

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

EXPLANATORY NOTES

PART 4: ENFORCEMENT OF JUDGMENTS AND ORDERS

Summary

408. **Part 4** of the Act makes a number of changes to existing court-based methods of enforcing debts in the civil courts. Part 4 also contains new provisions, including powers to obtain information about debtors.

Background

Attachment of earnings orders

409. An attachment of earnings order (AEO) is a means of securing payment of certain debts by requiring an employer to make deductions direct from an employed debtor's earnings. Currently, the rate of deductions under an AEO made to secure payment of a judgment debt is calculated by a county court using information provided by the debtor.
410. *Effective Enforcement* identified weaknesses in the current system and in particular the fact that information provided by debtors is often unreliable. The Act tackles this by making provision for a new method of calculation of deductions from earnings based on fixed rates, similar to the system used for council tax AEOs. Another weakness of the AEO system is that if a debtor changes job and does not inform the court of his new employer's details, the AEO lapses. The Act therefore enables the High Court, county courts, magistrates' courts and fines officers to request the name and address of the debtor's new employer from Her Majesty's Revenue and Customs ("HMRC"), for the purpose of redirecting the AEO.

Charging orders

411. A charging order is a means of securing payment of a sum of money ordered to be paid under a judgment or order of the High Court or a county court by placing a charge onto the debtor's property (usually a house or land or securities such as shares). A charging order can be made absolute or subject to conditions. Once an order is in place, a creditor can subsequently apply to court seeking an order for sale of the charged property.
412. At present, the court cannot make a charging order when payments due under an instalment order made to secure that same sum are not in arrears. In certain instances this can prejudice the creditor, allowing for example a debtor with large judgment debts, who is meeting his regular instalments, to benefit from the sale of a property without paying off the debt.
413. The Act removes this restriction and enables access to charging orders in circumstances where a debtor is not yet in arrears with an instalment order. As a safeguard, the Act allows the Lord Chancellor to set financial thresholds beneath which a court cannot

make a charging order or order for sale, in order to ensure that charging orders are not used to secure payment of disproportionately small judgment debts.

Information requests and orders

414. Currently, the only means of creditors to obtain information to assist them in determining how to enforce a civil judgment debt is by way of an Order to Obtain Information. This requires the debtor to attend court, which is problematic if the debtor is not co-operating with the court. The Act enables the High Court and the county courts to request information from the DWP and Commissioners for HMRC, other government departments and/or prescribed third parties (including banks and credit reference agencies) on a judgment debtor who has failed to respond to the judgment or comply with court-based methods of enforcement to assist with the enforcement of a judgment debt. Such information will include name, address, date of birth, National Insurance number and the name and address of the debtor's employer.

Commentary on Sections: Part 4

Section 91: Attachment of earnings orders: deductions at fixed rates

415. This section and Schedule 15 amend the Attachment of Earnings Act 1971 (the AEA 1971), by making provision for a fixed deductions scheme to introduce deductions from earnings at fixed rates for AEOs made by a county court to secure the payment of a judgment debt.

Schedule 15: Attachment of earnings orders: deductions at fixed rates

416. This Schedule is in two parts. Part 1 contains the main amendments to the AEA 1971 and inserts new sections and a new Schedule to enable a fixed deductions scheme to operate and to allow for a change in the basis upon which deductions from earnings are made under county court AEOs to secure payment of judgment debts. Part 2 sets out consequential amendments to the AEA 1971.
417. [Paragraph 2](#) amends section 6 of the AEA 1971 (effect and contents of order) by setting out the basis of deductions from earnings under different AEOs, and specifying that where an AEO is made by a county court to secure payment of a judgment debt, the AEO must specify that deductions under the order should be made in accordance with the fixed deductions scheme.
418. [Paragraph 3](#) inserts a new section 6A into the AEA 1971 (the fixed deductions scheme) which defines the fixed deductions scheme and provides for the Lord Chancellor to set out the detail of the scheme in regulations, subject to the affirmative resolution procedure in the first instance. It is intended that such regulations will set out the scheme of deductions in tabular format, in a similar way as is presently used for deductions from earnings for the collection of council tax.
419. [Paragraph 4](#) amends section 9 of the AEA 1971 (variation, lapse and discharge of orders) by specifying that the power of a court to vary an AEO is subject to Schedule 3A inserted by paragraph 7, which specifies circumstances in which a county court may, and circumstances in which a county court must vary an AEO made to secure the payment of a judgment debt.
420. [Paragraph 5](#) inserts a new section 9A into the AEA 1971 (suspension of fixed deductions orders), and obliges a county court, in certain circumstances, to suspend an AEO made under the fixed deductions scheme (a fixed deductions order). Where such a suspension order is made, the employer will not have to make deductions from the debtor's earnings and the debtor will make payments directly to the creditor in the manner specified by the court in the suspension order. Where a county court considers that a fixed deductions order is not appropriate (by way of example, because a county court considers that deductions should be more or less than the deductions specified in the fixed deductions

scheme because of the personal circumstances of the debtor), it must make a suspension order. The aim of the suspension provisions is to simplify the position for employers (who should only ever have to make deductions from earnings for county court AEOs made to secure a judgment debt in accordance with the fixed deductions scheme). Such a suspension order will specify the rate and timings of repayments by the debtor to the creditor, and might specify other terms. If any of the terms of the suspension order are broken (by way of example, if the debtor fails to make payments to the creditor), then the court must revoke the suspension order and reinstate the AEO (requiring the employer to make deductions from the debtor's earnings). Even where the terms of the suspension order have not been broken, the court may revoke the suspension order if it considers it appropriate to do so, and rules of court may specify the circumstances in which a court may make or revoke a suspension order of its own motion.

421. [Paragraph 7](#) inserts a new Schedule 3A into the AEA 1971 (changing the basis of deductions). Part 1 of Schedule 3A provides for variations to the basis of deductions under an AEO made to secure a county court judgment debt, such a variation to be changing the basis of deductions from deductions made in accordance with Schedule 3 of the AEA 1971 (a Schedule 3 judgment debt order), to deductions made in accordance with the fixed deductions scheme (a fixed deductions order), therefore, varying an AEO so that the scheme of deductions changes from the current scheme to the new fixed tables scheme. Part 2 of Schedule 3A provides for an AEO made to secure a county court judgment debt to be changed from a fixed deductions order to a Schedule 3 judgment debt order.
422. [Part 1](#) of Schedule 3A provides that a Schedule 3 judgment debt order can be varied to become a fixed deductions order, either on an application to the county court or of the court's own motion. The court must vary a Schedule 3 judgment debt order by way of changing it to a fixed deductions order if a Schedule 3 judgment debt order lapses (because the debtor has changed employment) and is then re-directed to the debtor's new employer (such a variation to take effect at the time of re-direction). [Paragraph 6](#) of Schedule 3A enables the Lord Chancellor to specify by order a "changeover date" when all existing Schedule 3 judgment debt orders should become fixed deductions orders. [Paragraph 7](#) of Schedule 3A provides that where an AEO is varied pursuant to Part 1 of Schedule 3A, the employer must comply with the varied order (but will not incur liability for non-compliance until 7 days have elapsed since service of the order as varied).
423. [Part 2](#) of Schedule 3A deals with changing the basis of deductions under an AEO from a fixed deductions order to a Schedule 3 judgment debt order. [Paragraph 10](#) provides that such a variation can only be made in accordance with Part 2 of Schedule 3A. [Paragraph 11](#) of Schedule 3A specifies that where a county court directs that an existing fixed deductions order should take effect to secure payments under an administration order in accordance with section 5 of the AEA 1971, the AEO must be varied at the same time to specify that deductions under the AEO should be made in accordance with Schedule 3 to the AEA 1971. This is because, for an AEO made to secure payments under an administration order, the county court should retain the flexibility to specify different levels of deductions, and deductions at fixed rates are insufficiently flexible. [Paragraph 8](#) of the Schedule makes a consequential amendment to section 5 of the AEA 1971 to this effect.
424. [Part 2](#) of the Schedule makes consequential amendments to the AEA 1971 to enable operation of the fixed deductions scheme.
425. [Paragraphs 9 to 15](#) amend section 14 of the AEA 1971, (power of the court to order the debtor and employer to provide specified information), in connection with the operation of fixed deductions orders to specify that unlike the position in connection with Schedule 3 deductions orders, the court will not need to order the debtor and/or the employer to provide particulars of the debtor's earnings and anticipated earnings, and as to his resources and needs (as the court will not need to be made aware of such facts

when it is not setting the level of deductions under the AEO as deductions are to be made in accordance with the fixed deductions scheme). Similarly, paragraph 16 amends section 15 of the AEA 1971 (obligation of debtor and employer to notify changes) to specify that for fixed deductions orders, the debtor and/or the employer are not obliged to notify the court of particulars of earnings or anticipated earnings.

426. [Paragraph 17](#) makes various consequential amendments in connection with the operation of consolidated attachment orders and paragraph 18 specifies that the fixed deductions scheme should apply to a consolidated attachment order where, before the consolidated order is made, one or more of the AEOs to be consolidated is a Schedule 3 judgment debt order.

Section 92: Attachment of earnings orders: finding the debtor's current employer

427. This section inserts sections 15A to 15D into the AEA 1971 to enable HMRC information to be provided to the courts for the purpose of re-directing a lapsed AEO.
428. Section 15A enables the High Court, county courts, magistrates' courts and fines officers, where an AEO has lapsed (where the debtor has changed employment but has failed to notify the court in accordance with his obligations in section 15(a) of the AEA 1971), to request HMRC to provide the name and address of the debtor's current employer for the purpose of re-directing the AEO. However, no request may be made under this section unless regulations governing the use and supply of debtor information are in force, having been made under section 15B(5) and (8). Section 15A enables HMRC to provide information to comply with a request, disapplies any legal restrictions that might otherwise apply in relation to the disclosure and also enables contractors who hold information on behalf of HMRC to disclose information pursuant to such a request.
429. Section 15B creates an offence where information obtained pursuant to section 15A is used or disclosed other than for a purpose connected with enforcement of the relevant AEO. Section 15C enables the Lord Chancellor to make regulations under section 15B, with the agreement of the Commissioners and subject to the affirmative resolution procedure. Section 15D sets out various definitions of terms used in sections 15A to 15C.

Section 93: Payment by instalments: making and enforcing charging orders

430. This section amends the Charging Orders Act 1979 ("the COA 1979") enabling the High Court and county courts to make a charging order in cases where the debtor is not in default under an instalments order made in relation to the sum to be secured by the charging order.
431. Subsection (3) prevents the court from making an order for sale unless the debtor has defaulted in making any payment due under an instalments order. It also enables rules of court to specify limitations upon enforcement of a charging order after there has been default under an instalments order.
432. Subsection (5) provides that any restrictions on enforcement of a charge set out in the inserted subsections 3(4A) to (4E) of the COA 1979 will not apply to any charge put on a bankrupt's home under section 313 of the Insolvency Act 1986.

Section 94: Charging orders: power to set financial thresholds

433. This section inserts a new section 3A into the COA 1979 to provide a power for the Lord Chancellor to specify financial thresholds below which a court cannot make i) a charging order and/or ii) an order for sale. The first of such regulations is to be subject to the affirmative resolution procedure, and any subsequent regulations are to be subject to the negative resolution procedure.

Section 95: Application for information about action to recover judgment debt

434. This section enables a judgment creditor to apply to the High Court or a county court for information about what type of court based action it would be appropriate to take to recover his debt (an information application), such court-based methods being, for example, a warrant of control, a third party debt order or an AEO.

Section 96: Action by the court

435. This section enables the High Court or a county court, where the creditor has made an information application, to either make a departmental information request or an information order, requesting or ordering a person to provide information to the court to assist with the creditor's information application. The debtor will be notified that the court intends to make an information request or order to give him an opportunity to object. However, the court may not make a departmental information request to HMRC unless regulations made under section 102(4) and (7) are in force. They must relate to the use or disclosure of debtor information disclosed by HMRC. Subsection (6) enables the court to disclose information about the debtor to a recipient of an information order or request to enable that recipient to identify the debtor in his records (such information being, for example, the known name and address of the debtor). Subsection (7) disappplies any legal restrictions that might otherwise apply in relation to a disclosure under subsection (6).

Section 97: Departmental information requests

436. This section specifies the information that may be requested by the court from government departments. Subsection (3) specifies information that may be requested from "the designated Secretary of State" (the Secretary of State for Work and Pensions will be designated for this purpose) and subsection (4) specifies the information that may be requested from HMRC. Subsection (5) enables the court to request prescribed information from other government departments. Such government departments will be requested rather than ordered to provide information and non-legislative agreements will set out arrangements for the respective government departments to deal with such requests.

Section 98: Information orders

437. This section enables the court to make information orders requiring prescribed third parties to provide prescribed information about the debtor. It is envisaged that credit reference agencies and banks are likely to be recipients of such information orders.

Section 99: Responding to a departmental information request

438. This section enables a government department in receipt of an information request to disclose information that it considers is necessary to comply with the request and also enables disclosure of information where such information is held by a government contractor. The section disappplies any legal restrictions that might otherwise apply to such a disclosure. Arrangements concerning compliance with such requests will be set out in non-legislative agreements between MoJ and the respective departments.

Section 100: Information order: required information not held etc

439. This section enables a recipient of an information order (the "information discloser") to avoid liability for failure to comply with the order where the information discloser:
- does not hold the relevant information and it is not being held on his behalf;
 - is unable to ascertain whether he holds the information (by way of example, where the information supplied by the court to the recipient of the information order is not

*These notes refer to the Tribunals, Courts and Enforcement Act
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sufficient to enable the recipient of the order to identify information that relates to the debtor in its records); or

- would incur an unreasonable effort or expense if he complied with the order.

440. The information discloser is required to comply with the information order, but may produce a certificate to the relevant court showing that one of the three bullet-points above applies.

Section 101: Using the information about the debtor

441. This section specifies how information obtained via an information order or departmental information request can be used by the court. Such information can be used by the court:

- to enable it to make a further departmental information request or information order in relation to the debtor (by way of example to further disclose information to enable a recipient of an order or request to identify the debtor more easily from records, such as date of birth information);
- to provide the creditor with information about what court based action he could take to seek to recover his judgment debt;
- to enable a court to take any such action that is initiated by the creditor, by way of example, to enable the court to make and enforce an AEO in relation to the debtor, (and to enable information to be disclosed between courts for the purpose of enforcement).

442. Regulations will further restrict how information obtained via an information order or request can be further used or disclosed by the court to ensure protection of the debtor's rights and to prevent the unlawful use of information.

Section 102: Offence of unauthorised use or disclosure

443. This section creates an offence where information obtained pursuant to an information order or request is used or disclosed otherwise than in accordance with the purposes intended.

Section 103: Regulations

444. This section creates a power for the Lord Chancellor to make regulations relating to sections 95 to 102, with a requirement to seek the agreement of HMRC in relation to any regulations governing the use and disclosure of information disclosed by that Department.

Section 104: Interpretation

445. This section defines terms used in sections 95 to 103.

Section 105: Application and transitional provision

446. This section establishes the application of the provisions and sets out the transitional provision.