
STATUTORY INSTRUMENTS

1981 No. 226

Judgments Enforcement (Northern Ireland) Order 1981

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^{F1} 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^{F1} or civil partner] and his dependants residing with him.

Status: Point in time view as at 12/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Judgments Enforcement (Northern Ireland) Order 1981, PART V. (See end of Document for details)

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^[F2] or civil partner] as appear to the Office to be essential for the domestic purposes of the debtor, his spouse^[F2] 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^[F3] £200] or of such greater amount as may be fixed by rules;
- (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.

F2 2004 c. 33

F3 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^[F4] 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.

F4 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.

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^{F5} 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.

F5 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 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^[F6] 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^[F7]Court of Judicature] or in the county court.

F6 2004 c. 33

F7 Words in art. 44(4)(b) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59(5), 148(1), Sch. 11 para. 6; S.I. 2009/1604, art. 2(b)(d)

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^{F8} 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^{F8} 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.

F8 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.

(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).

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.

Status: Point in time view as at 12/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Judgments Enforcement (Northern Ireland) Order 1981, PART V. (See end of Document for details)

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 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 [^{F9}which has an established place of business in Northern Ireland];

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.

F9 Words in art. 58(c) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), Sch. 1 para. 49(3) (with art. 10)

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.

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^{F10}Court of Judicature];

the Office may make a stop order.

F10 Words in art. 62(b) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 59\(5\), 148\(1\), Sch. 11 para. 6; S.I. 2009/1604, art. 2\(b\)\(d\)](#)

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.

Status: Point in time view as at 12/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Judgments Enforcement (Northern Ireland) Order 1981, PART V. (See end of Document for details)

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.

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;
- (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.

[^{FH} 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

Status: Point in time view as at 12/04/2010.

Changes to legislation: There are currently no known outstanding effects for the Judgments Enforcement (Northern Ireland) Order 1981, PART V. (See end of Document for details)

(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—

- (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 [^{F12}negative resolution].

(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.]

F11 1983 NI 22

F12 Words in art. 72(5) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), **Sch. 18 para. 125** (with arts. 28-31); S.I. 2010/977, **art. 1(2)**

[^{F13}[^{F14}Clerical and administrative costs of garnishees]

72A.—[

^{F14}(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^[F14] 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 ^[F15]negative resolution].]

F13 1983 NI 22

F14 1986 NI 11

F15 Words in art. 72A(4) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 15(5), Sch. 18 para. 126 (with arts. 28-31); S.I. 2010/977, art. 1(2)

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

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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, [^{F16} £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.

(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.

F16 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.

(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.

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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
- (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.

Status:

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Changes to legislation:

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