



# Attachment of Earnings Act 1971

## 1971 CHAPTER 32

### *Special provisions with respect to magistrates' courts*

#### **18 Certain action not to be taken by collecting officer except on request. E+W**

- (1) The clerk of a magistrates' court who is entitled to receive payments under a maintenance order for transmission to another person shall not—
  - (a) apply for an attachment of earnings order to secure payments under the maintenance order; or
  - (b) except as provided by section 10(3) of this Act, apply for an order discharging or varying such an attachment of earnings order; or
  - (c) apply for a determination under section 16 of this Act,unless he is requested in writing to do so by a person entitled to receive the payments through him.
- (2) Where the clerk is so requested—
  - (a) he shall comply with the request unless it appears to him unreasonable in the circumstances to do so; and
  - (b) the person by whom the request was made shall have the same liabilities for all the costs properly incurred in or about any proceedings taken in pursuance of the request as if the proceedings had been taken by that person.
- (3) For the purposes of subsection (2)(b) above, any application made by the clerk as required by section 10(3) of this Act shall be deemed to be made on the request of the person in whose favour the attachment of earnings order in question was made.

#### **19 Procedure on applications. E+W**

- (1) Subject to rules of court made by virtue of the following subsection, an application to a magistrates' court for an attachment of earnings order, or an order discharging or varying an attachment of earnings order, shall be made by complaint.
- (2) Rules of court may make provision excluding subsection (1) in the case of such an application as is referred to in section 9(3)(b) of this Act.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: Attachment of Earnings Act 1971, Cross Heading: Special provisions with respect to magistrates' courts is up to date with all changes known to be in force on or before 11 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) An application to a magistrates' court for a determination under section 16 of this Act shall be made by complaint.
- (4) For the purposes of [F1section 51 of the Magistrates' Courts Act 1980](which provides for the issue of a summons directed to the person against whom an order may be made in pursuance of a complaint)—
- (a) the power to make an order in pursuance of a complaint by the debtor for an attachment of earnings order, or the discharge or variation of such an order, shall be deemed to be a power to make an order against the person to whom payment under the relevant adjudication is required to be made (whether directly or through an officer of any court); and
  - (b) the power to make an attachment of earnings order, or an order discharging or varying an attachment of earnings order, in pursuance of a complaint by any other person (including a complaint in proceedings to which section 3(4)(b) of this Act applies) shall be deemed to be a power to make an order against the debtor.
- (5) A complaint for an attachment of earnings order may be heard notwithstanding that it was not made within the six months allowed by [F2section 127(1) of the Magistrates' Courts Act 1980].

#### Textual Amendments

- F1** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 100\(a\)](#)
- F2** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 100\(b\)](#)

## 20 Jurisdiction in respect of persons residing outside England and Wales. **U.K.**

- (1) It is hereby declared that a magistrates' court has jurisdiction to hear a complaint by or against a person residing outside England and Wales for the discharge or variation of an attachment of earnings order made by a magistrates' court to secure maintenance payments; and where such a complaint is made, the following provisions shall have effect.
- (2) If the person resides in Scotland or Northern Ireland, section 15 of the <sup>M1</sup>Maintenance Orders Act 1950 (which relates to the service of process on persons residing in those countries) shall have effect in relation to the complaint as it has effect in relation to the proceedings therein mentioned.
- (3) Subject to the following subsection, if the person resides outside the United Kingdom and does not appear at the time and place appointed for the hearing of the complaint, the court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the complaint at the time and place appointed for the hearing, or for any adjourned hearing, in like manner as if the person had then appeared.
- (4) Subsection (3) above shall apply only if it is proved to the satisfaction of the court, on oath or in such other manner as may be prescribed, that the complainant has taken such steps as may be prescribed to give to the said person notice of the complaint and of the time and place appointed for the hearing of it.

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**Marginal Citations**

**M1** 1950 c. 37.

**21 Costs on application under s. 16. E+W**

- (1) On making a determination under section 16 of this Act, a magistrates' court may in its discretion make such order as it thinks just and reasonable for payment by any of the persons mentioned in subsection (2) of that section of the whole or any part of the costs of the determination (but subject to section 18(2)(b) of this Act).
- (2) Costs ordered to be paid under this section shall—
  - (a) in the case of costs to be paid by the debtor to the person in whose favour the attachment of earnings order in question was made, be deemed—
    - (i) if the attachment of earnings order was made to secure maintenance payments, to be a sum due under the related maintenance order, and
    - (ii) otherwise, to be a sum due to the clerk of the court; and
  - (b) in any other case, be enforceable as a civil debt.

**Status:**

Point in time view as at 01/02/1991.

**Changes to legislation:**

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