

ÉIRE

BILLE UM FHEIDHMIU ORDUITHE CUIRTE, 1940. ENFORCEMENT OF COURT ORDERS BILL, 1940.

*Mar do ritheadh ag dhá Thigh an Oireachtais.
As passed by both Houses of the Oireachtas.*

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ÉIRE.

BILLE UM FHEIDHMIU ORDUITHE CUIRTE, 1940. ENFORCEMENT OF COURT ORDERS BILL, 1940.

BILL

entitled

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AN ACT TO AMEND AND EXTEND THE LAW IN RELATION
TO THE ENFORCEMENT OF CERTAIN COURT ORDERS
AND TO MAKE PROVISION FOR THE RELEASE IN
PROPER CASES OF PERSONS IMPRISONED FOR
NON-PAYMENT OF MONEY.

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BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

PART I.

AMENDMENT OF THE ENFORCEMENT OF COURT ORDERS ACT, 1926.

The Principal
Act.

1.—In this Part of this Act the expression “ the Principal Act ”
means the Enforcement of Court Orders Act, 1926 (No. 18 of 1926). 15

Construction of
this Part of this
Act.

2.—(1) This Part of this Act shall be read as one with Part II of
the Principal Act, and accordingly every word and expression to
which a particular meaning is given in or by the said Part II for
the purposes of the said Part II shall have in this Part of this Act
the meaning so given to it. 20

(2) In this Part of this Act, the expression “ instalment order ”
means an order made under section 17 of the Principal Act,
whether such order requires the debt and costs to be paid in
one payment or by instalments, and, where such order has been
varied under this Part of this Act, includes such order as so 25
varied.

Time within
which application
for examination
order may be
made.

3.—An application for an examination order may be made at
any time not more than six years after the date of the judgment
in relation to which such order is sought.

Duration of
instalment
orders.

4.—(1) An instalment order made after the passing of this Act 30
shall continue in force until the expiration of six years from the
date thereof and no longer.

(2) No instalment which accrues due under an instalment
order after such order ceases to be in force shall be payable or
recoverable. 35

(3) Nothing in this section shall be construed as requiring that
an instalment order shall provide for payment of the whole of the
debt and costs within the period during which such order continues
in force.

Variation of
instalment
orders.

5.—(1) A Justice of the District Court may, if he so thinks 40
proper on the application of the creditor or of the debtor, do
in respect of any instalment order (whether made before or

after the passing of this Act) whichever of the following things is applicable, that is to say:—

- 5 (a) where such instalment order requires the debt and costs to be paid in one payment, vary such order so as to provide (in lieu of such payment in one sum) for payment of the debt and costs by such instalments and at such times as such Justice shall in all the circumstances think reasonable;
- 10 (b) where such instalment order requires the debt and costs to be paid by instalments, vary such order in such manner as such Justice may think proper in respect of the number of instalments, the amount of the instalments, or the times at which the instalments are to be paid or all or any two of those matters.
- 15 (2) Whenever a Justice of the District Court makes under this section, whether on the application of the creditor or the application of the debtor, an order varying an instalment order, such Justice may, if he so thinks proper, do either or both of the following things, that is to say:—
- 20 (a) direct that the costs of the creditor in respect of the application for such variation order shall be part of the costs of the proceedings in the District Court within the meaning of section 17 of the Principal Act;
- (b) direct that such variation order shall apply and have effect
- 25 as from a specified date prior to the date thereof.
- (3) Save as provided by the preceding sub-sections of this section, an order under this section shall have effect from the date thereof.

6.—Section 18 of the Principal Act is hereby repealed and in lieu thereof it is hereby enacted as follows, that is to say:—

Re-enactment of section 18 of the Principal Act with modifications.

- 30 (a) where a debtor is liable, by virtue of an instalment order, to pay a debt and costs either in one payment or by instalments and such debtor fails to make such payment or fails to pay any one or more of such instalments
- 35 accruing due while such order is in force at the time or times appointed in that behalf by such order, the creditor may, at any time while such order is in force or within twelve months after it has ceased to be in force, apply to a Justice of the District Court for the
- 40 arrest and imprisonment of such debtor;
- (b) on the hearing of an application under the next preceding paragraph of this section, the Justice may, if he so thinks proper but subject to the next following paragraph of this section, order the arrest and imprisonment
- 45 of the debtor for any period not exceeding three months, and thereupon the debtor shall be arrested and imprisoned accordingly;
- (c) the Justice shall not order the arrest and imprisonment of the debtor under the next preceding paragraph of this
- 50 section if the debtor (if he appears) shows, to the satisfaction of such Justice, that his failure to pay was due neither to his wilful refusal nor to his culpable neglect;
- (d) on the hearing of an application under paragraph (a) of
- 55 this section, the Justice, if he so thinks proper, may, in lieu of ordering the arrest and imprisonment of the debtor, treat such application as an application under the next preceding section of this Act for the variation of the said instalment order and thereupon the said next preceding section shall apply as if such application were
- 60 an application thereunder;

(e) whenever a debtor is arrested and imprisoned by virtue of an order made under this section, he shall be entitled to be released immediately upon payment by him or on his behalf to the District Court Clerk, or to the Governor of the Prison for the District Court Clerk, of the sum of money (to be specified in such order) consisting of the amount of all instalments of the debt and costs which have accrued before and are unpaid at the date of such order, and such further sum (if any) for the costs of such order as the Justice making such order shall think reasonable; 5 10

(f) all moneys paid under this section to the District Court Clerk (whether directly or through the Governor of the Prison) by or on behalf of a debtor shall be paid by the District Court Clerk to the creditor on demand. 15

PART II.

MISCELLANEOUS AND GENERAL

Amendment of section 1 of the Married Women (Maintenance in case of Desertion) Act, 1886.

7.—The following provisions shall have effect in relation to sub-section (1) of section 1 of the Married Women (Maintenance in case of Desertion) Act, 1886, that is to say :— 20

(a) so much of the said sub-section (1) as provides that the weekly sum mentioned therein shall not exceed two pounds shall, on the passing of this Act, cease to have effect, and in lieu thereof it is hereby enacted that the said weekly sum shall not exceed four pounds; 25

(b) an application under the said sub-section (1) for variation of an order for payment of a weekly sum may, subject to the provisions of any relevant rules of court, be made to any Justice of the District Court.

Enforcement of certain orders for periodical payments.

8.—(1) Where a sum or sums payable by virtue of an order made under section 1 of the Married Women (Maintenance in case of Desertion) Act, 1886, or under section 3 of the Illegitimate Children (Affiliation Orders) Act, 1930 (No. 17 of 1930), is or are not duly paid, a Justice of the District Court may, on the application of the person to whom such sum or sums is or are payable under such order (in this section referred to as the applicant), by warrant cause the person by whom such sum or sums is or are payable under such order (in this section referred to as the defaulter) to be brought before him and thereupon such Justice, after hearing the applicant and the defaulter and such evidence (if any) as they may respectively adduce, may, if he so thinks proper, either direct such sum or sums together with the costs of such application to be levied by distress and sale of the goods of the defaulter or, unless the defaulter shows, to the satisfaction of such Justice, that the failure to pay was due neither to his wilful refusal nor to his culpable neglect, sentence the defaulter to imprisonment for any term not exceeding three months. 30 35 40 45

(2) Where a Justice of the District Court directs, under the foregoing sub-section of this section, that an amount be levied by distress and sale of the goods of the defaulter, the following provisions shall have effect, that is to say :— 50

(a) such Justice may require the defaulter to enter into a recognisance with sureties to the satisfaction of such Justice to appear before such Justice on a specified day if such amount is not previously discharged in full either as a result of such levy or otherwise; 55

(b) if the defaulter, on being so required to enter into such recognisance, does not comply with such requirement,

such Justice may, if he so thinks proper, direct the defaulter to be detained in custody and brought before such Justice on the said specified day unless he is previously released from custody in pursuance of this section;

5

(c) if while the defaulter is so in custody either—

10 (i) he enters into a recognisance before a peace commissioner with sureties to the satisfaction of such peace commissioner to appear before such Justice on the said specified day if the said amount is not previously discharged as a result of such levy or otherwise, or

(ii) the said amount is discharged in full either as a result of such levy or otherwise,

15 the defaulter shall be released from custody forthwith;

20 (d) if upon the said specified day the said amount has not been discharged in full either as a result of such levy or otherwise, such Justice may, unless the defaulter shows to the satisfaction of such Justice that the failure to discharge the said amount was due neither to his wilful refusal nor to his culpable neglect, sentence the defaulter to imprisonment for any term not exceeding three months.

25 (3) Whenever the defaulter is sentenced under this section to suffer a term of imprisonment he shall be entitled to be released immediately upon payment by him or on his behalf to the District Court Clerk or to the Governor of the Prison for the District Court Clerk of the sum of money specified in that behalf in the order for such imprisonment and consisting of the sum or the total of the
30 sums on account of the non-payment of which the application under this section was made by the applicant and the costs of such application.

(4) All moneys paid under the next preceding sub-section of this section to the District Court Clerk (whether directly or through
35 the Governor of the Prison) by or on behalf of the defaulter shall be paid by the District Court Clerk to the applicant on demand.

(5) The imprisonment of the defaulter under this section shall not operate as a satisfaction or extinguishment of the defaulter's liability for payment of any money on account of the non-payment
40 of which he was sentenced to such imprisonment nor shall such imprisonment deprive the applicant of any other right or remedy for enforcing or recovering payment of such money.

(6) Every distress and sale made in pursuance of a direction given under this section by a Justice of the District Court shall be
45 carried out by the under-sheriff.

(7) No application or other proceedings (whether under this section or otherwise) for the recovery of a sum or sums payable by virtue of an order made under section 1 of the Married Women (Maintenance in case of Desertion) Act, 1886, or under section 3
50 of the Illegitimate Children (Affiliation Orders) Act, 1930 (No. 17 of 1930), shall be maintainable in respect of any such sum which became due and payable on a day more than six months before the institution of such application or other proceedings:

55 Provided always that, in the case of proceedings otherwise than under this section, the Court may, if on account of special circumstances the Court so thinks proper, allow such proceedings to be maintained in respect of all or any one or more of such sums which became due and payable as aforesaid.

Release of
persons im-
prisoned for
non-payment of
money.

9.—(1) Where a person is in prison in pursuance of an order of a court made on account of the failure of such person to pay a sum of money, the Minister for Justice may, at any time and for any reason which appears to him sufficient, direct that such person shall be released either (as the said Minister shall think proper) forthwith or after payment of a specified part of the said sum of money. 3

(2) Whenever the Minister for Justice directs, under the next preceding sub-section of this section, that a person shall be released from prison, such person shall be released in accordance with such direction. 10

(3) The Minister for Justice shall not direct under this section the release from prison of a person until or unless either the said Minister has consulted the Judge or Justice by whom the order for the imprisonment of such person was made as to the propriety of such release or the said Minister is satisfied that such consultation is impracticable in the circumstances. 15

Short title and
citation.

10.—(1) This Act may be cited as the Enforcement of Court Orders Act, 1940.

(2) The Enforcement of Court Orders Act, 1926 (No. 18 of 1926), and this Act may be cited together as the Enforcement of Court Orders Acts, 1926 and 1940. 20

Éire.

Éire.

BILLE UM FHEIDHMIU ORDUITHE
CUIRTE, 1940.

ENFORCEMENT OF COURT ORDERS
BILL, 1940.

BILLE

dá ngairmtear

Acht chun leasuithe agus leathnuithe do dhéanamh ar an dlí i dtaobh ordaithe áirithe cúirte d'fheidhmiú agus chun socrúithe do dhéanamh chun daoine bheidh i bpríosún toise gan airgead d'íoc do scaoileadh saor i gcásanna cearta.

BILL

entitled

An Act to amend and extend the law in relation to the enforcement of certain court orders and to make provision for the release in proper cases of persons imprisoned for non-payment of money.

*Rithte ag dhá Thigh an Oireachtais,
3adh Iúl, 1940.*

*Passed by both Houses of the Oireachtas,
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