



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.

- (1) [^{F1}Where payments under a maintenance order are payable to the family court or an officer of the family court for transmission to a person, no officer of the family court is to—]
- (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 [^{F2}the family court or an officer of that court].
- (2) Where [^{F3}an officer of the family court] 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.

^{F4}(3)

Textual Amendments

- F1** Words in s. 18(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 30\(2\)\(a\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F2** Words in s. 18(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 30\(2\)\(b\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

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- F3** Words in s. 18(2) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 30\(3\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F4** S. 18(3) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 30\(4\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

19 Procedure on applications.

- (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.
- (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 [^{F5}section 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 [^{F6}section 127(1) of the Magistrates' Courts Act 1980].

Textual Amendments

- F5** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 100\(a\)](#)
- F6** 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.

- (1) It is hereby declared that [^{F7}the family court] has jurisdiction to hear [^{F8}an application] by or against a person residing outside England and Wales for the discharge or variation of an attachment of earnings order made by [^{F7}the family court] to secure maintenance payments; and where such [^{F8}an application] is made, the following provisions shall have effect.
- (2) If the person resides in Scotland or Northern Ireland, section 15 of the ^{M1}Maintenance Orders Act 1950 (which relates to the service of process on persons residing in those

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countries) shall have effect in relation to the [F⁹application] 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 [F⁹application], the court may, if it thinks it reasonable in all the circumstances to do so, proceed to hear and determine the [F⁹application] 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 [F¹⁰applicant] has taken such steps as may be prescribed to give to the said person notice of the [F⁹application] and of the time and place appointed for the hearing of it.

Textual Amendments

- F7** Words in s. 20(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 31\(2\)\(a\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F8** Words in s. 20(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 31\(2\)\(b\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F9** Word in s. 20(2)-(4) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 31\(3\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F10** Word in s. 20(4) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 31\(4\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Marginal Citations

- M1** 1950 c. 37.

21 Costs on application under s. 16.

- (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 ^{F11}....
- (2) Costs ordered to be paid under this section shall—
- 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 [F¹²deemed] to be a sum due to the [F¹³designated officer for the magistrates'] court; and
 - in any other case, be enforceable as a civil debt.

Textual Amendments

- F11** Words in s. 21(1) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 32\(a\)](#); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

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- F12** Word in s. 21(2) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 32\(b\)](#); [S.I. 2014/954](#), art. 2(d) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F13** Words in s. 21(2)(a)(ii) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 110(1), [Sch. 8 para. 144](#); [S.I. 2005/910](#), art. 3(y)

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