obtained, but, subject to that, regardless of whether any of the debts has been the subject of a judgment or not); and
- (c) furnishes to the Office a list of all his debts and the persons to whom they are owed respectively;

the Office may, on his application, make an order (an “administration order”) providing for the administration of his estate.

(2) An administration order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed the amount mentioned in or prescribed under paragraph (1)( b), but this paragraph does not prejudice the power of the Office to set aside the order.

(3) In this Article and Articles 81 and 83 “unsecured debt” means a debt which is not secured by mortgage, charge or lien on the debtor's property; and in this Article and Articles 81 and 83 to 87 “debt” means, in the case of a debt for which judgment has been obtained, the amount recoverable on foot of the judgment.

**F36** SR 1982/121

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### **Provisions for recovery of debts which may be made in, or in connection with, administration order**

**81.**—(1) An administration order may provide for the payment of the unsecured debts of the debtor by instalments or otherwise, and either in full or to such extent as to the Office in the circumstances of the case appears practicable, and subject to any conditions as to his future earnings, income or assets which the Office may think just.

(2) Where the Office 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.

(3) At any time when an administration order is in force the Office may (on the application of any person scheduled to the order under Article 83 or without an application) make an attachment of earnings order to secure the payments required by the administration order, if it appears to the Office that the debtor has failed to make any such payment.

(4) The power of the Office under this Article 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 the amount recoverable on foot of a judgment, include power to direct that the last-mentioned order shall take effect (with or without variation) as an order to secure the payments required by the administration order.

(5) A provision in an administration order for the payment of any sums by the debtor shall be a provision for their payment to the Office.

### **Notice of order**

**82.** The Office—

- (a) before making an administration order, shall send to every person whose name the debtor has notified to the Office, as being a person to whom he is indebted, notice that that person's name has been so notified; and
- (b) when an administration order is made, shall send notice of the order to every such person.

### **Schedule of debts**

**83.**—(1) There shall be scheduled to every administration order a list of the persons whose names the debtor has notified to the Office as being persons to whom he owes unsecured debts and whose debts have been proved in accordance with rules, with the respective amounts of their debts.

(2) Any other person to whom the debtor owes an unsecured debt, on proof of his debt to the Office, shall be entitled to be scheduled to the order for the amount of his proof.

(3) Any person scheduled to the order may, in the manner prescribed by rules, object to any debt scheduled, or to the manner in which payment is directed to be made.

(4) Any person to whom, after the date of the order, a debt becomes due from the debtor shall, on proof of his debt to the Office, be scheduled to the order for the amount of his proof, but shall not be entitled to any dividend under the order until those who are scheduled as having had debts due to them before the date of the order have been paid to the extent provided by the order.

### **Restriction of other remedies, where administration order made**

**84.**—(1) So long as an administration order is in force, a person who is scheduled to the order shall not, without the leave of the Office, be entitled to present, or join in, a bankruptcy petition against the debtor unless—

- (a) his name was, before the date of the order, notified to the Office by the debtor for the purposes of the order; and

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- (b) the debt by virtue of which he presents, or joins in, the petition exceeds<sup>[F37]</sup> £1,500] or such other amount as may be prescribed by rules; and
- (c) the notice given to him by the Office in accordance with Article 82( a) was received by him within 28 days immediately preceding the day on which the petition is presented.

(2) Subject to paragraph (3), when an administration order is made, no person to whom a debt scheduled to the order is owed by the debtor shall have any remedy against the person or property of the debtor in respect of that debt, except with the leave of the Office and on such terms as it may impose.

(3) Paragraph (2) shall not prevent the Office making any enforcement order when satisfied that such an order will not prevent or hinder the debtor from carrying out the terms of the administration order.

(4) Where a court in which proceedings, other than bankruptcy proceedings, are pending against the debtor in respect of any debt scheduled to an administration order receives notice of the administration order—

- (a) if it is the High Court, it may; and
- (b) if it is a county court or a court of summary jurisdiction, it shall, Bstay the proceedings, but may allow costs already incurred by the person to whom the debt is owed, and costs so allowed shall, on application to the Office, be added to the debt.

F37 SR 1985/164

### **Appropriation of money paid under administration order**

**85.** Money paid to the Office under an administration order shall be appropriated—

- (a) first in satisfaction of the expenses of the Office incurred in administering the order (but not in excess of 10p in the pound on the total amount of the scheduled debts); and
- (b) then (without prejudice to Article 90 (bankruptcy supervening)) in liquidation of the debts in accordance with the order and Article 83(4).

### **<sup>[F38]</sup>Default of debtor**

**86.**—(1) If the debtor fails to make any payment which he is required to make by virtue of an administration order the Office, if it considers it proper to revoke the administration order, may upon doing so make an order directing that this Article and<sup>[F39]</sup> Article 16 of the Companies Directors Disqualification (Northern Ireland) Order 2002] shall apply to the person for such period, not exceeding 2 years, as may be specified in the order.

(2) A person to whom this Article so applies shall not—

- (a) either alone or jointly with another person, obtain credit to the extent of the amount prescribed for the purposes of Article 331(1)(a) of the Insolvency (Northern Ireland) Order 1989 or more, or
- (b) enter into any transaction in the course of or for the purposes of any business in which he is directly or indirectly engaged,

without disclosing to the person from whom he obtains the credit, or (as the case may be) with whom the transaction is entered into, the fact that this Article applies to him.

(3) The reference in paragraph (2) to a person obtaining credit includes—

- (a) a case where goods are bailed or hired to him under a hire#purchase agreement or agreed to be sold to him under a conditional sale agreement, and

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- (b) a case where he is paid in advance (whether in money or otherwise) for the supply of goods or services.
- (4) A person who contravenes this Article shall be guilty of an offence and shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both.]

**F38** 1989 NI 19

**F39** 2002 NI 4

### Discharge of administration order

**87.** When the amount received under an administration order is sufficient to pay each of the persons scheduled to the order to the extent thereby provided and the expenses of the Office, the order shall be superseded, and the debtor shall be discharged from his debts which are included in the schedule.

VALID FROM 30/06/2011

#### [<sup>F40</sup> **Effect of administration order on debt relief order**

**87A.**—(1) This Article applies if—

- (a) an administration order is made, and
- (b) immediately before the order is made, a debt relief order is in force in respect of the debtor.

(2) The debt relief order ceases to be in force when the administration order is made.

(3) If the Office is aware of the debt relief order, the Office shall give the official receiver notice that the administration order has been made.

(4) In a case where the Office is aware of a debt relief order at the time it makes the administration order, it shall give the notice as soon as practicable after making the order.

(5) In a case where the Office becomes aware of a debt relief order after it makes the administration order, it shall give the notice as soon as practicable after becoming aware of it.

(6) In this Article “debt relief order” means a debt relief order within the meaning of Part 7A of the Order.

(7) For the purposes of this Article a debt relief order is “in force” if the moratorium applicable to the order under Article 208H of the Order has not yet ended.

**F40** Arts. 87A, 87B inserted (30.6.2011) by [Debt Relief Act \(Northern Ireland\) 2010 \(c. 16\)](#), ss. 6, 7(1), [Sch. para. 3](#); S.R. 2011/13, [art. 2](#)



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VALID FROM 30/06/2011

### Notice of administration order ceasing to be in force

**87B** In a case where an administration order ceases to be in force in accordance with Article 208F of the Order the Office shall send notice of the fact to every person to whom a debt scheduled to the administration order is owed.]

**F40** Arts. 87A, 87B inserted (30.6.2011) by [Debt Relief Act \(Northern Ireland\) 2010 \(c. 16\), ss. 6, 7\(1\), Sch. para. 3; S.R. 2011/13, art. 2](#)

## Bankruptcy and winding-up

### Effect of bankruptcy or winding-up on enforcement

**88.**—(1) Subject to paragraph (2)<sup>[F41]</sup> of this Article, Articles 106 and 258 of the Insolvency (Northern Ireland) Order 1989 (restrictions on proceedings and remedies)] and, generally, to the following provisions of this Part, a creditor who has obtained a money judgment against a debtor who is subsequently adjudged bankrupt or, being a company, is subsequently wound up under the<sup>[F41]</sup> Insolvency (Northern Ireland) Order 1989] shall be entitled—

- (a) <sup>[F41]</sup>as against the official receiver or trustee of the bankrupt's estate] ( “the trustee”), as the case may require;
- (b) as against the liquidator in the winding-up of the company ( “the liquidator”);

to any money paid by or on behalf of the debtor either to avoid enforcement of the judgment or in full or part satisfaction thereof, or to any proceeds of the enforcement, including any charge on the property of the debtor.

(2) A creditor shall be entitled to any such money or proceeds as are referred to in paragraph (1) where—

- (a) the money (being money received otherwise than as proceeds of enforcement) is paid or the enforcement producing the proceeds is completed before the date<sup>[F41]</sup> on which the bankruptcy order is made] or, as the case may be, the date on which the winding-up is under the<sup>[F41]</sup> Insolvency (Northern Ireland) Order 1989] deemed to commence; and
- (b) within 21 days after the receipt of the money or, as the case may be, the completion of the enforcement, the creditor or the Office—
  - (i) has not received notice of the<sup>[F41]</sup> making of the bankruptcy order] or of a bankruptcy petition<sup>[F41]</sup> presented] by or against the debtor or, as the case may require, has not received notice of the presentation of a petition for the winding-up of the company or of the calling of a meeting at which a resolution for the voluntary winding-up of the company is to be proposed; or
  - (ii) has received a notice of such a bankruptcy petition but<sup>[F41]</sup> a bankruptcy order] is not at any time made on foot thereof or, as the case may require, has received a notice of the presentation of such a winding-up petition or of the calling of such a meeting but a winding-up order is not at any time made or a resolution for voluntary winding-up is not at any time passed as a result of that petition or, as the case may be, the resolution so proposed.

(3) Save as provided by this Article,<sup>[F41]</sup> and Article 90(3A), the official receiver] or the trustee or the liquidator, as the case may be, shall be entitled as against the creditor to such money or proceeds

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as are referred to in paragraph (1)<sup>F41</sup> and, subject to paragraph (3A), that money and proceeds shall be comprised in the bankrupt's estate].

<sup>F41</sup>(3A) The rights conferred by this Article on the official receiver, the trustee or the liquidator may, to such extent and on such terms as it thinks fit, be set aside by the High Court in favour of the creditor.]

(4) Where an administration order has been made, this Article applies to the persons whose names have been scheduled to the order and to money paid to the Office under the order as it applies to a creditor and to proceeds of enforcement.

**F41** 1989 NI 19

### **Completion of enforcement in relation to bankruptcy and winding-up**

**89.** For the purposes of Article 88, enforcement shall be deemed to be completed in relation to—

- (a) money paid to a creditor under an instalment order under Article 30 or Article 107(3), upon receipt of any such payment by the creditor;
- (b) seizure pursuant to an order of seizure under Article 31 or to an authorisation under Article 43, at the date of the sale of the property seized;
- (c) an order charging funds, stock or shares under Article 58, upon the service of a copy of the order on the registrar, authority, undertaking or company (as the case may be) under Article 59;
- (d) a vesting order for funds, stock or shares under Article 60, upon the service of a copy of the order on the registrar, authority, undertaking or company (as the case may be) under paragraph (2)(a) of that Article;
- (e) money paid under a debenture order under Article 61, upon receipt of any such payment by the creditor;
- (f) a partnership order, upon the making of the order;
- (g) money paid to a receiver under an order appointing a receiver under Article 67, upon receipt of any such payment by the receiver;
- (h) an attachment of debts order under Article 69, upon the receipt by the Office of any payment made by the garnishee or upon the making of an order for payment pursuant to Article 70(1), whichever first occurs;
- (i) money paid to the Office under an attachment of earnings order under Article 73, upon receipt of any such payment by the Office;
- (j) money paid to the Office under an administration order, upon receipt of any such payment by the Office; and
- (k) money directed to be paid to a receiver or other person by an order made under section 27 of the Crown Proceedings Act 1947, upon receipt of any such payment by the receiver or other person.

### **Functions of Office as to proceeds of enforcement, etc.**

**90.—**(1) Without prejudice to Article 88 but subject to Article 91, the Office shall hold any money received to avoid enforcement, or in full or part satisfaction of the enforcement, or as proceeds of the enforcement, for 21 days after—

- (a) the receipt of the money (being money received otherwise than as proceeds of enforcement); or

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- (b) the completion of the enforcement;  
and if, within that period—
- (i) notice is served upon the Office of a bankruptcy petition<sup>[F42 presented]</sup> by or against the debtor, or, where the debtor is a company, of the presentation of a petition of the winding-up of the company or of the calling of a meeting at which a resolution for the voluntary winding-up of the company is to be proposed, the money shall be held by the Office pending the disposal of any such petition or the outcome of the resolution so proposed, as the case may be;
- (ii) notice is served upon the Office of<sup>[F42 a bankruptcy order]</sup> against the debtor, the money shall be paid to the<sup>[F42 official receiver]</sup> or, as the case may be, the trustee.
- (2) If, as a result of the disposal of any such petition or the outcome of any such resolution as is referred in paragraph (1)(i)—
- (a) <sup>[F42 a bankruptcy order]</sup> is made against the debtor, the money shall be paid to the<sup>[F42 official receiver]</sup> or, as the case may be, the trustee;
- (b) where the debtor is a company, a winding-up order is made or a resolution for the winding-up of the company is passed, as the case may be, the money shall be paid to the liquidator;  
but if such an order is not made or such a resolution is not passed, as the case may be, the money shall be dealt with as if no such notice as is referred to in paragraph (1) had been served.
- (3) Where—
- (a) a debtor is adjudged bankrupt or where a provisional liquidator is appointed or a winding-up order is made or a resolution for voluntary winding-up is passed in respect of a debtor being a company; and
- (b) any money or other property of the debtor is under seizure pursuant to an order of seizure under Article 31 or an authorisation under Article 43;
- the money or property shall on demand by the<sup>[F42 official receiver]</sup>, trustee or liquidator, as the case may be, be paid or delivered by the Office or any person having custody thereof to the person making the demand<sup>[F42 and subject to paragraph (3A), that money or property shall be comprised in the bankrupt's estate].</sup>
- <sup>[F42(3A)]</sup> The rights conferred by this Article on the official receiver, the trustee or the liquidator may, to such extent and on such terms as it thinks fit, be set aside by the High Court in favour of the creditor.
- (3B) Paragraph (1)(ii), (2)(a) or (3) shall not apply in relation to money or other property which has been acquired by or has devolved upon the debtor since the making of a bankruptcy order against him unless—
- (a) at the time the money is received or, as the case may be, the money or property is seized; or
- (b) before completion of the enforcement;
- the money or other property has been or is claimed for the bankrupt's estate under Article 280 of the Insolvency (Northern Ireland) Order 1989 (after#acquired property) and a copy of the notice given under that Article has been or is served upon the Office.]
- (4) For the purposes of this Article money paid to the Office under an administration order shall be treated as proceeds of enforcement.

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### Retention by Office of money or property pending result of interpleader

91. Where, but for this Article, the Office would be required to pay or deliver any money or property to the<sup>F43</sup> [official receiver], trustee or liquidator under Article 90 and an application is pending under Article 44 in relation to that money or property, the money or property shall be held by the Office until that application has been finally determined.

F43 1989 NI 19

### Charge in respect of costs and expenses of enforcement

92. Where, pursuant to this Part, money or property is paid or delivered to the<sup>F44</sup> [official receiver] or trustee, or, where the debtor is a company, to the liquidator, such costs and expenses of enforcement as may be approved by the Office shall be a first charge on the money or property so paid or delivered; and the<sup>F44</sup> [official receiver] or trustee or, as the case may be, the liquidator may realise the property or an adequate part thereof for the purpose of satisfying the charge.

F44 1989 NI 19

### Special provisions as to charges on land

93. A charge on land under Article 46 shall be void as against<sup>F45</sup> . . . the trustee or, where the debtor is a company, as against the liquidator if within 28 days after the date of registration of the order charging the land, or of any notice thereof, or of the charge, as the case may be—

- (a) the debtor is adjudged bankrupt or notice is served on the creditor of a bankruptcy petition<sup>F45</sup> [presented] by or against the debtor and<sup>F45</sup> [a bankruptcy order] is at any time made on foot thereof; or
- (b) where the debtor is a company—
  - (i) a winding-up order is made or a resolution is passed for the winding-up of the company; or
  - (ii) notice is served on the creditor of the presentation of a petition for the winding-up of the company or of the calling of a meeting at which a resolution for the voluntary winding-up of the company is to be proposed, and a winding-up order is at any time made or a resolution for the voluntary winding-up of the company is at any time passed as a result of that petition or, as the case may be, the resolution so proposed.

F45 1989 NI 19

### Effect of bankruptcy and winding-up on certain orders

94.—(1) An instalment order under Article 30 or a restraining order under Article 66 shall cease to have effect where the debtor is adjudged bankrupt or, where the debtor is a company, upon an order being made or a resolution passed for the winding-up of the company.

(2) An attachment of earnings order under Article 73 shall cease to have effect upon the debtor being adjudged bankrupt.

(3) Nothing in this Article shall make any person liable for anything done or omitted to be done by him in pursuance or purported pursuance of a restraining order or an attachment of earnings order unless and until he has received notice that the order has ceased to have effect by virtue of this Article.

## PART VII

### RECOVERY OF CERTAIN DEBTS WITHOUT JUDGMENT

#### Procedure for recovery of certain admitted debts

**95.**—(1) Subject to paragraph (2), where a person (“the creditor”) makes application to the Office for the recovery of a sum certain in money (“the debt”) which the creditor claims is owed to him by an individual (“the debtor”), and pays the appropriate fee, the Office may summon the debtor—

- (a) to attend in person, at a time and place specified in the summons, for examination by the Office—
  - (i) as to whether he admits the debt, and
  - (ii) if he does admit it, as to his means; and
- (b) to produce all books, documents and things in his possession or under his control relevant to the debt and his means.

(2) An application under paragraph (1) shall not be accepted by the Office—

- (a) unless the creditor furnishes proof in the manner prescribed by rules that he has given the debtor the notice so prescribed of his intention to make the application; or
- (b) if the debt is for a sum exceeding £300 or such other amount as may be prescribed by rules.

(3) If the debtor pays the debt in full before the time when he is required by the summons to attend for examination, the Office may repay to the creditor so much of the fee paid on his application as may be prescribed by rules.

(4) If the debtor, on attending in pursuance of the summons, does not admit the debt, the Office shall dismiss the application, unless paragraph (5) or (6) applies.

(5) If—

- (a) the debtor disputes the debt but admits (either on attending in pursuance of a summons under paragraph (1) or in a written communication sent to the Office) that he is indebted to the creditor in a sum less than that stated in the creditor's application, and
- (b) the creditor requests the Office to amend the application to show that sum as the debt, and
- (c) the Office is satisfied that the admission can properly be accepted and the amendment made,

that sum may be taken to be the debt for the purposes of Article 96(1) to (4) and (6).

(6) If—

- (a) the debtor—
  - (i) does not pay the debt in full before the time when he is required by a summons under paragraph (1) to attend for examination, and
  - (ii) does not comply with the summons, and
  - (iii) does not notify the Office in writing that he disputes the debt; and
- (b) the Office is satisfied that the debtor received the summons,

the debtor shall be taken to admit the debt, unless the Office otherwise orders.

#### Power to treat debt as money judgment

**96.**—(1) If the debtor admits the debt (either on attending in pursuance of a summons under Article 95(1) or in a written communication sent to the Office) or is taken to do so by virtue of Article 95(5) or (6), the application may, to the extent that the Office so directs, be treated as if

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judgment had been given for the amount of the debt and the application were one under Article 22 for the enforcement of that judgment; and, subject to paragraphs (2) and (3) and without prejudice to paragraph (6), this Order shall have effect, with any necessary modifications, in relation to the recovery of that amount as it has effect in relation to the amount recoverable on foot of a judgment (and in particular any reference to the enforcement of a judgment shall be construed as including a reference to the recovery of that amount, and the summons under Article 95(1) may for the purposes of Articles 27(2) and 114 be treated as a summons under Article 27(1), those Articles having effect as if any reference in them to an examination as to means or the production of books, documents and things relating to means or relevant to the examination included a reference to an examination as to admission of the debt and the production of books, documents and things relevant to the debt).

(2) Paragraph (1) shall not require any entry to be made in the register of judgments under Article 116 in respect of the debt until the expiration of the period of three months from the day when the debtor is required by the summons to attend for examination; and if the debtor pays the debt in full, and the Office is informed (under Article 135(2) or otherwise) of the payment, before the expiration of that period, no entry in respect of the debt shall be made in the register.

(3) Article 126 (costs and expenses) shall not apply to the recovery under this Article of a debt which does not exceed £50 or such other amount as may be prescribed by rules; and Article 127 (interest) shall not apply to such recovery of any debt.

(4) Rules may provide that where in consequence of an application under Article 95(1) the Office makes an enforcement order in respect of a debt the order may, if the Office so directs after giving the debtor an opportunity of being heard, be expressed to have effect in relation to all sums which, at the time when the order is made, are certified by the creditor to be due and payable by the debtor to the creditor in respect of any corresponding debt.

(5) Rules may modify or exclude the operation of Article 95 and paragraphs (1) to (4) in relation to debts of any specified description.

(6) Notwithstanding Article 24(3) (priority of applications to be in the order of their respective serial numbers), during the period of the present emergency (within the definition contained in section 18(3) of the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 as that definition applies in relation to section 3 of that Act) an application made under Article 95(1) shall have priority over any application under this Order in respect of which an enforcement order has not been made (except another application in connection with a debt to which this paragraph applies) if the first-mentioned application is one in respect of a debt due to—

- (a) a Minister of the Crown or a government department (which for the purposes of this paragraph includes a department of the Government of the United Kingdom);
- (b) a local or public authority, that is to say,—
  - (i) a district council or a joint committee appointed by two or more district councils,
  - (ii) a body or person exercising functions under a statutory provision,
  - (iii) a body or person appointed, wholly or partly, by a Minister of the Crown or a government department (whether upon, or partly upon, the nomination of any other person or otherwise),
  - (iv) a body or person whose accounts are audited by or on behalf of, or are examined and reported on by or on behalf of, the Comptroller and Auditor-General for Northern Ireland;
- (c) the Consolidated Fund; or
- (d) any funds administered by or on behalf of any government department or local or public authority.

(7) For the purposes of Article 95 and this Article a debtor shall be taken not to admit a debt if his admission is coupled with a claim to set off or a counterclaim.

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## PART VIII POWERS OF COURTS

[<sup>F46</sup>Maintenance orders: means of payments

**F46** 1993 NI 6

### **Maintenance orders in the High Court and [<sup>F47</sup> certain] county courts: means of payment**

**96A.**—(1) Where the High Court or a divorce county court [<sup>F47</sup> or civil partnership proceedings county court] makes a qualifying periodical maintenance order, it may at the same time exercise either of its powers under paragraph (4) in relation to the order, whether of its own motion or on an application made under this paragraph by an interested party.

(2) For the purposes of this Article, a periodical maintenance order is an order—

- (a) which requires money to be paid periodically by one person ( “the debtor”) to another ( “the creditor”); and
- (b) which is a maintenance order;

and such an order is a “qualifying periodical maintenance order” if, at the time it is made, the debtor is ordinarily resident in Northern Ireland.

(3) Where—

- (a) the High Court or a divorce county court [<sup>F47</sup> or civil partnership proceedings county court] has made a qualifying periodical maintenance order; or
- (b) a qualifying periodical maintenance order is registered in the High Court,

that court may at any later time—

- (i) on an application made under this paragraph by an interested party, or
- (ii) of its own motion, in the course of any proceedings concerning the order,

exercise either of its powers under paragraph (4) in relation to the order.

(4) The powers mentioned in paragraphs (1) and (3) are—

- (a) the power to order that payments required to be made by the debtor to the creditor under the qualifying periodical maintenance order in question shall be so made by such a method of payment falling within paragraph (5) as the court may specify in the particular case; or
- (b) the power to make an attachment of earnings order under Articles 97 to 105 to secure payments under the qualifying periodical maintenance order in question.

(5) The methods of payment mentioned in paragraph (4)(a) are—

- (a) payment by standing order; or
- (b) payment by any other method which requires the debtor to give his authority for payments of a specific amount to be made from an account of his to an account of the creditor's on specific dates during the period for which the authority is in force and without the need for any further authority from the debtor.

(6) In any case where—

- (a) the court proposes to exercise its power under paragraph (4)(a), and
- (b) having given the debtor an opportunity of opening an account from which payments under the order may be made in accordance with the method of payment proposed to be ordered

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under that paragraph, the court is satisfied that the debtor has failed, without reasonable excuse, to open such an account,

the court in exercising its power under that sub-paragraph may order that the debtor open such an account.

(7) Where in the exercise of its powers under paragraph (1) or (3), the High Court or a divorce county court<sup>F47</sup> or civil partnership proceedings county court] has made in relation to a qualifying periodical maintenance order such an order as is mentioned in paragraph (4)(a) (a “means of payment order”), it may at any time later—

- (a) on an application made under this paragraph by an interested party, or
- (b) of its own motion, in the course of any proceedings concerning the qualifying periodical maintenance order,

revoke, suspend, revive or vary the means of payment order.

(8) In deciding whether to exercise any of its powers under this Article the court in question having (if practicable) given every interested party an opportunity to make representations shall have regard to any representations made by any such party.

(9) Nothing in this Article shall be taken to prejudice—

- (a) any power under Articles 97 to 105 which would, apart from this Article, be exercisable by the High Court or a divorce county court<sup>F47</sup> or civil partnership proceedings county court]; or
- (b) any right of any person to make any application under those Articles;

and paragraph (7) is without prejudice to any other power of the High Court or a divorce county court<sup>F47</sup> or civil partnership proceedings county court] to revoke, suspend, revive or vary an order.

(10) For the purposes of this Article—

“debtor” and “creditor” shall be construed in accordance with paragraph (2);

“interested party” means any of the following, that is to say—

- (a) the debtor;
- (b) the creditor; and
- (c) in a case where the person who applied for the qualifying periodical maintenance order in question is a person other than the creditor, that other person;

“maintenance order” means any order specified in Article 98(a)(i) to (v) and includes any such order which has been rescinded, revoked or discharged, if any arrears are recoverable under it;

“qualifying periodical maintenance order” shall be construed in accordance with paragraph (2), and the references to such an order in paragraphs (3) and (7) are references to any such order, whether made before or after the coming into operation of this Article;

and the reference in paragraph (2) to an order requiring money to be paid periodically by one person to another includes a reference to an order requiring a lump sum to be paid by instalments by one person to another.]

**F47** 2004 c. 33

#### Attachment of earnings by order of court

### Interpretation of Articles 98 to 105

**97.—**(1) In Articles 98 to 105—

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



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

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

(2) Where an attachment of earnings order is, or is to be, made to secure payments under a maintenance order, Article 3(5)(f) (exclusion of seamen's wages, with certain exceptions) shall not apply (and accordingly<sup>F48</sup> section 34(1)(a) of the Merchant Shipping Act 1995] (prohibition on attachment of certain seamen's wages) shall not apply).

F48 1995 c.21

### Power of courts to make attachment of earnings orders

98. An attachment of earnings order may be made—

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

(i) made by the High Court in the exercise of its matrimonial<sup>F49</sup> or civil partnership] jurisdiction,

(ii) made by a divorce county court in the exercise of its matrimonial jurisdiction<sup>F49</sup> or a civil partnership proceedings county court in the exercise of its civil partnership jurisdiction] where, by virtue of rules of court made under<sup>F50</sup> Article 12(3)(f) of the Family Law (Northern Ireland) Order 1993], the order is enforceable as if it were an order of the High Court,

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

(iv) made in another part of the United Kingdom and registered in the High Court under Part II of the Maintenance Orders Act 1950 ,<sup>F51</sup> but not subsequently registered in a court of summary jurisdiction under section 36 of the Civil Jurisdiction and Judgements Act 1982] or

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

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

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

F49 2004 c. 33

F50 1993 NI 6

F51 1982 c.27

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## **Making of attachment of earnings order**

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

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

- (a) otherwise than for the enforcement of a maintenance order, on the application of the creditor;
- (b) for the enforcement of a maintenance<sup>[F52]</sup> order, in accordance with Article 96A(1) or (3).]

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

- (a) to make periodical deductions from the debtor's earnings in accordance with Part I of Schedule 1; and
- (b) at such times as the order may require, or as the court may allow, to pay the amounts deducted to the person entitled to the payments for which the order to be enforced provides, as specified in the order.

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

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

(6) The order shall specify—

- (a) the normal deduction rate, that is to say, the rate (expressed as a sum of money per week, month or other period) at which the court thinks it reasonable for the debtor's earnings to be applied to meeting his liability under the relevant judgment; and
- (b) the protected earnings rate, that is to say the rate (so expressed) below which, having regard to the debtor's resources and needs (including the needs of any person for whom he must, or reasonably may, provide), the court thinks it reasonable that the earnings actually paid to him should not be reduced;

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

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

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

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### **Compliance with order by employer**

**100.**—(1) Where an attachment of earnings order has been made, the employer shall, if he has been served with the order, comply with it; but he shall be under no liability for non-compliance before seven days have elapsed since the service.

(2) Where a person is served with an attachment of earnings order directed to him and he has not the debtor in his employment, or the debtor subsequently ceases to be in his employment, he shall (in either case), within 10 days from the date of service or, as the case may be, the cesser, give notice in writing of that fact to such officer of the court as may be prescribed by rules of court.

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

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

(5) On any occasion when the employer makes, in compliance with the order, a deduction from the debtor's earnings—

(a) he shall be entitled to deduct, in addition, 50p or such other sum as may be prescribed by rules towards his clerical and administrative costs; and

(b) he shall give to the debtor a statement in writing of the total amount of the deduction.

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

### **Persons employed under the Crown**

**101.**—(1) The fact that an attachment of earnings order is made at the suit of the Crown shall not prevent its operation at any time when the debtor is in the employment of the Crown.

(2) Where a debtor is in the employment of the Crown and an attachment of earnings order is made in respect of him, then for the purposes of Articles 99, 100 and 102 to 105 and Schedule 1—

(a) the chief officer for the time being of the government department, office or other body in which the debtor is employed shall be treated as having the debtor in his employment (any transfer of the debtor from one department, office or body to another being treated as a change of employment); and

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

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

(4) If any question arises, in proceedings for or arising out of an attachment of earnings order, as to what department, office or other body is concerned for the purposes of this Article, or as to who for those purposes is the chief officer thereof, the question shall be referred to and determined by the Department of the Civil Service or, as the case may require, the Minister for the Civil Service; but the Department or Minister shall not be under any obligation to consider a reference under this paragraph unless it is made by the court.

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

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

### **Variation, lapse, discharge and termination of orders**

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

(2) Where an attachment of earnings order is varied, the employer shall if he has been served with notice of the variation, comply with the order as varied; but he shall be under no liability for non-compliance before seven days have elapsed since the service.

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

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

(5) Where an attachment of earnings order has been made and the person to whom it is directed ceases to have the debtor in his employment, the order shall lapse (except as respects deduction from earnings paid after the cesser and payment to the person entitled to the payments for which the order to be enforced provides of amounts deducted at any time) and be of no effect unless and until the court revives it by again directing it to a person (whether the same as before or another) who appears to the court to have the debtor in his employment.

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

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

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

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

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

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

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

### **Statement of earnings, etc.**

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

- (a) direct the debtor to furnish within a specified period a statement signed by him of—
  - (i) the name and address of any person by whom earnings are paid to him;
  - (ii) specified particulars of his earnings and anticipated earnings, and of his resources and needs (including the needs of any person for whom he must, or reasonably may, provide);
  - (iii) specified particulars of any matters which are, or may be, relevant under Article 99(6) to the determination of the normal deduction rate and the protected earnings rate to be specified in the order;
  - (iv) specified particulars for the purpose of enabling the debtor to be identified by any employer of his;
- (b) direct any person appearing to the court to be an employer of the debtor to furnish within a specified period a statement signed by him or on his behalf of specified particulars of the debtor's earnings and anticipated earnings.

(2) Where an attachment of earnings order has been made, the court may at any time while the order is in force give any direction it is authorised by paragraph (1)( *a*) or ( *b*) to give.

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

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

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

- (a) the debtor shall notify the prescribed officer in writing of every occasion on which he leaves any employment, or becomes employed or re-employed, not later (in each case) than seven days from the date on which he did so;
- (b) the debtor shall, on any occasion when he becomes employed or re-employed, include in his notification under sub-paragraph ( *a*) particulars of his earnings and anticipated earnings from the relevant employment; and
- (c) any person who becomes the debtor's employer and knows that the order is in force and that it was made by the court shall, within seven days of his becoming the debtor's employer or of acquiring that knowledge (whichever is the later) notify the prescribed officer in writing that he is the debtor's employer, and include in his notification a statement of the debtor's earnings and anticipated earnings.

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

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### **Power of court to determine whether particular payments are earnings**

**105.**—(1) Where an attachment of earnings order is in force the court shall, on the application of either the employer or the debtor, determine whether payments to the debtor of a particular class or description specified by the application are earnings for the purposes of the order; and the employer shall give effect to any determination for the time being in force under this Article.

(2) Where an application under this Article is made by the employer, he shall not incur any liability for non-compliance with the order as respects any payments of the class or description specified by the application which are made by him to the debtor while the application is pending; but this paragraph shall not, unless the court otherwise orders, apply as respects such payments if the employer subsequently withdraws the application.

### **Imprisonment for wilful default**

### **Limitation on arrest and imprisonment of debtors**

**106.** Save as otherwise expressly provided by Article 115 or by any other statutory provision, a person shall not be arrested or imprisoned for making default in payment of any amount due or recoverable on foot of any judgment or of any instalment thereof except in accordance with Article 107.

### **Committal for default**

**107.**—(1) A court may, subject to this Article and in accordance with rules of court, make an order committing to prison until payment of the relevant amount, but not in any event for a term exceeding six weeks, any person who makes default—

- (a) in payment of the amount due or recoverable on foot of a judgment; or
- (b) in payment of any one or more than one instalment due under an instalment order under Article 30 or under paragraph (3); or
- (c) in payment of an amount due under an order for the periodical payment of money made by the High Court or a divorce county court in the exercise of its matrimonial jurisdiction<sup>F53</sup> or by the High Court or a civil partnership proceedings county court in the exercise of its civil partnership jurisdiction].

(2) A person shall not be committed to prison under paragraph (1)—

- (a) by a county court, where—
  - (i) the judgment is that of the High Court and the amount due on foot thereof exceeds<sup>F54</sup> £15,000;] or
  - (ii) the order was made by the High Court in the exercise of its matrimonial<sup>F53</sup> or civil partnership] jurisdiction;
- (b) by a court of summary jurisdiction, where the judgment is not a judgment of such a court;
- (c) by any court, where the relevant amount is due on foot of a judgment which is enforceable through the Office, unless an application has first been made for the enforcement of the judgment by the Office.

(3) Upon the hearing of an application for committal under paragraph (1), a court may make an order directing that the amount due or recoverable on foot of the judgment or any part thereof, or the instalments or any one or more than one of them, in respect of the payment of which default has been made, be paid by instalments and thereupon the court may—

- (a) dismiss the application; or
- (b) adjourn the hearing of the application; or

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(c) make an order but stay its execution so long as the debtor complies with the order.

(4) The jurisdiction conferred by this Article may be exercised only where it is proved to the satisfaction of the court that the person making default either has or has had, or but for his act or default would have had, since the date of the judgment or of the instalment order, as the case may be, the means to pay the amount due or recoverable on foot of the judgment or any part thereof, or the instalments or any one or more than one of them, in respect of which he has made default, and has refused or neglected or refuses or neglects to pay the same.

(5) Where an attachment of earnings order is in force, an order under this Article shall not be made in respect of any failure to pay the amount recoverable on foot of the judgment in respect of which that attachment of earnings order has been made.

**F53** 2004 c. 33  
**F54** SR 1993/282

### **Proof of means**

**108.**—(1) The making of an instalment order under Article 30 or under Article 107 (3) (otherwise than on consent) shall, until the contrary is proved, be evidence that the debtor has the means to pay the amounts specified in the instalment order.

(2) Subject to paragraph (1), proof of the means of a person making default may be given in such manner as the court may think fit; and, for the purposes of such proof, the debtor and any witnesses may be summoned and examined on oath.

### **Discharge of debtor from custody**

**109.** Any person imprisoned under Article 107 shall be discharged from custody upon a certificate, signed in such manner as may be prescribed by rules of court, to the effect that he has satisfied the amount specified in the order of committal as the sum in respect of which that order is made and the amount so specified of any costs ordered to be paid by him.

### **Appeal from committal order**

**110.** Any person aggrieved by an order under Article 107(1) committing him to prison may appeal therefrom—

- (a) where the order was made by the High Court, to the Court of Appeal; or
- (b) where the order was made by a county court, to the High Court; or
- (c) where the order was made by a court of summary jurisdiction, to the appropriate county court;

in accordance with rules of court, and the decision of the court shall, except as provided by Article 61 or 62 of the County Courts (Northern Ireland) Order 1980 , be final and conclusive.

Sequestration and committal for contempt

### **Sequestration order against individual in contempt**

**111.**—(1) Where an individual is in contempt for failing to comply with any judgment—

- (a) requiring him to pay money into court, or
- (b) requiring him to do an act (other than the payment of money) within a limited time,

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the High Court or, where the judgment was given by a county court or a court of summary jurisdiction, a county court may make an order of sequestration (“a sequestration order”) against him.

(2) A sequestration order may appoint one or more than one sequestrator nominated by the party seeking to enforce the judgment and shall empower any person so appointed to—

- (a) enter upon any lands being the property of the party against whom the judgment has been given;
- (b) receive, sequester and take the rents and profits of any such lands;
- (c) take any other personal property of the party referred to in sub-paragraph (a) and keep such property under sequestration in his hands until that party has complied with the judgment.

(3) Where money is to be paid under any judgment in respect of which a sequestration order has been made, the sequestrator may with the leave of the court which made the order apply towards the satisfaction of the judgment any rents and profits or other personal property taken or kept by virtue of the order.

#### **Failure of individual to comply with sequestration order**

**112.** Any person served with a copy of a sequestration order who fails to pay any rents or profits, or deliver any personal property, to a sequestrator in accordance with the order may on the application of the sequestrator be ordered to pay to him—

- (a) the amount then due on foot of the judgment in respect of which the sequestration order was made, together with the costs of the application and the order made thereon; or
- (b) the value of such rents, profits or property;

whichever is the less.

#### **Sequestration order against company in contempt**

**113.** Where a company is in contempt for failing to comply with the judgment of a court or with any order of the Office made for the purpose of enforcing such a judgment, the High Court or, where the judgment was given by a county court or a court of summary jurisdiction, a county court may make a sequestration order against the company, and Articles 111(2) and 112 shall apply to the company as if it were an individual against whom a sequestration order had been made.

#### **Referral to High Court of certain contempts of Office**

**114.—**(1) This Article applies where—

- (a) a person attending pursuant to a summons under Article 27(1) or 28(1) or (2) or an attendance order made under Article 27(2)(A) or 28(3), or brought before the Office on a warrant of arrest issued in pursuance of an order made under Article 27(2)(B) or on such a warrant issued under Article 28(4), refuses without just cause—
  - (i) to be sworn, or
  - (ii) to answer, or to answer satisfactorily, any question as to the means of the debtor, or the assets and liabilities of a debtor company or firm, properly put to him, or
  - (iii) to produce any book, document or thing relevant to his examination; or
- (b) a person appearing before the Master or a Judicial Officer acting in discharge of functions under this Order behaves contumeliously towards him.

(2) The Master or a Judicial Officer—

- (a) on the motion of the creditor, where the offence is one under paragraph (1)(a); or



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(b) on his own motion, in any case, may certify the offence and, in the case of a Judicial Officer, report it to the Master.

(3) The Master, on certifying or receiving a report of the offence in accordance with paragraph (2), may refer it to the High Court, which may, if satisfied that the offence certified has been committed, deal with the offence in any manner in which the Court could deal with it if committed in relation to the Court.

### **Committal for contempt in certain proceedings in court**

**115.**—(1) Any person who when ordered by the High Court or a county court—

- (a) to pay a penalty or a sum in the nature of a penalty (other than a penalty in respect of a contract);
- (b) being a trustee or person acting in a fiduciary capacity, to pay any sum of money in his possession or under his control;
- (c) being a solicitor, to pay costs for misconduct as such, or to pay a sum of money payable in his capacity as an officer of the court;

makes default in such payment, shall be deemed to be in contempt of the court which made the order.

(2) Where a person is deemed to be in contempt of court under paragraph (1) the court may commit that person to prison until the expiration of such period or periods as the court may direct (but not exceeding, in the aggregate, one year) or until that person complies with the order, whichever first occurs.

## **PART IX**

### **REGISTRATION OF JUDGMENTS AND PENDING ACTIONS**

#### **The register of judgments**

**116.**—(1) A register of judgments shall be kept by the Office in such form as the Lord Chancellor may direct.

(2) Without prejudice to Article 138(1)(b) (entry of note of postponement of priority), there shall be entered in the register of judgments such particulars as may be prescribed by rules in respect of—

- (a) all judgments in respect of which an application has been accepted under Article 22 (application for enforcement) or Article 23(1) (preliminary application);
- (b) all judgments in respect of which an order for a stay of enforcement has been made on the ground of the debtor's inability to pay forthwith the amount due thereunder;
- (c) all attachment of earnings orders made by a court;
- (d) all administration orders;
- (e) all orders made under Article 107 (committal for default);
- (f) such other matters as may be prescribed by rules.

(3) When a court makes an order such as is mentioned in paragraph (2)(b), (c) or (e), the proper officer of the court shall transmit a copy of the order to the Office.

(4) Any person may, on payment of the appropriate fee, obtain from the Office a copy or a certified copy of any entry in the register of judgments.

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## Registration of pending actions, etc.

### 117. Pending actions (including cases stated)—

- (a) affecting unregistered land, may be registered in the Registry of Deeds in accordance with section 3 of the Registration of Deeds Act (Northern Ireland) 1970 ;
- (b) affecting registered land, may be registered only in the Land Registry in accordance with the Land Registration Act (Northern Ireland) 1970 .

## PART X

### OFFENCES, PROSECUTIONS AND CIVIL LIABILITY

#### Obstruction and personation of enforcement officers

##### 118. Any person who—

- (a) obstructs or impedes an enforcement officer in the performance of his duties; or
- (b) impersonates an enforcement officer;

shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding<sup>[F55]</sup> level 3 on the standard scale], or to both such imprisonment and such fine.

**F55** 1984 NI 3

#### False applications: criminal and civil liability

119.—(1) Any person who himself or by his servant or agent wilfully or recklessly applies for the enforcement of—

- (a) a money judgment for recovery of a sum of money greater than that due thereunder at the date of his application; or
- (b) any judgment which he is not entitled to enforce, whether wholly or in part,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>[F56]</sup> level 5 on the standard scale].

(2) Where upon an application for enforcement pursuant to Article 22 an applicant, himself or by his servant or agent, makes any statement in evidence or in writing which he knows or ought to know to be false in any material particular he shall—

- (a) be guilty of an offence and liable on summary conviction to a fine not exceeding<sup>[F56]</sup> level 5 on the standard scale]; and
- (b) be liable in damages at the suit of the debtor.

(3) Where a warrant of arrest is issued and it is shown that documents containing representations made by or on behalf of the creditor which led to the making of an order under Article 27(2)(B) in pursuance of which the warrant was issued, or, as the case may be, documents grounding the creditor's application for the warrant, contain statements which are false in any material particular or that the creditor has failed to inform the Office—

- (a) of any reason given to him or to his agent by the person in respect of whom the warrant was issued for his non-attendance pursuant to a summons under Article 27(1) or Article 28(1) or (2) or an order under Article 27(2)(A) or Article 28(3) (as the case may be) following which the warrant was issued; or

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- (b) of any payment on account of or in full settlement of the amount recoverable on foot of the judgment,

the creditor shall be liable in damages at the suit of the person in respect of whom the warrant was issued and the creditor's application for enforcement shall stand dismissed.

F56 1984 NI 3

### False answers

**120.** A person who, on being asked by an officer of the Office in the course of an examination under this Order any question for the purpose of obtaining disclosure of his or any other person's means or the assets and liabilities of any company or firm, knowingly and wilfully makes a statement false in a material particular shall be guilty of an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 .

### Rescue of or interference with goods in custody of Office

**121.** Any person who rescues or attempts to rescue or interferes with any goods which are or are deemed to be in the custody and possession of the Office shall, unless he satisfies the court that he had no reason to believe that the goods were in such custody and possession, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F57</sup> level 5 on the standard scale] or to imprisonment for a term not exceeding six months or to both.

F57 1984 NI 3

### Offences in relation to attachment of earnings orders

**122.—**(1) Subject to paragraphs (4) and (5), a person commits an offence if—

- (a) being required by Article 74(1), 76(3), 100(1) or 102(2) to comply with an attachment of earnings order, he fails to do so; or
- (b) being required by Article 74(2) or 100(2) to give a notice for the purposes of that paragraph, he fails to give it, or fails to give it within the period required by that paragraph; or
- (c) he fails to comply with a direction under Article 77(1) or (2) or 103(1) or (2); or
- (d) he fails to comply with Article 78 or 104; or
- (e) he gives a notice for the purposes of Article 74(2) or 100(2), or a notification for the purposes of Article 78 or 104, 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 Article 74(2) or (4)(b) or 100(2) or (5)(b), or with a direction under Article 77(1) or (2) or 103(1) or (2), 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.

(2) Where a person commits an offence under paragraph (1)—

- (a) he shall in any case on summary conviction be liable to a fine not exceeding<sup>F58</sup> level 3 on the standard scale]; or
- (b) if the offence is committed in relation to proceedings in, or to an attachment of earnings order made by, the High Court or a county court, he may be ordered by a judge of the High Court or, as the case may be, a county court judge to pay a fine not exceeding<sup>F59</sup> £2,000], or, where the offence is committed under paragraph (1)(c) or (d) by the debtor,

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or under paragraph (1)( *e*) or ( *f*) by the debtor or any other person, to be imprisoned for not more than 14 days.

(3) Where a person who has been convicted under paragraph (2), or on whom a fine or a sentence of imprisonment has been imposed under that paragraph otherwise than following such a conviction, commits a second or subsequent offence under the same provision of paragraph (1) in relation to the same provision of this Order (and in the case of an offence under paragraph (1)( *a*) in relation to the same attachment of earnings order) paragraph (2)( *a*) and ( *b*) shall have effect as if the reference therein (in each case) to £100 were to<sup>F59</sup> £2,000].

(4) It shall be a defence—

- (a) for a person charged with an offence under paragraph (1)( *a*) 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 paragraph (1)( *b*) to prove that he did not know, and could not reasonably be expected to know,—
  - (i) that the debtor was not in his employment, or (as the case may be)
  - (ii) that the debtor had ceased to be in his employment,

and that he gave the required notice as soon as reasonably practicable after the fact came to his knowledge.

(5) It shall also be a defence for a person charged with an offence under paragraph (1)( *b*) of failing to give notice that the debtor had ceased to be in his employment to prove that he had had reasonable cause to believe that the Office, or, as the case may be, the court, had knowledge of the cesser.

(6) Where a person is convicted of or dealt with for an offence under paragraph (1)( *a*) the court or judge may order him to pay to the Office or, as the case requires, the creditor any sums deducted by that person from the debtor's earnings and not already so paid.

(7) Where under this Article 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 under paragraph (2)( *b*) and any sums ordered by a judge of the High Court or a county court judge to be paid under paragraph (6) shall be recoverable in the same way as a fine imposed by the High Court or a county court in exercise of its jurisdiction to punish for contempt of court; and any sum ordered by a court of summary jurisdiction to be paid under paragraph (6) shall be recoverable as a sum adjudged to be paid on a conviction by that court.

(9) For the purposes of any statutory provision conferring a right of appeal from an order made in the exercise of jurisdiction to punish for contempt of court, an order made by a county court judge under paragraph (2)( *b*) shall be deemed to be an order made by a county court in the exercise of such a jurisdiction.

(10) In this Article 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, and references to a debtor or creditor include references to, respectively, the person liable to make payments under a maintenance order (within the meaning of Article 97) or the person entitled to those payments.

**F58** 1984 NI 3

**F59** SR 1984/253

### **Misrepresentation by debt collectors**

**123.**—(1) A person commits an offence if, with the object of coercing another person to pay money claimed from the other as a debt due under a contract, he—

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- (a) falsely represents that process of any court or the Office has been issued, or that any judgment has been obtained, in respect of the money claimed;
  - (b) falsely represents, in relation to the money claimed, that criminal proceedings may be instituted for failure to pay it;
  - (c) falsely represents himself to be authorised in some official capacity to claim or enforce payment; or
  - (d) utters a document falsely represented by him to have some official character or which purports to have, or, by reason of its form or appearance or both, has the appearance of having, some official character which he knows it has not.
- (2) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding<sup>F60</sup> level 5 on the standard scale].

F60 1984 NI 3

### **Conduct of prosecutions**

**124.** An officer of the Northern Ireland Court Service who is an officer of a class designated by the Lord Chancellor, although not of counsel or a solicitor may, and if the Master so directs shall, prosecute or conduct before a court of summary jurisdiction any proceedings in respect of any offence under this Part.

## **PART XI**

### **MISCELLANEOUS AND SUPPLEMENTARY**

#### **Effect of imprisonment under Article 107 or 115**

**125.** Imprisonment under Article 107 or 115 shall not operate as a satisfaction or extinguishment of any debt, demand or cause of action, or deprive any person of any right to make an application under this Order, or, where he has so applied (whether before or after such imprisonment), affect the right of the Office to perform its functions under this Order in respect of the application.

#### **Amount recoverable on foot of a judgment**

**126.** Subject to the provisions of this Order, in the enforcement of a judgment there shall be recoverable from the person against whom the judgment has been obtained—

- (a) any expenses incurred by the Office wholly in relation to the enforcement of the judgment;
- (b) the costs of enforcement reasonably incurred by the person who has obtained the judgment;
- (c) any interest due and payable by virtue of Article 127; and
- (d) all sums of money due and payable under the judgment;

and any sums recovered from the person against whom the judgment has been obtained shall be applied in the order set out in the foregoing paragraphs.

#### **Interest**

**127.—(1)** A money judgment under which a sum exceeding £200 or such other amount as may be prescribed by rules is due and payable (not being a judgment for a penal sum for securing principal and interest) shall, subject to any contrary provision in the judgment, carry such interest at such rate

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as may be prescribed by rules of court from the date on which the judgment was given until the date of the application under Article 22 or 23(1) or until payment of the amount due on foot of the judgment, whichever first occurs.

(2) An order charging land under Article 46 and a charging order on funds, stock or shares under Article 58 may provide for the payment of interest on any sum secured by the order at such rate and in respect of such period as may be prescribed by rules of court.

(3) The Office shall not be obliged to recover interest unless—

- (a) the interest is payable on a money judgment and the creditor specifically requests its recovery by the Office; or
- (b) the interest is payable on a sum secured by a charging order on funds, stock or shares which requires the payment of dividends or interest to the Office.

### **Set-off of cross judgments**

**128.**—(1) Where a person has obtained a judgment against another person and that other person has obtained a judgment against him, either may apply to the Office for leave to set off any sums payable under the several judgments.

(2) Upon any such application the set-off may be allowed in accordance with the practice for the time being in force in the High Court.

### **Disposal of moneys recovered from debtor, etc.**

**129.**—(1) Save as otherwise provided by this Order or by rules, all moneys recovered by the Office under this Order as a result of the enforcement of a money judgment shall, after deduction of any expenses due to the Office in respect of such enforcement, be paid to the creditor in satisfaction of the whole or part of the amount recoverable on foot of the judgment.

(2) The Office shall make such returns and render such accounts to the creditor as shall be fixed by rules of all moneys recovered as a result of the enforcement of the money judgment.

(3) Any moneys recovered by the Office as a result of the enforcement of a money judgment which are in excess of the sum required to satisfy the amount recoverable on foot of the judgment shall be paid to the debtor or other person entitled thereto, unless the Office has directed that any such excess be applied in or towards the satisfaction of any other money judgment against that debtor in respect of which an application for enforcement has been made.

### **Entry of satisfaction**

**130.** Where the Office is satisfied that the amount recoverable on foot of a judgment has been paid or otherwise satisfied, an entry of satisfaction shall be made in the register of judgments.

### **Certificate of satisfaction**

**131.** Where an order charging land or a charging order on funds, stock or shares has been made, the Office shall, on application made after satisfaction has been entered in the register of judgments pursuant to Article 130, issue a certificate of satisfaction.

### **Vacating of certain charges**

**132.**—(1) The lodgment in the Registry of Deeds or, subject to Land Registry Rules, in the Land Registry, as the case may require, of a certified copy (or, where the owner of the land is a company, two certified copies) of the certificate of satisfaction shall be effective to cancel the charge imposed by an order charging land or to cancel the notice of such an order.

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(2) The lodgment with the registrar of Government funds or stock, or with the local authority, public undertaking or public company, as the case may require, of a certified copy of the certificate of satisfaction shall be sufficient authority for vacating a charge on funds, stock or shares under Article 58.

### **Functions of police**

**133.**—(1) A constable shall, at the written request of the Office,—

- (a) render to the Office all reasonable assistance in discovering any person against whom the Office is seeking to enforce a judgment;
- (b) give protection to any enforcement officer in the performance of his functions under this Order; and
- (c) render such other assistance in connection with the enforcement of any enforcement order or custody warrant as may be necessary to enable the Office to perform its functions under this Order in respect of any such order or warrant.

(2) All orders of committal (other than orders of the High Court under Article 107) and warrants of arrest under this Order shall be executed by a constable.

(3) Every constable shall, in order to give effect to any sequestration order under Article 111(1) or Article 113, render all reasonable assistance to put the sequestrator into possession of the property of the person against whom the order was made.

### **Liability for official acts and omissions**

**134.**—(1) Neither the Crown nor any member of the Office shall be liable to be sued in any court for anything done or omitted to be done in good faith by the Office or that member in the performance or purported performance of its or his functions under this Order unless—

- (a) as respects the liability of the Crown, the Office or some such member thereof wilfully or negligently; or
- (b) as respects the liability of any such member, that member wilfully;

failed to comply with the provisions of this Order.

(2) A constable shall not be liable to be sued in any court for anything done by him in the performance or purported performance of his functions under Article 133 by reason only of an irregularity in the request, order or warrant under which he was acting or purporting to act.

### **Liability of persons applying for enforcement**

**135.**—(1) Save as provided in Article 53(2) and Article 119(2) and (3), and subject to paragraphs (2) and (3), a person applying for enforcement of a judgment under this Order shall not be liable for anything done or omitted to be done by the Office or any member thereof or by any constable in the performance or purported performance of any function conferred by this Order or by rules unless that thing was done or omitted to be done as a result of any information given by the person applying for enforcement which—

- (a) that person knew to be incorrect; or
- (b) was incorrect and was given by that person recklessly or maliciously.

(2) It shall be the duty of a person applying for the enforcement of a judgment under this Order to inform the Office forthwith if, before the application for enforcement is disposed of, he receives or is paid any moneys for or on account of the amount recoverable on foot of the judgment.

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(3) Failure to comply with paragraph (2) shall render the person liable in damages at the suit of the debtor, and the Office may dismiss the application for enforcement without prejudice to the person's right to make a fresh application.

### **Power of Office to require attendance of creditor**

**136.**—(1) Where it appears to the Office that the attendance of the creditor is necessary or expedient for the proper disposal of an application for enforcement of a money judgment, the Office may, by notice in writing, require the creditor to attend before it on such date and at such time (not being earlier than seven days from the date of the notice) as may be specified in the notice.

(2) If the creditor fails, without reasonable excuse, to attend in pursuance of a notice under paragraph (1), the Office may make an order—

- (a) dismissing the creditor's application for enforcement, or
- (b) declaring that any existing priority attaching to the application is forfeited.

(3) Where the creditor is a body corporate any reference in this Article to the creditor's attendance shall be construed as a reference to the attendance of a person authorised by the body to act in the matter on its behalf.

### **Dilatory creditors**

**137.**—(1) This Article applies where applications have been received from two or more creditors for the enforcement of separate money judgments against the same debtor and it appears to the Office that the creditor (“the first creditor”) whose application has first priority as between both or all of them is not pursuing with proper diligence the remedies available to him under this Order.

(2) The Office may—

- (a) make an order requiring the first creditor to show cause why an order should not be made depriving his application of its priority; and
- (b) if the creditor fails to show such cause, make an order declaring that any existing priority attaching to the application is forfeited.

### **Postponement of priority of application of dilatory, etc., creditor**

**138.**—(1) Where, under Article 136 or 137, the Office makes an order declaring that any existing priority attaching to an application is forfeited—

- (a) the application shall stand postponed to all other applications made on or before the date of the order in respect of judgments against the same debtor; and
- (b) a note that it is so postponed shall be entered in the register of judgments.

(2) In Articles 136 and 137 and this Article any reference to priority is to priority by virtue of Article 24(3).

### **Execution of documents in name of debtor**

**139.**—(1) Where the debtor or his trustee is required by any order made under this Order to execute any document and the debtor or trustee—

- (a) refuses or neglects to comply with the order; or
- (b) cannot be found; or
- (c) is for some reasonable cause unable to execute the document;



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the Office may order some other person to execute that document in the name of the debtor or, as the case may be, his trustee, and such execution shall be as valid and effectual as if done by the debtor or, as the case may be, his trustee.

(2) In this Article “trustee” means a person holding property of a debtor in any fiduciary capacity.

## Appeals

**140.**—(1) Any party aggrieved by any order of the Office under any provision of this Order mentioned in the following Table may appeal therefrom to the High Court.

**TABLE**

<i>Article</i>	<i>General subject matter</i>
44	Interpleader.
53(1)	Order for delivery of possession of land.
55(3)	Question as to ownership of goods.
56(2)	Claim that possession of land has been wrongly delivered.
57	Order for delivery of goods.
68(2)	Claim of right superior to order appointing receiver.
73(1)	Attachment of earnings order.
136(2)	Dismissal of application for enforcement or forfeiture of priority.
137(2)(b)	Forfeiture of creditor's priority.

(2) Any party aggrieved by the Office's refusal of leave under Article 84(1) or (2) (restriction on bankruptcy petition or other remedy in respect of debt scheduled to administration order) may appeal therefrom to the High Court.

(3) Any party aggrieved by an order or decision of the Office (other than such orders as are referred to in paragraph (1)) may appeal therefrom on a question of law to the Court of Appeal.

(4) The decision of the High Court under paragraph (1) or (2), or of the Court of Appeal under paragraph (3), shall be final and conclusive.

## Judgment Enforcement Rules

**141.**—(1) The Lord Chancellor may make rules, to be known as “Judgment Enforcement Rules”, for the purpose of regulating the exercise of the jurisdiction conferred on the Office by this Order or on the Master by the Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 and generally for carrying this Order and that Act into effect.

(2) Without prejudice to the generality of paragraph (1), rules may—

- (a) provide for regulating and prescribing the procedure and practice to be followed in proceedings before the Office, including the manner in which, the time within which and the conditions on which any proceedings may or are to be taken;
- (b) provide for regulating any matters relating to the costs of proceedings before the Office;

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- (c) subject to Article 70(1), provide for the cases in which money paid for or on account of the amount recoverable on foot of a judgment must be paid to the Office or to the creditor, or may be paid to either of them;
- (d) make provision as to proceedings by the Crown;
- (e) prescribe or fix anything which under this Order may or is to be so prescribed or fixed;
- (f) amend or repeal any statutory provision passed before 15th February 1971 so far as may be necessary or expedient in consequence of provisions made by the rules.

(3) Rules shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(4) Rules which may involve an increase in expenditure out of public funds shall not be made except with the concurrence of the Treasury; but the validity of any rule so made shall not, in any proceedings in any court or in the Office, be called in question either by the court, the Office or any party to the proceedings on the ground only that the Treasury did not concur or are not expressed to have concurred in the making of the rule.

### **Financial provision**

**142.** All expenses of and incidental to the operation of this Order shall be defrayed out of moneys provided by the Parliament of the United Kingdom.

### **Provisions as to distress**

**143.—**(1) Notwithstanding anything contained in any other statutory provision, a person shall not distrain on any property for the enforcement of any recognizance or bond, or for rent (including rent-charge) in arrear, or for tithes.

(2) Paragraph (1) shall not affect the relationship of landlord and tenant save in so far as that paragraph restricts the remedy of distress.

### **Property in custody of Office exempt from distress**

**144.** Any property which is or is deemed to be in the custody and possession of the Office under this Order shall not, so long as it is in such custody and possession, be liable to seizure by way of distress under any other statutory provision or by virtue of the common law, except with the consent in writing of the Office.

### **Preservation of certain rights of re-entry**

**145.** Where any lease or contract of tenancy contains a provision conferring on the landlord a right of re-entry exercisable in default of recovery of arrears of rent by means of distress, that provision shall, subject to any relief which may be provided by or under any other statutory provision or by any rule of law or equity, be construed as if it conferred a right of re-entry when—

- (a) the rent reserved by the lease or contract is in arrear for any period specified therein as the period after which rent in arrear may be recovered by means of distress; or
- (b) if no such period is so specified, whenever the rent so reserved is in arrear for the space of 30 days after it became due and payable.

### **Application to the Crown**

**146.** Without prejudice to any Order in Council made under section 53 of the Crown Proceedings Act 1947 (extension of that Act to Northern Ireland), Articles 3, 73 to 79 and 97 to 105 and Schedule 1

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to bind the Crown to the extent necessary to enable the enforcement of the duties imposed on chief officers by virtue of Articles 75 and 101.

### **Amendments, transitional and saving provisions, etc., and repeals**

*Para.(1), with Schedule 2, effects amendments*

(2) Without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 , the transitional and saving provisions, and the provisions for the construction of certain expressions, specified in Schedule 3 shall have effect for the purposes of this Order.

*Para.(3), with Schedule 4, effects repeals*

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