



# Attachment of Earnings Act 1971

## 1971 CHAPTER 32

### *Miscellaneous provisions*

#### **22 Persons employed under the Crown.**

- (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 this Act—
  - (a) the chief officer for the time being of the 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 or a Minister of the Crown, or out of the public revenue of the United Kingdom, shall be treated as paid by the said chief officer.
- (3) 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 section, or as to who for those purposes is the chief officer thereof, the question shall be referred to and determined by the Minister for the Civil Service; but that Minister shall not be under any obligation to consider a reference under this subsection unless it is made by the court.
- (4) A document purporting to set out a determination of the said Minister under subsection (3) above and to be signed by an official of the [<sup>F1</sup>Office of Public Service <sup>F2</sup> . . .] shall, in any such proceedings as are mentioned in that subsection, be admissible in evidence and be deemed to contain an accurate statement of such a determination unless the contrary is shown.
- (5) This Act shall have effect notwithstanding any enactment passed before 29th May 1970 and preventing or avoiding the attachment or diversion of sums due to a person in respect of service under the Crown, whether by way of remuneration, pension or otherwise.

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### Textual Amendments

- F1** Words in s. 22(4) substituted (6.7.1992) by virtue of S.I. 1992/1296, art. 6(1), **Sch. para. 4**.  
**F2** Words in s. 22(4) omitted (1.1.1996) by virtue of S.I. 1995/2985, art. 5(1), **Sch. para. 3**

## 23 Enforcement provisions.

(1) If, after being served with notice of an application to a county court for an attachment of earnings order or for the variation of such an order [<sup>F3</sup>or with an order made under section 14(2)(b) above], the debtor fails to attend on the day and at the time specified for any hearing of the application [<sup>F4</sup>or specified in the order], the court may adjourn the hearing and order him to attend at a specified time on another day; and if the debtor—

- (a) fails to attend at that time on that day; or
- (b) attends, but refuses to be sworn or give evidence,

he may be ordered by the judge to be imprisoned for not more than fourteen days.

[<sup>F5</sup>(1A) In any case where the judge has power to make an order of imprisonment under subsection (1) for failure to attend, he may, in lieu of or in addition to making that order, order the debtor to be arrested and brought before the court either forthwith or at such time as the judge may direct.]

(2) Subject to this section, a person commits an offence if—

- (a) being required by section 7(1) or 9(2) of this Act to comply with an attachment of earnings order, he fails to do so; or
- (b) being required by section 7(2) of this Act to give a notice for the purposes of that subsection, he fails to give it, or fails to give it within the time required by that subsection; or
- (c) he fails to comply with an order under section 14(1) of this Act or with any such requirement of a notice of application for an attachment of earnings order as is mentioned in section 14(4), or fails (in either case) to comply within the time required by the order or notice; or
- (d) he fails to comply with section 15 of this Act; or
- (e) he gives a notice for the purposes of section 7(2) of this Act, or a notification for the purposes of section 15, 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 section 7(2) or 15 of this Act, or with an order under section 14(1), or with any such requirement of a notice of application for an attachment of earnings order as is mentioned in section 14(4), 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.

(3) Where a person commits an offence under subsection (2) above in relation to proceedings in, or to an attachment of earnings order made by, the High Court or a county court, he shall be liable on summary conviction to a fine of not more than [<sup>F6</sup>level 2 on the standard scale] or he may be ordered by a judge of the High Court or the county court judge (as the case may be) to pay a fine of not more than [<sup>F7</sup> £250] or, in the case of an offence specified in subsection (4) below, to be imprisoned for not more than fourteen days; and where a person commits an offence under subsection (2)

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otherwise than as mentioned above in this subsection, he shall be liable on summary conviction to a fine of not more than [<sup>F6</sup>level 2 on the standard scale].

- (4) The offences referred to above in the case of which a judge may impose imprisonment are—
- (a) an offence under subsection (2)(c) or (d), if committed by the debtor; and
  - (b) an offence under subsection (2)(e) or (f), whether committed by the debtor or any other person.
- (5) It shall be a defence—
- (a) for a person charged with an offence under subsection (2)(a) above 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 subsection (2)(b) to prove that he did not know, and could not reasonably be expected to know, that the debtor was not in his employment, or (as the case may be) had ceased to be so, and that he gave the required notice as soon as reasonably practicable after the fact came to his knowledge.
- (6) Where a person is convicted or dealt with for an offence under subsection (2)(a), the court may order him to pay, to whoever is the collecting officer of the court for the purposes of the attachment of earnings order in question, any sums deducted by that person from the debtor's earnings and not already paid to the collecting officer.
- (7) Where under this section 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 by a judge of the High Court under subsection (3) above and any sums ordered by the High Court to be paid under subsection (6) above shall be recoverable in the same way as a fine imposed by that court in the exercise of its jurisdiction to punish for contempt of court; [<sup>F8</sup>section 129 of the County Courts Act 1984](enforcement of fines) shall apply to payment of a fine imposed by a county court judge under subsection (3) and of any sums ordered by a county court judge to be paid under subsection (6); and any sum ordered by a magistrates' court to be paid under subsection (6) shall be recoverable as a sum adjudged to be paid on a conviction by that court.
- (9) For the purposes of section 13 of the <sup>M1</sup>Administration of Justice Act 1960 (appeal in cases of contempt of court), subsection (3) above shall be treated as an enactment enabling the High Court or a county court to deal with an offence under subsection (2) above as if it were contempt of court.
- (10) In this section 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.
- [<sup>F9</sup>(11) A district judge, assistant district judge or deputy district judge shall have the same powers under this section as a judge of a county court.]

#### Textual Amendments

- F3** Words inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), s. 53(2)(a)
- F4** Words inserted by [Administration of Justice Act 1982 \(c. 53, SIF 37\)](#), s. 53(2)(b)
- F5** [S. 23\(1A\)](#) inserted by [Contempt of Court Act 1981 \(c. 49, SIF 39:3\)](#), s. 14(5), [Sch. 2 Pt. III para. 6](#)
- F6** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46

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- F7** Words in s. 23(3) substituted (1.10.1992) by virtue of Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 17(3), **Sch. 4 Pt.I** (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**.
- F8** Words substituted by County Courts Act 1984 (c. 28, SIF 34), s. 148(1), **Sch. 2 para. 41**
- F9** S. 23(11) inserted (1.7.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 125(2), **Sch. 17 para.6**; S.I. 1991/1364, art. 2,Sch.

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

- C1** S. 23(3): power to amend conferred (1.10.1992) by Magistrates' Courts Act 1980 (c. 43, SIF 82), **Sch. 6A** (as substituted 1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 17(3), **Sch. 4 Pt. IV** (with s. 28); S.I. 1992/333, art. 2(2), **Sch.2**)

**Marginal Citations**

- M1** 1960 c. 65.

**24 Meaning of “earnings”.**

- (1) For the purposes of this Act, but subject to the following subsection, “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>F10</sup>(c) by way of statutory sick pay.]
- (2) The following shall not be treated as earnings:—
- (a) sums payable by any public department of the Government of Northern Ireland or of a territory outside the United Kingdom;
  - (b) pay or allowances payable to the debtor as a member of Her Majesty’s forces [<sup>F11</sup>other than pay or allowances payable by his employer to him as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996)];
  - (c) pension, allowances or benefit payable under any [<sup>F12</sup>enactment relating to social security;]
  - (d) pension or allowances payable in respect of disablement or disability;
  - (e) [<sup>F13</sup>except in relation to a maintenance order]wages payable to a person as a seaman, other than wages payable to him as a seaman of a fishing boat.
- [<sup>F14</sup>(f) guaranteed minimum pension within the meaning of the [<sup>F15</sup>Pension Schemes Act 1993].]
- (3) In subsection (2)(e) above,
- [<sup>F16</sup>“fishing boat” means a vessel of whatever size, and in whatever way propelled, which is for the time being employed in sea fishing or in the sea-fishing service;
- “seaman” includes every person (except masters and pilots) employed or engaged in any capacity on board any ship; and
- “wages” includes emoluments.]

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### Textual Amendments

- F10** S. 24(1)(c) inserted by [Social Security Act 1985 \(c. 53, SIF 113:1\)](#), s. 21, [Sch. 4 para. 1](#)
- F11** Words in s. 24(2)(b) inserted (1.1.1999) by [S.I. 1998/3086, reg. 6\(1\)](#)
- F12** Words substituted by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86, [Sch. 10 Pt. VI para. 102](#)
- F13** Words inserted by [Merchant Shipping Act 1979 \(c. 39, SIF 111\)](#), [s. 39\(1\)](#)
- F14** S. 24(2)(f) inserted by [Social Security Pensions Act 1975 \(c. 60\)](#), [Sch. 4 Pt. I para. 15](#)
- F15** Words in s. 24(2) substituted (7.2.1994) by 1993 c. 48, s. 190, [Sch. 8 para. 4](#) (with ss. 6(8), 164); [S.I. 1994/86, art. 2](#)
- F16** Words in s. 24(3) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), [Sch. 13 para. 46](#) (with s. 312(1))

## 25 General interpretation.

(1) In this Act, except where the context otherwise requires—

“administration order” means an order made under, and so referred to in, <sup>F17</sup>Part VI of the County Courts Act 1984];

“the court”, in relation to an attachment of earnings order, means the court which made the order, subject to rules of court as to the venue for, and the transfer of, proceedings in county courts and magistrates’ courts;

“debtor” and “relevant adjudication” have the meanings given by section 2 of this Act;

“the employer”, in relation to an attachment of earnings order, means the person who is required by the order to make deductions from earnings paid by him to the debtor;

“judgment debt” has the meaning given by section 2 of this Act;

“legal aid contribution order” means an order under <sup>F18</sup>section 23 of the Legal Aid Act 1988]

“maintenance order” has the meaning given by section 2 of this Act;

“maintenance payments” means payments required under a maintenance order;

“prescribed” means prescribed by rules of court; and

“rules of court”, in relation to a magistrates’ court, means rules under <sup>F19</sup>section 144 of the Magistrates’ Courts Act 1980];

and, in relation to a magistrates’ court, references to a single justice are to a justice of the peace acting for the same petty sessions area as the court.

(2) Any reference in this Act to sums payable under a judgment or order, or to the payment of such sums, includes a reference to costs and the payment of them; and the references in sections 6(4) and 12(2) to relevant costs are to any costs of the proceedings in which the attachment of earnings order in question was made, being costs which the debtor is liable to pay.

(3) References in sections 6(5)(b), 9(3)(b) and 14(1)(a) of this Act to the debtor’s needs include references to the needs of any person <sup>F20</sup> for whom he must, or reasonably may, provide.

(4) <sup>F20</sup> .....

(5) Any power to make rules which is conferred by this Act is without prejudice to any other power to make rules of court.

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- (6) This Act, so far as it relates to magistrates' courts, and [<sup>F21</sup>Part III of the Magistrates' Courts Act 1980] shall be construed as if this Act were contained in that Part.
- (7) References in this Act to any enactment include references to that enactment as amended by or under any other enactment, including this Act.

#### **Textual Amendments**

- F17** Words substituted by County Courts Act 1984 (c. 28, SIF 34), s. 148(1), **Sch. 2 para. 42**
- F18** Words substituted by virtue of Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, **Sch. 5 para. 3**
- F19** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154, **Sch. 7 para. 101(a)**
- F20** S. 25(4) repealed by Dock Work Act 1989 (c. 13, SIF 43:1), s. 7(1), **Sch. 1 Pt. I**
- F21** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), s. 154, **Sch. 7 para. 101(b)**

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