

SCHEDULES

SCHEDULE 15

Section 91

ATTACHMENT OF EARNINGS ORDERS: DEDUCTIONS AT FIXED RATES

PART 1

MAIN AMENDMENTS

Introduction

- 1 This Schedule amends the Attachment of Earnings Act 1971 (c. 32).

Amendment of section 6: Effect and contents of order

- 2 (1) For section 6(1)(a) (instruction to employer to make deductions from debtor's earnings) substitute—
- “(a) to make periodical deductions from the debtor's earnings, as specified in the order; and”.
- (2) After section 6(1) insert—
- “(1A) If a county court makes an attachment of earnings order to secure payment of a judgment debt, the order must specify that periodical deductions are to be made in accordance with the fixed deductions scheme.
- (1B) If a court (whether a county court or another court) makes any other attachment of earnings order, the order must specify that periodical deductions are to be made in accordance with Part 1 of Schedule 3.”
- (3) In section 6(5) (order to specify normal deduction and protected earnings rates), for “the order” substitute “a Schedule 3 deductions order”.

Insertion of new section 6A

- 3 After section 6 insert—

“6A The fixed deductions scheme

- (1) In this Act “fixed deductions scheme” means any scheme that the Lord Chancellor makes which specifies the rates and frequencies at which deductions are to be made under attachment of earnings orders so as to secure the repayment of judgment debts.
- (2) The Lord Chancellor is to make the fixed deductions scheme by regulations.
- (3) The power to make regulations under subsection (2) is exercisable by statutory instrument.

Status: This is the original version (as it was originally enacted).

- (4) The Lord Chancellor may not make a statutory instrument containing the first regulations under subsection (2) unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (5) A statutory instrument containing any subsequent regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.”

Amendment of section 9: Variation, lapse and discharge of orders

4 After section 9(1) (power of court to vary order) insert—

“(1A) Subsection (1) is subject to Schedule 3A (which deals with the variation of certain attachment of earnings orders by changing the basis of deductions).”

Insertion of new section 9A

5 After section 9 insert—

“9A Suspension of fixed deductions orders

- (1) A county court must make an order suspending a fixed deductions order if the court is satisfied of either or both of the following—
 - (a) that the fixed deductions order requires periodical deductions to be made at a rate which is not appropriate;
 - (b) that the fixed deductions order requires periodical deductions to be made at times which are not appropriate.
- (2) The county court is to make the suspension order on the following terms—
 - (a) if the condition in subsection (1)(a) is met: on terms specifying the rate at which the debtor must make repayments (whether higher or lower than the rate at which the order requires the deductions to be made);
 - (b) if the condition in subsection (1)(b) is met: on terms specifying the times at which the debtor must make repayments;
 - (c) if either or both conditions are met: on any additional terms that the court thinks appropriate.
- (3) If the employer is given notice of the suspension order, the employer must cease to make the deductions required by the fixed deductions order; but the employer is under no liability for non-compliance before seven days have elapsed since service of the notice.
- (4) A county court—
 - (a) must revoke the suspension order if any of the terms of the suspension order are broken;
 - (b) may revoke the suspension order in any other circumstances if the court thinks that it is appropriate to do so.
- (5) Rules of court may make provision as to the circumstances in which a county court may of its own motion—
 - (a) make a suspension order; or
 - (b) revoke a suspension order.

Status: This is the original version (as it was originally enacted).

- (6) The suspension of a fixed deductions order under this section does not prevent the order from being treated as remaining in force subject to the provisions of this section.
- (7) This section is without prejudice to any other powers of a court to suspend attachment of earnings orders or to revoke the suspension of such orders.
- (8) In this section, in relation to a fixed deductions order, “repayments” means repayments of the judgment debt to which the order relates.”

Amendment of section 25: General interpretation

- 6 In section 25(1) (meaning of particular words and phrases) insert the following entries at the appropriate place—

““fixed deductions order” means an attachment of earnings order under which periodical deductions are to be made in accordance with the fixed deductions scheme;”;

““fixed deductions scheme” has the meaning given by section 6A(1);”;

““Schedule 3 deductions order” means an attachment of earnings order under which periodical deductions are to be made in accordance with Part 1 of Schedule 3;”;

““suspension order” means an order under section 9A suspending a fixed deductions order;”.

Insertion of new Schedule 3A

- 7 After Schedule 3 insert—

“SCHEDULE
3A

CHANGING THE BASIS OF DEDUCTIONS

PART 1

CHANGING TO THE FIXED DEDUCTIONS SCHEME

Introduction

- 1 This Part of this Schedule deals with the variation of a certain kind of attachment of earnings order — referred to as a Schedule 3 judgment debt order — by changing the basis of deductions.
- 2 A Schedule 3 judgment debt order is a Schedule 3 deductions order made by a county court to secure payment of a judgment debt.
- 3 References to variation of a Schedule 3 judgment debt order by changing the basis of deductions are references to the variation of the order so that it specifies that periodical deductions are to be made in accordance with the fixed deductions scheme.

Status: This is the original version (as it was originally enacted).

Variation at discretion of court

- 4 (1) A county court may vary a Schedule 3 judgment debt order by changing the basis of deductions.
- (2) The county court may make the variation—
- (a) in consequence of an application made to the court, or
 - (b) of its own motion.
- (3) The variation takes effect on the date that it is made.

Variation by court upon redirection

- 5 (1) A county court must vary a Schedule 3 judgment debt order by changing the basis of deductions if—
- (a) the order lapses, and
 - (b) the county court directs the order to a person in accordance with section 9(4).
- (2) The variation must be made at the same time as the county court directs the order in accordance with section 9(4).
- (3) The variation takes effect on the date that it is made.

Automatic variation on changeover date

- 6 (1) On the changeover date, all Schedule 3 judgment debt orders are to be treated as if a county court had varied them by changing the basis of deductions.
- (2) The variation takes effect on the changeover date.
- (3) The changeover date is the date which the Lord Chancellor specifies for the purposes of this paragraph.
- (4) The Lord Chancellor is to specify the changeover date in an order made by statutory instrument.
- (5) A statutory instrument containing an order under sub-paragraph (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

Notice of variation still required

- 7 Section 9(2) (service by court of notice of variation) applies to the variation of an order under this Part of this Schedule (including variation in accordance with paragraph 6) as it applies to any other variation of an attachment of earnings order.

Status: This is the original version (as it was originally enacted).

PART 2

CHANGING FROM THE FIXED DEDUCTIONS SCHEME

Introduction

- 8 This Part of this Schedule deals with the variation of fixed deductions orders by changing the basis of deductions.
- 9 References to variation of a fixed deductions order by changing the basis of deductions are references to the variation of the order so that it specifies that periodical deductions are to be made in accordance with Part 1 of Schedule 3.

General prohibition on changing from the fixed deductions basis

- 10 A court may not vary a fixed deductions order by changing the basis of deductions unless the variation is in accordance with this Part of this Schedule.

Fixed deductions order directed to secure payments under an administration order

- 11 (1) A county court must vary a fixed deductions order by changing the basis of deductions if, under section 5, the county court directs the order to take effect as an order to secure payments required by an administration order.
- (2) The variation must be made at the same time as the county court gives that direction under section 5.
- (3) The variation takes effect on the date that it is made.
- (4) Section 9(2) (service by court of notice of variation) applies to the variation of an order under this paragraph as it applies to any other variation of an attachment of earnings order.”

PART 2

CONSEQUENTIAL AMENDMENTS

Amendment of section 5: Securing payments under administration order

- 8 In section 5(3) (power of county court to direct existing attachment of earnings order to secure administration order), for the words in brackets substitute “(with the variation required by paragraph 11 of Schedule 3A and such other variations, if any, as the court thinks appropriate)”.

Status: This is the original version (as it was originally enacted).

Amendment of section 14: Power of court to obtain information

- 9 In section 14(1) (power of court to order debtor and employer to provide specified information), for “an attachment of earnings order” substitute “a Schedule 3 deductions order”.
- 10 After section 14(1) insert—
- “(1A) Where in any proceedings a county court has power to make a fixed deductions order, the court may order the debtor to give to the court, within a specified period, a statement signed by him of—
- (a) the name and address of any person by whom earnings are paid to him; and
- (b) specified particulars for enabling the debtor to be identified by any employer of his.”
- 11 In section 14(2) (powers of court after attachment of earnings order has been made), for the words from “Where” to “in force—” substitute “At any time when a Schedule 3 deductions order is in force, the court or the fines officer, as the case may be, may—”.
- 12 After section 14(2) insert—
- “(2A) At any time when a fixed deductions order is in force, the court may—
- (a) make such an order as is described in subsection (1A) above; and
- (b) order the debtor to attend before it on a day and at a time specified in the order to give the information described in subsection (1A) above.”
- 13 In section 14(4) (rules of court about notice of application for attachment or earnings order), for the words from “give” to “the application.” substitute “, within such period and in such manner as may be prescribed, give the court a statement in accordance with subsection (4A) or (4B).”
- 14 After section 14(4) insert—
- “(4A) In a case where the attachment of earnings order would, if made, be a Schedule 3 deductions order, the debtor must give a statement in writing of—
- (a) the matters specified in subsection (1)(a) above, and
- (b) any other prescribed matters which are, or may be, relevant under section 6 of this Act to the determination of the normal deduction rate and the protected earnings rate to be specified in any attachment of earnings order made on the application.
- (4B) In a case where the attachment of earnings order would, if made, be a fixed deductions order, the debtor must give a statement in writing of the matters specified in subsection (1A) above.”
- 15 In section 14(5) (certain statements in proceedings for making or varying etc attachment of earnings orders deemed to be evidence of facts stated), after “subsection (1)(a) or (b)” insert “or (1A)”.

Amendment of section 15: Obligation of debtor and employer to notify changes

- 16 (1) Section 15(1) is amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In paragraph (b) (obligation to notify of court of earnings under new employment) at the beginning insert “if the order is a Schedule 3 deductions order,”.
- (3) In paragraph (c) (obligation of employer to notify court of debtor’s new employment and earnings) for “and include” insert “and, if the order is a Schedule 3 deductions order, include”.

Amendment of section 17: Consolidated attachment orders

- 17 (1) Section 17(3) (rules of court made in connection with consolidated attachment orders) is amended as follows.
 - (2) In paragraph (b) (rules relating to powers of court to which order etc transferred), after “vary” insert “, suspend”.
 - (3) In paragraph (e) (rules modifying or excluding statutory provisions), after “provisions of this Act” insert “, the fixed deductions scheme”.
- 18 After section 17(3) insert—
 - “(4) Section 6(1A) applies to a consolidated attachment order which a county court makes to secure the payment of two or more judgment debts even if, immediately before the order is made, one or more of those debts is secured by a Schedule 3 deductions order.”

Amendment of section 23: Enforcement provisions

- 19 Section 23 is amended as follows.
- 20 In subsection (1) (failure of debtor to attend hearing)—
 - (a) for the words from “notice of an application” to “such an order” substitute “relevant notice,”;
 - (b) for “for any hearing of the application” substitute “in the notice for any hearing,”.
- 21 After subsection (1) insert—

“(1ZA) In subsection (1) “relevant notice” means any of the following—

 - (a) notice of an application to a county court to make, vary or suspend an attachment of earnings order;
 - (b) notice that a county court is, of its own motion, to consider making, varying or suspending an attachment of earnings order.”
- 22 In subsection (2)(c) and (f) (offences related to attachment of earnings orders)—
 - (a) after “section 14(1)” insert “or (1A)”.
 - (b) after “attachment of earnings order” insert “or suspension order”.