

SCHEDULES

SCHEDULE 4

Section 14(3).

ENFORCEMENT: ENGLAND AND WALES

Regulations for recovery of sums payable

- 1 (1) The Secretary of State may make regulations in relation to the recovery of any sum which has become payable to a billing authority under any provision included in regulations under—
- (a) paragraph 2, 3 or 6(2) or (3) of Schedule 2 to this Act; or
 - (b) paragraph 6 of Schedule 3 to this Act,
- and has not been paid.
- (2) The Secretary of State may also make regulations in relation to the recovery of any sum which has become payable (by way of repayment) to a person other than a billing authority under any provision included in regulations under paragraph 2, 3 or 6(2) or (3) of Schedule 2 to this Act and has not been paid.
- (3) References in sub-paragraphs (1) and (2) above to a sum which has become payable and has not been paid include references to a sum forming part of a larger sum which has become payable and the other part of which has been paid.

Provision which may be made

- 2 (1) Regulations under sub-paragraph (1) of paragraph 1 above may make, in relation to the recovery of any sum falling within that sub-paragraph which a person is solely liable to pay, any such provision as is authorised by the following paragraphs of this Schedule.
- (2) Regulations under that sub-paragraph may make, in relation to any sum falling within that sub-paragraph which persons are jointly and severally liable to pay, provision equivalent to any so authorised subject to any modifications the Secretary of State thinks fit.
- (3) Regulations under sub-paragraph (2) of that paragraph may provide that any sum falling within that sub-paragraph shall be recoverable in a court of competent jurisdiction.

Liability orders

- 3 (1) Regulations under paragraph 1(1) above may provide that—
- (a) the authority concerned may apply to a magistrates' court for an order (a “liability order”) against the person by whom the sum is payable;
 - (b) the magistrates' court shall make the order if it is satisfied that the sum has become payable by the person concerned and has not been paid.

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- (2) The regulations may include provision that the order shall be made in respect of an amount equal to the aggregate of—
 - (a) the sum payable; and
 - (b) a sum (of a prescribed amount or an amount determined in accordance with prescribed rules) in respect of the costs incurred in obtaining the order.
- (3) The regulations may include provision that, where the sum payable is paid after the order has been applied for but before it is made, the magistrates' court shall nonetheless make the order in respect of a sum (of a prescribed amount or an amount determined in accordance with prescribed rules) in respect of the costs incurred in applying for it.
- (4) The regulations may include—
 - (a) provision prescribing steps to be taken before an application may be made;
 - (b) provision that no application may be made after a prescribed period has expired;
 - (c) provision prescribing the procedure to be followed for the initiation of an application (which may include provision as to form);
 - (d) provision prescribing the procedure to be followed in dealing with an application;
 - (e) provision prescribing the form and contents of an order.

Information

- 4 (1) Regulations under paragraph 1(1) above may provide that where a magistrates' court has made a liability order against a person (“the debtor”) he shall, during such time as the amount in respect of which the order was made remains wholly or partly unpaid, be under a duty to supply relevant information to the authority concerned.
- (2) For the purposes of this paragraph relevant information is such information as fulfils the following conditions—
 - (a) it is in the debtor’s possession or control;
 - (b) the authority requests him to supply it; and
 - (c) it falls within a prescribed description of information.
- (3) The regulations may include provision that the information is to be supplied in a prescribed form and within a prescribed period of the request being made.

Attachment of earnings etc.

- 5 (1) Regulations under paragraph 1(1) above may provide that where a magistrates' court has made a liability order against a person (“the debtor”) and the debtor is an individual—
 - (a) the authority concerned may make an order (an “attachment of earnings order”) to secure the payment of any outstanding sum which is or forms part of the amount in respect of which the liability order was made;
 - (b) such an order shall be expressed to be directed to a person who has the debtor in his employment, and shall operate as an instruction to such a person to make deductions from the debtor’s earnings and to pay the amounts deducted to the authority;

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- (c) the authority may serve a copy of the order on a person who appears to the authority to have the debtor in his employment; and
 - (d) a person who has the debtor in his employment shall comply with the order if a copy of it is served on him.
- (2) The regulations may include—
- (a) provision allowing an attachment of earnings order to be varied;
 - (b) provision requiring a person who has the debtor in his employment to comply with the order as varied if a copy of the order as varied is served on him;
 - (c) provision requiring an order to be in a prescribed form;
 - (d) provision requiring an order to specify the sum to which the order relates, the rate at which the debtor's earnings are to be applied to meet the sum, and such other particulars as may be prescribed;
 - (e) rules about the rate which may be so specified;
 - (f) provision allowing the person who deducts and pays amounts under the order to deduct from the debtor's earnings prescribed sums, or sums determined in accordance with prescribed rules, towards his administrative costs;
 - (g) provision requiring the person who deducts and pays amounts under the order to notify the debtor, in a prescribed manner and at any prescribed time, of the total amount of sums (including sums towards administrative costs) deducted up to the time of the notification or of the total amount of sums (including sums towards such costs) that will fall to be deducted after that time;
 - (h) provision requiring any person on whom a copy of the order is served to notify the authority in a prescribed manner and within a prescribed period if he does not have, or subsequently ceases to have, the debtor in his employment;
 - (i) provision that, where the whole amount to which the order relates has been paid, the authority shall give notice of that fact to any person who appears to it to have the debtor in his employment and who has been served with a copy of the order;
 - (j) provision allowing or requiring an order to be discharged.
- (3) The regulations may include provision that while an attachment of earnings order is in force—
- (a) the debtor shall from time to time notify the authority concerned, in a prescribed manner and within a prescribed period, of each occasion when he leaves any employment or becomes employed or re-employed, and shall include in such a notification a statement of his earnings and expected earnings from the employment concerned and of such other matters as may be prescribed;
 - (b) any person who becomes the debtor's employer and knows that the order is in force and by what authority it was made shall notify the authority concerned, in a prescribed manner and within a prescribed period, that he is the debtor's employer, and shall include in such a notification a statement of the debtor's earnings and expected earnings from the employment concerned and of such other matters as may be prescribed.
- (4) The regulations may include provision with respect to the priority to be accorded as between—
- (a) two or more orders made under the regulations;

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- (b) orders made under the regulations and orders made under the Attachment of Earnings Act 1971 or the Child Support Act 1991.
- (5) The regulations may include provision that a person may appeal to a magistrates' court if he is aggrieved by the making or the terms of an attachment of earnings order, or there is a dispute whether payments constitute earnings or as to any other prescribed matter relating to the order.
- (6) The regulations may include—
 - (a) provision prescribing the procedure to be followed for initiating an appeal;
 - (b) provision prescribing the procedure to be followed in dealing with an appeal;
 - (c) provision as to the powers of the court (which may include provision as to the quashing of an attachment of earnings order or the variation of the terms of such an order).
- (7) The provisions of this paragraph (except sub-paragraphs (3) and (4)(b) above) shall apply to elected members of billing authorities or relevant precepting authorities as they apply to persons in employment; and for the purposes of the application of those provisions in relation to any such members—
 - (a) any reference to a person having the debtor in his employment shall be construed as a reference to such an authority having the debtor as an elected member; and
 - (b) any reference to the debtor's earnings shall be construed as a reference to allowances payable to the debtor by such an authority.
- (8) For the purposes of sub-paragraph (7) above—
 - (a) a relevant precepting authority is a major precepting authority other than the Receiver for the Metropolitan Police District; and
 - (b) a person is an elected member of a relevant precepting authority other than a county council if he is appointed to the authority by a constituent council of which he is an elected member.

Deductions from income support

- 6 (1) Regulations under paragraph 1(1) above may provide that where a magistrates' court has made a liability order against a person ("the debtor") and the debtor is entitled to income support within the meaning of the Social Security Contributions and Benefits Act 1992—
 - (a) the authority concerned may apply to the Secretary of State asking him to deduct sums from any amounts payable to the debtor by way of income support, in order to secure the payment of any outstanding sum which is or forms part of the amount in respect of which the liability order was made; and
 - (b) the Secretary of State may deduct such sums and pay them to the authority towards satisfaction of any such outstanding sum.
- (2) The regulations may include—
 - (a) provision allowing or requiring adjudication as regards an application, and provision as to appeals and reviews;
 - (b) a scheme containing provision as to the circumstances and manner in which and times at which sums are to be deducted and paid, provision about the calculation of such sums (which may include provision to secure that amounts payable to the debtor by way of income support do not fall below

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- prescribed figures), and provision as to the circumstances in which the Secretary of State is to cease making deductions;
- (c) provision requiring the Secretary of State to notify the debtor, in a prescribed manner and at any prescribed time, of the total amount of sums deducted up to the time of the notification;
 - (d) provision that, where the whole amount to which the application relates has been paid, the authority shall give notice of that fact to the Secretary of State.

Distress

- 7 (1) Regulations under paragraph 1(1) above may provide that where a magistrates' court has made a liability order against a person ("the debtor") the authority concerned may levy the appropriate amount by distress and sale of the debtor's goods.
- (2) For the purposes of this paragraph the appropriate amount is the aggregate of—
- (a) an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made; and
 - (b) a sum (of a prescribed amount or an amount determined in accordance with prescribed rules) in respect of the charges connected with the distress.
- (3) The regulations may include provision that—
- (a) a distress may be made anywhere in England and Wales;
 - (b) a distress shall not be deemed unlawful on account of any defect or want of form in the liability order and no person making a distress shall be deemed a trespasser on that account;
 - (c) no person making a distress shall be deemed a trespasser from the beginning on account of any subsequent irregularity in making the distress, but a person sustaining special damage by reason of the irregularity may recover full satisfaction for the special damage (and no more) by proceedings in trespass or otherwise.
- (4) The regulations may include provision that—
- (a) no person shall make a distress unless he is an officer of the authority concerned, or he is a person of a prescribed description and any prescribed conditions are fulfilled;
 - (b) no person making a distress shall seize goods of a prescribed description.
- (5) The regulations may include provision that a person may appeal to a magistrates' court if he is aggrieved by the levy of, or an attempt to levy, a distress.
- (6) The regulations may include—
- (a) provision prescribing the procedure to be followed for initiating an appeal;
 - (b) provision prescribing the procedure to be followed in dealing with an appeal;
 - (c) provision as to the powers of the court (which may include provision as to the discharge of goods distrained or the payment of compensation in respect of goods distrained and sold).

Commitment to prison

- 8 (1) Regulations under paragraph 1(1) above may provide that—
- (a) where an authority has sought to levy an amount by distress under any provision included by virtue of paragraph 7 above, the debtor is an individual

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who has attained the age of 18 years, and the person making the distress reports to the authority that he was unable (for whatever reason) to find any or sufficient goods of the debtor on which to levy the amount, the authority may apply to a magistrates' court for the issue of a warrant committing the debtor to prison;

- (b) on such application being made the court shall (in the debtor's presence) inquire as to his means and inquire whether the failure to pay which has led to the application is due to his wilful refusal or culpable neglect;
- (c) if (and only if) the court is of opinion that his failure is due to his wilful refusal or culpable neglect it may if it thinks fit issue a warrant of commitment against the debtor, or fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as the court thinks just;
- (d) the warrant shall be made in respect of the relevant amount (within the meaning given by sub-paragraph (2) below);
- (e) the warrant shall state that amount;
- (f) the order in the warrant shall be that the debtor be imprisoned for a time specified in the warrant (which shall not exceed three months), unless the amount stated in the warrant is sooner paid;
- (g) the period of imprisonment shall be reduced by a prescribed amount in respect of part payment in prescribed circumstances;
- (h) a warrant may be directed to the authority concerned and to such other persons (if any) as the court issuing it thinks fit;
- (i) a warrant may be executed anywhere in England and Wales by any person to whom it is directed.

(2) For the purposes of sub-paragraph (1) above the relevant amount is the aggregate of—

- (a) an amount equal to the appropriate amount within the meaning of paragraph 7 above or (as the case may be) to so much of it as remains outstanding; and
- (b) a sum (of a prescribed amount or an amount determined in accordance with prescribed rules) in respect of the costs of commitment.

(3) The regulations may include—

- (a) provision that a single warrant shall not be issued, under any provision included under this paragraph, against more than one person;
- (b) provision as to the form of a warrant;
- (c) provision allowing remission of payment where no warrant is issued or term of imprisonment fixed;
- (d) provision allowing an application to be renewed where no warrant is issued or term of imprisonment fixed;
- (e) provision that a statement in writing to the effect that wages of any amount have been paid to the debtor during any period, purporting to be signed by or on behalf of his employer, shall be evidence of the facts there stated;
- (f) provision that, for the purpose of enabling inquiry to be made as to the debtor's conduct and means, a justice of the peace may issue a summons to him to appear before a magistrates' court and (if he does not obey the summons) may issue a warrant for his arrest;
- (g) provision that, for the purpose of enabling such inquiry, a justice of the peace may issue a warrant for the debtor's arrest without issuing a summons;

- (h) provision as to the execution of a warrant for arrest (which may include provision allowing it to be executed anywhere in England and Wales).

Bankruptcy

- 9 (1) Regulations under paragraph 1(1) above may provide that where a magistrates' court has made a liability order against a person (“the debtor”) and the debtor is an individual, the amount due shall be deemed to be a debt for the purposes of section 267 of the Insolvency Act 1986 (grounds of creditor’s petition).
- (2) The amount due is an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made.

Winding up

- 10 (1) Regulations under paragraph 1(1) above may provide that where a magistrates' court has made a liability order against a person (“the debtor”) and the debtor is a company, the amount due shall be deemed to be a debt for the purposes of section 122(1)(f) of the Insolvency Act 1986 (winding up of companies by the court) or, as the case may be, section 221(5)(b) of that Act (winding up of unregistered companies).
- (2) The amount due is an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made.

Charging orders

- 11 (1) Regulations under paragraph 1(1)(a) above may provide that where a magistrates' court has made a liability order against a person (“the debtor”) and prescribed conditions are fulfilled—
 - (a) the authority concerned may apply to a court for an order (a “charging order”) imposing, on any interest held by the debtor beneficially in the relevant dwelling, a charge for securing the due amount; and
 - (b) a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand.
- (2) For the purposes of sub-paragraph (1) above the relevant dwelling is the dwelling in respect of which, at the time the application for the liability order was made, the debtor was liable to pay the sum falling within paragraph 1(1)(a) above.
- (3) For the purposes of sub-paragraph (1) above the due amount is the aggregate of—
 - (a) an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made; and
 - (b) a sum (of a prescribed amount or an amount determined in accordance with prescribed rules) in respect of costs connected with the charging order.
- (4) The regulations may include provision—
 - (a) as to the court to which an application may be made (which may be the High Court or a county court);
 - (b) as to the factors to be considered by the court in deciding whether to make a charging order;
 - (c) requiring an order to specify the dwelling and interest concerned, and such other matters as may be prescribed;

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- (d) requiring an order to be in a prescribed form;
- (e) allowing an order to be made absolutely or subject to conditions;
- (f) as to the discharge or variation of an order.

Relationship between remedies

- 12 (1) As regards a case where a magistrates' court has made a liability order, regulations under paragraph 1(1) above may include provision that—
- (a) attachment of earnings may be resorted to more than once;
 - (b) deductions from income support may be resorted to more than once;
 - (c) distress may be resorted to more than once;
 - (d) attachment of earnings, deductions from income support and distress (or any two of them) may be resorted to in any order or alternately (or both);
 - (e) steps by way of attachment, deduction, distress, commitment, bankruptcy, winding up or charging may not be taken while steps by way of another of those methods are being taken;
 - (f) where a warrant of commitment is issued against (or a term of imprisonment is fixed in the case of) the person concerned no steps, or no further steps, by way of attachment, deduction, distress, bankruptcy or charging may be taken.
- (2) Any reference in this paragraph to attachment of earnings includes a reference to attachment of allowances.

Magistrates and justices

- 13 Regulations under paragraph 1(1) above may include—
- (a) provision for determining what justices and magistrates' courts are to have jurisdiction in cases provided for by the regulations;
 - (b) provision as to the composition of magistrates' courts in cases provided for by the regulations.

Admissibility of evidence

- 14 (1) Regulations under paragraph 1(1) above may include provision that, in any proceedings before a magistrates' court under any provision included by virtue of the preceding provisions of this Schedule—
- (a) a statement contained in a document of record shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible; and
 - (b) a certificate which is made with respect to a document of record produced by a computer and purports to be signed by a responsible person shall be admissible as evidence of anything which is stated in it to the best of his information and belief.
- (2) In this paragraph—
- “document of record” means a document constituting or forming part of a record compiled by the authority concerned;
 - “responsible person” means a person occupying a responsible position in relation to the operation of the computer;

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“statement” includes any representation of fact, whether made in words or otherwise.

Exclusion of certain matters

- 15 Regulations under paragraph 1(1) above may provide that any matter which could be the subject of an appeal under section 16 of this Act, or regulations under section 24 of this Act, may not be raised in proceedings under the regulations.

Costs

- 16 Regulations under paragraph 1(1) above may provide that where an authority has received in proceedings under the regulations an amount by way of costs it shall pay a prescribed amount, or an amount determined in accordance with prescribed rules, to a prescribed person for the benefit of such court as is identified in accordance with prescribed rules.

Termination of proceedings

- 17 (1) Regulations under paragraph 1(1) above may provide that in a case where—
- (a) proceedings under the regulations have been taken as regards the recovery of any sum mentioned in paragraph 1(1) above; and
 - (b) the outstanding amount is paid or tendered to the authority to which it is payable;
- the authority shall accept the amount, no further steps shall be taken as regards its recovery, and any person committed to prison in pursuance of the proceedings shall be released.
- (2) The outstanding amount is an amount equal to the sum concerned or to so much of it as remains outstanding (as the case may be).
- (3) In a case where costs and charges are relevant the outstanding amount shall be treated as augmented by a sum (of a prescribed amount or an amount determined in accordance with prescribed rules) in respect of costs and charges incurred in the proceedings up to the time of payment or tender.

Offences

- 18 (1) Regulations under paragraph 1(1) above may provide that a person shall be guilty of an offence if he is required by any provision included by virtue of paragraph 4 above to supply information and—
- (a) he fails without reasonable excuse to supply the information in accordance with the provision; or
 - (b) in supplying information in purported compliance with the provision he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular.
- (2) Regulations under paragraph 1(1) above may provide that—
- (a) a person shall be guilty of an offence if he is required by any provision included by virtue of paragraph 5(1)(d) or (2)(b) above to comply with an attachment of earnings order and fails to do so;

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- (b) it shall be a defence for a person charged with such an offence to prove that he took all reasonable steps to comply with the order.
- (3) Regulations under paragraph 1(1) above may provide that a person shall be guilty of an offence if he is required by any provision included by virtue of paragraph 5(2)(g) or (h) or (3)(a) or (b) above to notify another person and—
 - (a) he fails without reasonable excuse to notify the other person in accordance with the provision; or
 - (b) in notifying the other person in purported compliance with the provision he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular.
- (4) Regulations under paragraph 1(1) above may provide that a person guilty of an offence under any provision included by virtue of sub-paragraphs (1) to (3) above shall be liable on summary conviction to a fine not exceeding—
 - (a) level 2 on the standard scale (where the provision is included by virtue of sub-paragraph (1)(a) or (3)(a) above); or
 - (b) level 3 on the standard scale (where the provision is included by virtue of sub-paragraph (1)(b), (2) or (3)(b) above).

Other enactments

- 19 (1) Regulations under paragraph 1(1) above may apply any provision contained in or made under a relevant enactment, or may apply any such provision subject to prescribed modifications, or may contain provision equivalent to any such provision (whether or not subject to prescribed modifications).
- (2) For the purposes of sub-paragraph (1) above relevant enactments are the Attachment of Earnings Act 1971, the Charging Orders Act 1979, Part II of the Social Security Administration Act 1992, and any enactment applied by any of those enactments.
- (3) Regulations under paragraph 1(1) above may exclude any provision contained in the Distress (Costs) Act 1817 or the Distress (Costs) Act 1827 (which make provision as to the costs and expenses chargeable in respect of the levying of certain distresses).