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STATUTORY INSTRUMENTS

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**1989 No. 438**

**The Community Charges (Administration  
and Enforcement) Regulations 1989**

**PART IV  
ENFORCEMENT**

**Interpretation and application of Part IV**

**27.**—(1) In this Part—

“attachment of earnings order” means an order under regulation 32;

“charging order” means an order under regulation 44;

“debtor” means a person against whom a liability order has been made;

“earnings” has the meaning given in section 24 of the Attachment of Earnings Act 1971(1), and sections 6(2) and 25(4) of that Act shall apply for the purposes of this Part accordingly;

“liability order” means an order under regulation 29; and

“net earnings” in relation to an employment means the residue of earnings payable under the employment after deduction by the employer of—

(a) income tax; and

(b) primary class 1 contributions under Part I of the Social Security Act 1975(2).

(2) Regulations 28 to 47 apply for the recovery of a sum which has become payable to a charging authority under Part III and which has not been paid; but their application in relation to a sum for which persons are jointly and severally liable under that Part is subject to the provisions of regulation 48 (joint and several liability).

(3) References in this Part to a sum which has become payable and which 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.

**Liability orders: preliminary steps**

**28.**—(1) Subject to paragraph (3), before a charging authority applies for a liability order it shall serve on the person against whom the application is to be made a notice (“reminder notice”), which is to be in addition to any notice required to be served under Part III, and which is to state every amount in respect of which the authority is to make the application.

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(1) 1971 c. 32; section 24 was amended by the Social Security Pensions Act 1975 (c. 60), Schedule 4, paragraph 15, the Merchant Shipping Act 1979 (c. 39), section 39(1) the Social Security Act 1985 (c. 53), Schedule 4, paragraph 1, and the Social Security Act 1986 (c. 50), Schedule 10, paragraph 102.

(2) 1975 c. 14; see sections 1(2) and 4. Relevant amendments were made by the Social Security Pensions Act 1975 (c. 60), Schedule 4, paragraph 36 and Schedule 5, the Education (School-leaving Dates) Act 1976 (c. 5), section 2(4), the Social Security Act 1979 (c. 18), section 14(1) and Schedule 3, paragraph 4, the Social Security and Housing Benefits Act 1982 (c. 24), Schedule 5, the Social Security Act 1985 (c. 53), sections 7(1) and (2) and 8(1), the Social Security Act 1986 (c. 50), section 74 and Schedule 10, paragraph 104, and S.I. 1988/675.

(2) A reminder notice may be served in respect of an amount at any time after it has become due.

(3) A reminder notice need not be served on a person who has been served under regulation 20(1) or 21(4) with a notice in respect of the amount concerned; and in determining whether a person has been served for this purpose regulation 22(6) shall not have the effect of deeming him to have been served in a case where he has not in fact been so.

### **Application for liability order**

**29.**—(1) If an amount which has fallen due under regulation 20(2) or 21(1) and (4) is wholly or partly unpaid, or (in a case where a reminder notice is required under regulation 28) the amount stated in the reminder notice is wholly or partly unpaid at the expiry of the period of 7 days beginning with the day on which the notice was served, the charging authority may, in accordance with paragraph (2), apply to a magistrates' court for an order against the person by whom it is payable.

(2) The application is to be instituted by making complaint to a justice of the peace, and requesting the issue of a summons directed to that person to appear before the court to show why he has not paid the sum which is outstanding.

(3) Section 127(1) of the Magistrates' Courts Act 1980(3) does not apply to such an application; but no application may be instituted in respect of a sum after the period of two years beginning with the day on which it became due under Part III.

(4) A warrant shall not be issued under section 55(2) of the Magistrates' Courts Act 1980 in any proceedings under this regulation.

(5) The court shall make the order if it is satisfied that the sum has become payable by the defendant and has not been paid.

(6) The order shall be made in respect of an amount equal to the aggregate of—

- (a) the sum payable, and
- (b) a sum of an amount equal to the costs reasonably incurred by the applicant in obtaining the order.

### **Liability orders: further provision**

**30.**—(1) A single liability order may deal with one person and one such amount as is mentioned in regulation 29(6) (in which case the order shall be in the form specified as form A in Schedule 3, or a form to the like effect), or, if the court thinks fit, may deal with more than one person and more than one such amount (in which case the order shall be in the form specified as form B in that Schedule, or a form to the like effect).

(2) A summons issued under regulation 29(2) may be served on a person—

- (a) by delivering it to him,
- (b) by leaving it at his usual or last known place of abode, or in the case of a company, at its registered office, or
- (c) by sending it by post to him at his usual or last known place of abode, or in the case of a company, to its registered office.

(3) The amount in respect of which a liability order is made is enforceable in accordance with this Part; and accordingly for the purposes of any of the provisions of Part III of the Magistrates' Courts Act 1980 (satisfaction and enforcement) it is not to be treated as a sum adjudged to be paid by order of the court.

### **Duties of debtors subject to liability order**

**31.**—(1) Where a liability order has been made, the debtor against whom it was made 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 charging authority on whose application it was made.

(2) For the purposes of paragraph (1), relevant information is such information as fulfils the following conditions—

- (a) it is in the debtor’s possession or control,
- (b) the charging authority requests him by notice given in writing to supply it; and
- (c) it falls within paragraph (3).

(3) Information falls within this paragraph if it is specified in the notice mentioned in paragraph (2)(b) and it falls within one or more of the following descriptions—

- (a) information as to the name and address of an employer of the debtor;
- (b) information as to earnings or expected earnings of the debtor;
- (c) information as to deductions or expected deductions from such earnings in respect of income tax, primary class 1 contributions under Part I of the Social Security Act 1975 or attachment of earnings orders made under this Part or under the Attachment of Earnings Act 1971;
- (d) information as to the debtor’s work or identity number in an employment, or such other information as will enable an employer of the debtor to identify him; or
- (e) information as to sources of income of the debtor other than an employer of his.

(4) Information is to be supplied within 14 days of the day on which the request is made.

### **Making of attachment of earnings order**

**32.**—(1) Where a liability order has been made and the debtor against whom it was made is an individual, the authority which applied for the order may make an order under this regulation 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.

(2) Such an order—

- (a) 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 so deducted to the authority;
- (b) shall specify the sum to which the order relates, the rate at which the debtor’s earnings are to be applied to meet the sum by way of deductions from his net earnings in accordance with regulation 33, and the period within which an amount deducted is to be paid to the authority; and
- (c) shall remain in force until discharged under regulation 36(2) or the whole amount to which it relates has been paid (whether by attachment of earnings or otherwise).

(3) 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 a person on whom it is so served who has the debtor in his employment shall comply with it.

### **Deductions under attachment of earnings order**

**33.**—(1) The sum to be deducted by an employer under an attachment of earnings order on any pay day shall be—

- (a) where the debtor's earnings from the employer are payable weekly, the sum specified in column 2 of Table A in Schedule 4 opposite the band in column 1 of that Table within which the net earnings payable by the employer on the pay-day fall;
  - (b) where his earnings from the employer are payable monthly, the sum specified in column 2 of Table B in that Schedule opposite the band in column 1 of that Table within which the net earnings payable by the employer on the pay-day fall;
  - (c) where his earnings from the employer are payable at regular intervals of a whole number of weeks or months, the sum arrived at by—
    - (i) calculating what would be his weekly or monthly net earnings by dividing the net earnings payable to him by the employer on the pay-day by that whole number (of weeks or months, as the case may be),
    - (ii) ascertaining the sum specified in column 2 of Table A (if the whole number is of weeks) or of Table B (if the whole number is of months) in Schedule 4 opposite the band in column 1 of that Table within which the notional net earnings calculated under paragraph (i) fall, and
    - (iii) multiplying that sum by the whole number (of weeks or months, as the case may be).
- (2) Where the debtor's earnings from the employer are payable at regular intervals other than at intervals to which paragraph (1) applies, the sum to be deducted on any pay-day shall be arrived at by—
- (a) calculating what would be his daily net earnings by dividing the net earnings payable to him by the employer on the pay-day by the number of days in the interval,
  - (b) ascertaining the sum specified in column 2 of Table C in Schedule 4 opposite the band in column 1 of that Table within which the notional net earnings calculated under sub-paragraph (a) fall, and
  - (c) multiplying that sum by the number of days in the interval.
- (3) Where earnings are payable to a debtor by the employer by 2 or more series of payments at regular intervals—
- (a) if some or all of the intervals are of different lengths—
    - (i) for the purpose of arriving at the sum to be deducted, whichever of paragraphs (1) and (2) is appropriate shall apply to the series with the shortest interval (or, if there is more than one series with the shortest interval, such one of those series as the employer may choose), and
    - (ii) in relation to the earnings payable in every other series, the sum to be deducted shall be 20 per cent. of the net earnings;
  - (b) if all of the intervals are of the same length, whichever of paragraphs (1) or (2) is appropriate shall apply to such series as the employer may choose and sub-paragraph (a) (ii) shall apply to every other series.
- (4) Subject to paragraphs (5) and (6), where the debtor's earnings from the employer are payable at irregular intervals, the sums to be deducted on any pay-day shall be arrived at by—
- (a) calculating what would be his daily net earnings by dividing the net earnings payable to him by the employer on the pay-day—
    - (i) by the number of days since earnings were last payable by it to him, or
    - (ii) if the earnings are the first earnings to be payable by it to him with respect to the employment in question, by the number of days since he began the employment;

- (b) taking the sum specified in column 2 of Table C of Schedule 4 opposite the band in column 1 of that Table within which the notional net earnings calculated under sub-paragraph (a) fall; and
- (c) multiplying that sum by the number of days mentioned in sub-paragraph (a).

(5) Where on the same pay-day there are payable to the debtor by the employer both earnings payable at regular intervals and earnings which are payable at irregular intervals, for the purpose of arriving at the sum to be deducted on the pay-day under the foregoing provisions of this regulation all the earnings shall be aggregated and treated as earnings payable at the regular interval.

(6) Where there are earnings payable to the debtor by the employer at regular intervals on one pay-day, and earnings are payable by the employer to him at irregular intervals on a different pay-day, the sum to be deducted on each of the pay-days on which the earnings which are payable at irregular intervals are so payable shall be 20 per cent. of the net earnings payable to him on the day.

#### **Attachment of earnings orders: ancillary powers and duties of employers and others served**

**34.**—(1) An employer who deducts and pays amounts under an attachment of earnings order may, on each occasion that he makes such a deduction, also deduct from the debtor's earnings the sum of one pound towards his administrative costs.

(2) An employer who deducts and pays amounts under an attachment of earnings order shall, in accordance with paragraph (3), notify the debtor in writing of the total amount of the sums so deducted under it (including sums deducted under paragraph (1)) up to the time of the notification.

(3) A notification under paragraph (2) must be given at the time that the pay statement given by the employer to the debtor next after a deduction has been made is so given, or if no such statements are usually issued by the employer, as soon as practicable after a deduction has been made.

(4) A person on whom a copy of an attachment of earnings order has been served shall, in accordance with paragraph (5), notify in writing the authority which made the order if he does not have the debtor against whom it was made in his employment or the debtor subsequently ceases to be in his employment.

(5) A notification under paragraph (4) must be given within 14 days of the day on which the copy of the order was served on him or the debtor ceased to be in his employment (as the case may be).

(6) While an attachment of earnings order is in force, 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 that authority in writing that he is the debtor's employer.

(7) A notification under paragraph (6) must be given within 14 days of the day on which the debtor became the person's employee or of the day on which the person first knew that the order is in force and the identity of the authority by which it was made, whichever is the later.

#### **Attachment of earnings orders: duties of debtor**

**35.**—(1) While an attachment of earnings order is in force, the debtor in respect of whom the order has been made shall from time to time notify in writing the authority which made it of each occasion when he leaves an employment or becomes employed or re-employed, and (in a case where he becomes so employed or re-employed) shall include in the notification a statement of—

- (a) his earnings and (so far as he is able) expected earnings from the employment concerned,
- (b) the deductions and (so far as he is able) expected deductions from such earnings in respect of income tax and primary class 1 contributions under Part I of the Social Security Act 1975,
- (c) the name and address of the employer, and
- (d) his work or identity number in the employment (if any).

(2) A notification under paragraph (1) must be given within 14 days of the day on which the debtor leaves or commences (or recommences) the employment (as the case may be), or (if later) the day on which he is informed by the authority that the order has been made.

#### **Attachment of earnings orders: ancillary powers and duties of authority**

**36.**—(1) Where the whole amount to which an attachment of earnings order relates has been paid (whether by attachment of earnings or otherwise), the authority by which it was made 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.

(2) The authority by which an attachment of earnings order was made may, on its own account or on the application of the debtor or an employer of the debtor, make an order discharging the attachment of earnings order; and if it does so it 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.

(3) If an authority serves a copy of an attachment of earnings order in accordance with regulation 32(3), it shall (unless it has previously done so) also serve a copy of the order on the debtor.

#### **Priority between attachment of earnings orders**

**37.**—(1) Where an employer would, but for this paragraph, be obliged under regulation 32(3) to make deductions on any pay-day under two or more attachment of earnings orders made under this Part, he shall make deductions only with respect to the one which was made first until it ceases to be in force, and shall then deal with the other order or orders in like manner in the order in which they were made.

(2) Where an employer is or would, but for this paragraph, be obliged to comply at any time with an attachment of earnings order made under this Part and an order made under the Attachment of Earnings Act 1971 (“the 1971 Act”)—

- (a) if the order made under the 1971 Act was made first, whilst it is in force he shall comply only with the order made under the 1971 Act, or
- (b) if the attachment of earnings order made under this Part was made first, whilst it is in force the attachable earnings for the purposes of Schedule 3 to the 1971 Act are to be treated as such of the attachable earnings mentioned in paragraph 3 of that Schedule<sup>(4)</sup> as remain after deduction of the amount to be deducted under the order made under this Part.

#### **Attachment of earnings orders: persons employed under the Crown**

**38.**—(1) Where a debtor is in the employment of the Crown and an attachment of earnings order is made in respect of him, for the purposes of this Part—

- (a) the chief officer for the time being of the department, office or other body in which the debtor is employed shall be treated as having the debtor in his employment (any transfer of the debtor from one department, office or body to another being treated as a change of employment); and
- (b) any earnings paid by the Crown or a Minister of the Crown, or out of the public revenue of the United Kingdom, shall be treated as paid by that chief officer.

(2) If any question arises as to what department, office or other body is concerned for the purposes of this regulation, or as to who for those purposes is its chief officer, the question shall be referred to and determined by the Minister for the Civil Service.

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(4) Paragraph 3 of Schedule 3 was amended by the Social Security (Consequential Provisions) Act 1975 (c. 18), Schedule 2, paragraph 43, the Social Security Pensions Act 1975 (c. 60), Schedule 5 and the Wages Act 1986 (c. 48), Schedule 4, paragraph 4.

(3) A document purporting to set out a determination of the Minister under paragraph (2) and to be signed by an official of the Office of that Minister shall, in any proceedings arising in relation to an attachment of earnings order, be admissible in evidence and be deemed to contain an accurate statement of such a determination unless the contrary is shown.

(4) This Part shall have effect in relation to attachment of earnings orders notwithstanding any enactment passed before 29th May 1970 and preventing or avoiding the attachment or diversion of sums due to a person in respect of services under the Crown, whether by way of remuneration, pension or otherwise.

## **Distress**

**39.**—(1) Where a liability order has been made, the authority which applied for the order may levy the appropriate amount by distress and sale of the goods of the debtor against whom the order was made.

(2) The appropriate amount for the purposes of paragraph (1) 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 determined in accordance with Schedule 5 in respect of charges connected with the distress.

(3) If, before any goods are seized, the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority shall accept the amount and the levy shall not be proceeded with.

(4) Where an authority has seized goods of the debtor in pursuance of the distress, but before sale of those goods the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority shall accept the amount, the sale shall not be proceeded with and the goods shall be made available for collection by the debtor.

(5) The person levying distress on behalf of an authority shall carry with him the written authorisation of the authority, which he shall show to the debtor if so requested; and he shall hand to the debtor or leave at the premises where the distress is levied a copy of this regulation and Schedule 5 and a memorandum setting out the appropriate amount, and shall hand to the debtor a copy of any close or walking possession agreement entered into.

(6) A distress may be made anywhere in England and Wales.

(7) 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; and 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 subsequent irregularity may recover full satisfaction for the special damage (and no more) by proceedings in trespass or otherwise.

(8) The provisions of this regulation shall not affect the operation of any enactment which protects goods of any class from distress.

(9) Nothing in the Distress (Costs) Act 1817<sup>(5)</sup>, as extended by the Distress (Costs) Act 1827<sup>(6)</sup>, (which makes provision as to the costs and expenses of the levying of certain distresses) shall apply to a distress under this regulation.

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(5) 1817 c. 93.

(6) 1827 c. 17.

### **Appeals in connection with distress**

**40.**—(1) A person aggrieved by the levy of, or an attempt to levy, a distress may appeal to a magistrates' court.

(2) The appeal shall be instituted by making complaint to a justice of the peace, and requesting the issue of a summons directed to the authority which levied or attempted to levy the distress to appear before the court to answer to the matter by which he is aggrieved.

(3) If the court is satisfied that a levy was irregular, it may order the goods distrained to be discharged if they are in the possession of the authority; and it may by order award compensation in respect of any goods distrained and sold of an amount equal to the amount which, in the opinion of the court, would be awarded by way of special damages in respect of the goods if proceedings were brought in trespass or otherwise in connection with the irregularity under regulation 39(7).

(4) If the court is satisfied that an attempted levy was irregular, it may by order require the authority to desist from levying in the manner giving rise to the irregularity.

### **Commitment to prison**

**41.**—(1) Where a charging authority has sought to levy an amount by distress under regulation 39, the debtor is an individual, and it appears to the authority that no (or insufficient) goods of the debtor can be found 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.

(2) 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 led to the liability order concerned being made against him was due to his wilful refusal or culpable neglect.

(3) If (and only if) the court is of the opinion that his failure was due to his wilful refusal or culpable neglect it may if it thinks fit—

- (a) issue a warrant of commitment against the debtor, or
- (b) 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.

(4) The warrant shall be made in respect of the relevant amount; and the relevant amount for this purpose is the aggregate of—

- (a) the appropriate amount mentioned in regulation 39(2), or (as the case may be) so much of it as remains outstanding, and
- (b) a sum of an amount equal to the costs reasonably incurred by the applicant in respect of the application.

(5) The warrant—

- (a) shall state the relevant amount mentioned in paragraph (4),
- (b) may be directed to the authority making the application and to such other persons (if any) as the court issuing it thinks fit, and
- (c) may be executed anywhere in England and Wales by any person to whom it is directed.

(6) If—

- (a) before the issue of a warrant the appropriate amount mentioned in regulation 39(2) (or so much of it as remains outstanding) is paid or tendered to the authority, or
- (b) after the issue of the warrant, the amount stated in it is paid or tendered to the authority,

the authority shall accept the amount concerned, no further steps shall be taken as regards its recovery, and the debtor if committed to prison shall be released.



(7) The order in the warrant shall be that the debtor be imprisoned for a time specified in the warrant which shall not exceed 3 months, unless the amount stated in the warrant is sooner paid; but—

- (a) where a warrant is issued after a postponement under paragraph (3)(b) and, since the term of imprisonment was fixed but before the issue of the warrant, the amount mentioned in paragraph (4)(a) with respect to which the warrant would (but for the postponement) have been made has been reduced by a part payment, the period of imprisonment ordered under the warrant shall be the term fixed under paragraph (3) reduced by such number of days as bears to the total number of days in that term less one day the same proportion as the part paid bears to that amount, and
- (b) where, after the issue of a warrant, a part payment of the amount stated in it is made, the period of imprisonment shall be reduced by such number of days as bears to the total number of days in the term of imprisonment specified in the warrant less one day the same proportion as the part paid bears to the amount so stated.

(8) In calculating a reduction required under paragraph (7) any fraction of a day shall be left out of account; and rule 55(1), (2) and (3) of the Magistrates' Courts Rules 1981(7) applies (so far as is relevant) to a part payment as if the imprisonment concerned were imposed for want of sufficient distress to satisfy a sum adjudged to be paid by a magistrates' court.

#### **Commitment to prison: further provision**

**42.—**(1) A single warrant may not be issued under regulation 41 against more than one person, and shall be in the form specified as form C in Schedule 3, or in a form to the like effect.

(2) Where an application under regulation 41 has been made, and after the making of the inquiries mentioned in paragraph (2) of that regulation no warrant is issued or term of imprisonment fixed, the court may remit all or part of the appropriate amount mentioned in regulation 39(2) with respect to which the application related.

(3) Where an application under regulation 41 has been made but no warrant is issued or term of imprisonment fixed, the application may be renewed (except so far as regards any sum remitted under paragraph (2)) on the ground that the circumstances of the debtor have changed.

(4) 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 in any proceedings under regulation 41 be evidence of the facts there stated.

(5) For the purpose of enabling enquiry to be made as to the debtor's conduct and means under regulation 41, a justice of the peace may—

- (a) issue a summons to him to appear before a magistrates' court and (if he does not obey the summons) issue a warrant for his arrest, or
- (b) issue a warrant for the debtor's arrest without issuing a summons.

(6) A warrant issued under paragraph (5) may be executed anywhere in England and Wales by any person to whom it is directed or by any constable acting within his police area; and section 125(3) of the Magistrates' Courts Act 1980 applies to such a warrant.

(7) Regulation 41 and this regulation have effect subject to Part I of the Criminal Justice Act 1982(8) (treatment of young offenders).

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(7) S.I. 1981/552.

(8) 1982 c. 48.

## **Insolvency**

**43.**—(1) Where a liability order has been made and the debtor against whom it was made is an individual, the amount due shall be deemed to be a debt for the purposes of section 267 of the Insolvency Act 1986(9) (grounds of creditor's petition).

(2) Where a liability order has been made and the debtor against whom it was made is a company, the amount due shall be deemed to be a debt for the purposes of section 122(1)(f) of that Act (winding up of companies by the court).

(3) The amount due for the purposes of this regulation 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**

**44.**—(1) An application to the appropriate court may be made under this regulation where—

- (a) a magistrates' court has made a liability order,
- (b) the amount mentioned in regulation 29(6)(a) in respect of which the liability order was made is an amount the debtor is liable to pay under Part III in relation to a collective community charge, and
- (c) at the time that the application under this regulation is made at least £1000 of the amount in respect of which the liability order was made remains outstanding.

(2) The application which may be made to the appropriate court under this regulation is an application by the authority concerned for an order imposing, on any interest held by the debtor beneficially in the relevant designated dwelling, a charge for securing the due amount; and the court may make such an order on such application.

(3) For the purposes of paragraph (2)—

- (a) the authority concerned is the authority which applied for the liability order referred to in paragraph (1)(a),
- (b) the relevant designated dwelling is the designated dwelling to which the community charge mentioned in paragraph (1)(b) relates,
- (c) the due amount is the aggregate of—
  - (i) 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
  - (ii) a sum of an amount equal to the costs reasonably incurred by the applicant in obtaining the charging order,
- (d) the appropriate court is the county court for the area in which the relevant designated dwelling is situated.

## **Charging orders: further provision**

**45.**—(1) In deciding whether to make a charging order, the court shall consider all the circumstances of the case, and in particular any evidence before it as to—

- (a) the personal circumstances of the debtor, and
- (b) whether any other person would be likely to be unduly prejudiced by the making of the order.

(2) A charging order—

- (a) shall specify the designated dwelling concerned and the interest held by the debtor beneficially in it, and
  - (b) may, as the court thinks fit, be made absolutely or subject to conditions as to the time when the charge is to become enforceable or as to other matters.
- (3) 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.
- (4) The court by which a charging order was made may at any time, on the application of the debtor, the authority on whose application the order was made or any person interested in the designated dwelling, make an order discharging or varying the charging order.
- (5) The Land Charges Act 1972(10) and Land Registration Act 1925(11) shall apply in relation to charging orders as they apply in relation to orders or writs issued or made for the purposes of enforcing judgments; and in section 49(1)(g) of the Land Registration Act 1925, after the words “Criminal Justice Act 1988” there are inserted the words “, or regulations under paragraph 11 of Schedule 4 to the Local Government Finance Act 1988”.
- (6) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under paragraph (4) discharging the charging order may direct that the entry be cancelled.

### **Relationship between remedies**

**46.**—(1) Where a warrant of commitment is issued against (or a term of imprisonment is fixed in the case of) a person under regulation 41(3), no steps, or no further steps, may be taken under this Part by way of attachment of earnings, distress, bankruptcy or charging of a designated dwelling in relation to the relevant amount mentioned in regulation 41(4).

(2) Steps under this Part by way of attachment of earnings, distress, commitment, bankruptcy, winding up or charging of a designated dwelling may not be taken while steps by way of another of those methods are being taken.

(3) Subject to paragraphs (1) and (2)—

- (a) attachment of earnings or distress may be resorted to more than once, and
- (b) attachment of earnings or distress may be resorted to in any order or alternately (or both).

(4) Where a step is taken for the recovery of an outstanding sum which is or forms part of an amount in respect of which a liability order has been made and under which additional costs or charges with respect to the step are also recoverable in accordance with this Part, any sum recovered thereby which is less than the aggregate of the amount outstanding and such additional costs and charges shall be treated as discharging first the costs and charges, the balance (if any) being applied towards the discharge of the outstanding sum.

### **Magistrates' courts**

**47.**—(1) Justices of the peace for a commission area within which is situated the area of a charging authority shall have jurisdiction to act under the provisions of this Part as respects that authority.

(2) Subject to any other enactment authorising a stipendiary magistrate or other person to act by himself, a magistrates' court shall not under this Part hear a summons, entertain an application

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(10) 1972 c. 61; section 6 of the Act was amended by the Supreme Court Act 1981 (c. 54), Schedule 5, and the County Courts Act 1984 (c. 28), Schedule 2, paragraph 18.

(11) 1925 c. 21; section 49(1)(g) was inserted by the Charging Orders Act 1979 (c. 53), section 3(3), and amended by the Drug Trafficking Offences Act 1986 (c. 32), section 39(2) and the Criminal Justice Act 1988 (c. 33), Schedule 15, paragraph 6.

for a warrant or hold an inquiry as to means on such an application except when composed of at least two justices.

(3) References to a justice of the peace in regulations 29(2) and 40(2) shall be construed subject to rule 3 of the Justices' Clerks Rules 1970(12) (which authorises certain matters authorised to be done by a justice of the peace to be done by a justices' clerk).

### **Joint and several liability**

**48.**—(1) This regulation has effect with respect to the application of regulations 28 to 47 to a sum for which persons are jointly and severally liable under Part III.

(2) A reminder notice shall be served in accordance with regulation 28(1) and (2) on every person against whom the application for a liability order is to be made except a chargeable person who has been served under regulation 20(1) or 21(4) with a notice in respect of the amount concerned; and in determining whether a person has been served for this purpose, regulation 22(6) shall not have the effect of deeming him to have been served in a case where he has not in fact been so.

(3) A liability order may be made against the chargeable person alone, or against that person and the spouse or manager (as the case may be), but may not be made against the spouse or manager alone.

(4) Where a liability order has been made against both the chargeable person and the spouse or manager, subject to paragraph (9)—

- (a) an attachment of earnings order may be made against one of them, or different such orders may be made against each;
- (b) distress may be made against one of them or against each; and
- (c) a charging order may be made against one of them or different such orders may be made against each.

(5) Where distress has been made against both the chargeable person and the spouse or manager, a warrant of commitment may be applied for against one of them or different warrants may be applied for against each.

(6) Where distress has been made against the chargeable person only, a warrant of commitment may be applied for against that person.

(7) Where a liability order has been made against a chargeable person and a spouse or manager, a warrant of commitment may not be applied for against the spouse or manager unless distress has been made against the chargeable person (as well as against the spouse or manager) and it appears to the authority concerned that no (or insufficient) goods of those persons can be found.

(8) Where a liability order has been made against a chargeable person and a spouse or manager, and a warrant for commitment is issued against (or a term of imprisonment is fixed in the case of) one of them under regulation 41(3), no steps, or further steps, may be taken under this Part against that one by way of attachment of earnings, distress or charging of a designated dwelling in relation to the amount mentioned in regulation 41(4).

(9) Where a liability order has been made against a chargeable person and a spouse or manager—

- (a) steps by way of attachment of earnings, distress, commitment, bankruptcy, winding up or charging of a designated dwelling may not be taken against a person while steps by way of another of those methods are being taken against him, and
- (b) subject to paragraph (10), steps by way of attachment of earnings, distress, or charging of a designated dwelling may not be taken against a person while steps by way of the same method or another of those methods are being taken against the other.

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(12) [S.I. 1970/231](#), to which there are amendments not relevant to these Regulations.

(10) Where a liability order has been made in respect of an amount against a chargeable person and a spouse of his and in making distress against one of them goods jointly owned by both are found, paragraph (9)(b) does not preclude distress being levied against those goods with respect to that amount; but in any subsequent proceedings under regulation 41 (commitment), charges arising under Schedule 5 from such distress shall be treated as charges relating to the person against whose goods the levy was intended to be made when the jointly owned goods were found, and not as charges relating to the other.

(11) Where a liability order has been made against a chargeable person and a spouse or manager in respect of an amount, paragraph 2(2) of Schedule 5 shall have effect so that if a charge has arisen against one of them under head B of the Table to paragraph 1 of the Schedule as regards a levy in respect of it, no further charge may be aggregated for the purposes of regulation 39(2) under heads A or B in consequence of any subsequent levy or attempted levy against either in respect of the amount; and if a charge has arisen under head A against one of them, it shall be treated as a charge under that head with respect to the other as well as that one for the purposes of the calculation of any subsequent charge under heads A or B against either.

(12) Where a liability order is made against a chargeable person in respect of an amount, and also against a spouse or manager of his (whether at the same time as the order against the chargeable person or subsequently and whether in respect of all or part of that amount), the order made as respects the spouse or manager shall not include under regulation 29(6)(b) any additional sum in respect of the costs of obtaining the order against the spouse or manager, but the spouse or manager shall be treated as jointly and severally liable for the amount included in the order against the chargeable person in respect of costs, and the order against the spouse or manager shall (as regards regulation 29(6)(b)) be made in respect of the sum outstanding in relation to it.

(13) In this regulation “chargeable person”, “spouse” and “manager” shall be construed in accordance with regulation 22.

### **Collective community charge contributions**

**49.** A sum which has become payable to a chargeable person under regulation 18(3) but which has not been paid shall be recoverable in a court of competent jurisdiction.

### **Repayments**

**50.** A sum which has become payable (by way of repayment) under Part III to a person other than a charging authority but which has not been paid shall be recoverable in a court of competent jurisdiction.

### **Offences**

**51.—(1)** A person shall be guilty of an offence if, following a request under paragraph (2)(b) of regulation 31, he is under a duty to supply information and—

- (a) he fails without reasonable excuse to supply the information in accordance with that regulation, or
- (b) in supplying information in purported compliance with that regulation he makes a statement which is false in a material particular.

(2) Subject to paragraph (3), a person shall be guilty of an offence if, following the service of an attachment of earnings order on him under regulation 32(3), he is under a duty to comply with the order by virtue of that provision and he fails to do so.

(3) It shall be a defence for a person charged with an offence under paragraph (2) to prove that he took all reasonable steps to comply with the order.

(4) A person shall be guilty of an offence if he is under a duty to notify another person under regulation 34(2) and (3), 34(4) and (5), 34(6) and (7) or 35 and—

- (a) he fails without reasonable excuse to notify the other person in accordance with the provision concerned, or
- (b) in notifying the other person in purported compliance with the provision concerned 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.

(5) A person guilty of an offence under paragraph (1)(a) or (4)(a) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) A person guilty of an offence under paragraph (1)(b), (2) or (4)(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Miscellaneous provisions**

**52.**—(1) Any matter which could be the subject of an appeal under section 23 of the Act may not be raised in proceedings under this Part.

(2) The contents of an item entered in a community charges register of a charging authority may be proved in proceedings under this Part either by—

- (a) production of a copy of the relevant part of the register purporting to be certified by the registration officer maintaining the register to be a true copy, or
- (b) evidence given in those proceedings as to the item by an officer of the charging authority authorised by it in that behalf who has inspected the register.

(3) If a liability order has been made and by virtue of—

- (a) a notification which is given by the charging authority under regulation 20(4) or (7), 21(7) or (11), 23(4) or 26(2), or paragraph 6(3) or 7(2)(a) of Schedule 1, or
- (b) section 36(2) of the Act applying in any case,

any part of the amount mentioned in regulation 29(6)(a) in respect of which the order was made would (if paid) fall to be repaid or credited against any subsequent liability, that part shall be treated for the purposes of this Part as paid on the day the notification is given or the amount in substitution is set under section 34 or 35 of the Act (as the case may be) and accordingly as no longer outstanding.

(4) If, after a warrant is issued or term of imprisonment is fixed under regulation 41(3), and before the term of imprisonment has begun or been fully served, a charging authority gives such a notification as is mentioned in paragraph (3)(a) in the case in question, or sets an amount in substitution so that section 36(2) of the Act applies in the case in question, it shall forthwith notify accordingly the clerk of the court which issued the warrant and (if the debtor is detained) the governor or keeper of the prison or place where he is detained or such other person as has lawful custody of him.

(5) If the debtor is treated as having paid an amount under paragraph (3) on any day, and—

- (a) that day falls after the completion of the service of a term of imprisonment imposed under regulation 41 in respect of the amount he is treated as having paid, or
- (b) the debtor is serving a term of imprisonment imposed under regulation 41 on that day and the amount he is treated as having paid exceeds the amount of any part payment which, if made, would cause the expiry of the term of imprisonment pursuant to paragraph (7) (b) of that regulation on that day,

the amount mentioned in sub-paragraph (a) or excess mentioned in sub-paragraph (b) shall be paid to the debtor or credited against any subsequent liability of his, as the debtor requires.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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