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AN BILLE UM FHEIDHMIÚ ORDUITHE CÚIRTE, 1998
ENFORCEMENT OF COURT ORDERS BILL, 1998

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As initiated

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Acts Referred to

Agriculture Act, 1931	1931, No. 8
Criminal Justice (Community Service) Act, 1983	1983, No. 23
Enforcement of Court Orders Act, 1940	1940, No. 23
Harbours Act, 1946	1946, No. 9
Local Government Act, 1941	1941, No. 23
Vocational Education Act, 1930	1930, No. 29



AN BILLE UM FHEIDHMIÚ ORDUITHE CÚIRTE, 1998
ENFORCEMENT OF COURT ORDERS BILL, 1998

BILL

entitled

5 AN ACT TO MAKE PROVISION FOR THE ISSUE OF COURT
ORDERS RELATING TO ATTACHMENT OF EARNINGS
SO AS TO COMPEL EMPLOYERS, OR IN THE CASE OF
SOCIAL WELFARE RECIPIENTS, THE MINISTER FOR
10 SOCIAL, COMMUNITY AND FAMILY AFFAIRS, TO
MAKE SPECIFIC DEDUCTIONS FROM EMPLOYEE
EARNINGS OR SOCIAL WELFARE PAYMENTS, AS THE
CASE MAY BE, IN ORDER TO SECURE PAYMENT
WITHIN A REASONABLE PERIOD OF ANY SUMS DUE
AND OWING UNDER A RELEVANT ANTECEDENT
15 ORDER OR FINANCIAL PENALTY; TO PROVIDE FOR
THE IMPOSITION OF COMMUNITY SERVICE ORDERS
ON SUCH DEFAULTERS; WHERE APPROPRIATE, TO
MAKE MONEY PAYMENT SERVICE ORDERS; TO
ALLOW FOR AN EXTENSION OF TIME FOR REPAY-
20 MENT OF SUCH FINES AND DEBTS AND FOR THEIR
PAYMENT BY INSTALMENTS; AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

25 Preliminary

1.—(1) This Act may be cited as the Enforcement of Court Orders Act, 1998. Short title and commencement.

(2) This Bill shall come into operation on such day or days as, by order or orders made by the Minister for Justice, may be fixed there-
30 fore either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes or different provisions.

2.—In this Bill— Interpretation.

“the Act of 1940” means the Enforcement of Court Orders Act,
35 1940;

“the Act of 1983” means the Criminal Justice (Community Service) Act, 1983.

Persons to whom
Bill applies.

3.—This Bill applies to a person—

- (a) who has defaulted on payment of a penalty imposed by a Court; or 5
- (b) who has defaulted on payment of a civil debt.

PART II

Attachment of Earnings

Attachment of
Earnings Orders.

4.—(1) (a) On application—

- (i) to the High Court by a person on whose application the High Court has made an antecedent order, 10
- (ii) to the Circuit Court by a person on whose application the Circuit Court has made an antecedent order, 15
- (iii) to the District Court by a person on whose application the District Court has made an antecedent order,

the Court to which the application is made (subsequently referred to in this section as “the Court”) may, to secure payments under the antecedent order, if it is satisfied that the civil debtor is a person to whom earnings fall to be paid, make an attachment of earnings order. 20

- (b) Where the Court is satisfied that a person, in default of payment of a penalty, is a person to whom earnings fall to be paid, it may make an attachment of earnings order. 25

(2) An attachment of earnings order shall be an order directed to a person who (at the time of the making of the order or at any time thereafter) has the civil debtor or defaulter in his employment and shall operate as a direction to that person to make, at such times as may be specified in the order, periodical deductions of such amounts (specified in the order) as may be appropriate, having regard to the normal deduction rate and the protected earnings rate, from the civil debtor or fine defaulter’s earnings and to pay the amounts deducted, at such times as the Court may order. 30 35

(3) An attachment of earnings order shall not be made without the consent of the civil debtor or fine defaulter unless the Court is satisfied that the civil debtor or fine defaulter has, without reasonable excuse, defaulted in the making of any payment under the relevant antecedent order or financial penalty. 40

(4) An attachment of earnings order shall—

- (a) specify the normal deduction rate, that is to say, the rate at which the Court considers it reasonable that the earnings to which the order relates should be applied in satisfying 45

the relevant antecedent order, not exceeding the rate appearing to the Court to be necessary for the purpose of—

(i) securing payment of the sums falling due from time to time under the relevant antecedent order or financial penalty, and

(ii) securing payment within a reasonable period of any sums already due and unpaid under the relevant antecedent order or financial penalty and any costs incurred in proceedings relating to the relevant antecedent order or financial penalty which are payable by the civil debtor or fine defaulter,

(b) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and the needs of the civil debtor or fine defaulter, the Court considers it proper that the relevant earnings should not be reduced by a payment made in pursuance of the attachment of earnings order,

(c) contain so far as they are known to the Court such particulars as it considers appropriate for the purpose of enabling the civil debtor or fine defaulter to be identified by the person to whom the order is directed.

(5) Payments under an attachment of earnings order shall be in lieu of payments of the like total amount under the relevant antecedent order that have not been made and that, but for the attachment of earnings order, would fall to be made under the relevant antecedent order or financial penalty.

5.—(1) Where an attachment of earnings order or an order varying it is made, the employer for the time being affected by it shall, if it has been served upon him, comply with it; but he shall be under no liability for non-compliance therewith before ten days have elapsed since the service.

Compliance with Attachment of Earnings Orders.

(2) Where an attachment of earnings order is served on any person and the civil debtor is not in his employment or the civil debtor subsequently ceases to be in his employment, that person shall (in either case), within ten days from the date of service or, as the case may be, the cesser, give notice of that fact to the Court.

(3) On any occasion when a person makes, in compliance with an attachment of earnings order, a deduction from a civil debtor's earnings or from a fine defaulter's earnings, he shall give to the civil debtor or fine defaulter a statement in writing of the total amount of the deduction.

(4) Such court registrar or court clerk as may be specified by an attachment of earnings order shall cause the order to be served on the employer to whom it is directed and on any subsequent employer of the civil debtor concerned of whom the registrar or clerk so specified becomes aware and such service may be affected by leaving the order at, or sending the order or a copy of the order by registered prepaid post to, the residence or place of business in the State of the person to be served.

Statement as to
Earnings.

6.—In relation to an attachment of earnings order or an application for such an order, the Court that made the order or to which the application is made may, before or at the hearing or while the order is in force—

- (a) order the civil debtor or fine defaulter to give to the Court, 5
within a specified period, a statement in writing signed
by him of—
 - (i) the name and address of any person by whom earnings are paid to him,
 - (ii) specified particulars as to his earnings and expected 10
earnings and as to his resources and needs, and
 - (iii) specified particulars for enabling the civil debtor or
fine defaulter to be identified by any employer of
his,
- (b) order any person appearing to the Court to have the civil 15
debtor or fine defaulter in his employment to give to the
Court, within a specified period, a statement signed by
that person, or on his behalf, of specified particulars of
the civil debtor or fine defaulter’s earnings and expected
earnings. 20

Notifications of
changes of
employment and
earnings.

7.—Where an attachment of earnings order is in force—

- (a) the civil debtor or fine defaulter shall notify in writing the
Court that made the order of every occasion in which
he leaves any employment, or becomes employed or re-
employed, not later (in each case) than ten days from the 25
date on which he does so,
- (b) the civil debtor or fine defaulter shall, on any occasion on
which he becomes employed or re-employed, include in
his notification under *paragraph (a)* particulars of his
earnings and expected earnings from the relevant 30
employment,
- (c) any person who becomes an employer of the civil debtor or
fine defaulter and knows that the order is in force and by
what Court it was made shall, within ten days of his
becoming the fine defaulter or civil debtor’s employer or 35
of acquiring that knowledge (whichever is the later),
notify that Court in writing that he is the defaulter or
debtor’s employer, and include in his notification a state-
ment of the debtor’s earnings and expected earnings.

Power to determine
whether particular
payments are
earnings.

8—(1) Where an attachment of earnings order is in force, the 40
Court that made that order shall, on the application of the employer
concerned or the civil debtor or the fine defaulter or the person to
whom payments are being made under the order, determine whether
payments (or any portion thereof) to the civil debtor or fine defaulter
of a particular class or description specified by the application are 45
earnings for the purpose of the order, and the employer shall give
effect to any determination for the time being in force under this
section.

(2) Where an application under this section is made by the
employer, he shall not incur any liability for non-compliance with 50

the order as respects any payments (or any portion thereof) of the class or description specified by the application which are made by him to the civil debtor or fine defaulter while the application or any appeal in consequence thereof or any decision in relation to the application or appeal is pending, but this shall not, unless the Court otherwise orders, apply as respects such payments (or any portion thereof) if the employer subsequently withdraws the application or, as the case may be, abandons the appeal.

9.—(1) Where a civil debtor or fine defaulter is in the service of the State, a local authority for the purposes of the Local Government Act, 1941, a harbour authority within the meaning of the Harbours Act, 1946, a health board, a vocational education committee established by the Vocational Education Act, 1930, or a committee of agriculture established by the Agriculture Act, 1931, or is a member of either House of the Oireachtas—

Persons in service of State, local authority, etc.

(a) in a case where a civil debtor or fine defaulter in the service of the State is employed in a department, office, organisation, service, undertaking or other body, its chief officer (or such other officer as the Minister of State, by whom the department, office, organisation, service, undertaking or other body is administered, may from time to time designate) shall, for the purposes of this Act, be regarded as having the civil debtor or fine defaulter in his employment;

(b) in a case where a civil debtor or fine defaulter is in the service of such an authority, board or committee, its chief officer shall, for the purposes of this Act, be regarded as having the civil debtor or fine defaulter in his employment;

(c) in any other case, where a civil debtor or fine defaulter is paid out of the Central Fund or out of moneys provided by the Oireachtas, the Secretary General of the Department of Finance (or such other officer of the Minister for Finance as that Minister may from time to time designate) shall, for the purposes of this Act, be regarded as having the civil debtor or fine defaulter in his employment; and

(d) any earnings of a civil debtor or fine defaulter paid out of the Central Fund or out of moneys provided by the Oireachtas shall be regarded as paid by the chief officer referred to in *paragraph (a) or (b)*, as the case may be, the Secretary General of the Department of Finance or such other officer as may be designated under *paragraph (a) or (c)*, as the case may be, as may be appropriate.

(2) If any question arises in proceedings for, or arising out of, an attachment of earnings order as to what department, office, organisation, service, undertaking or other body a civil debtor or fine defaulter in the service of the State is employed in for the purposes of this section, the question may be referred to and determined by the Minister for Finance, but that Minister shall not be under any obligation to consider a reference under this subsection unless it is made by the Court.

(3) A document purporting to contain a determination of the Minister for Finance under *subsection (2)* and to be signed by an officer of the Minister for Finance shall, in any such proceedings as

are mentioned in that subsection, be admissible in evidence and be deemed, unless the contrary is shown, to contain an accurate statement of that determination.

(4) In this section references to a civil debtor or fine defaulter in the service of the State include references to a civil debtor or a fine defaulter to whom earnings are paid directly out of moneys provided by the Oireachtas. 5

Discharge, variation
and lapse of
Attachment of
Earnings Orders.

10.—(1) The Court that made an attachment of earnings order may, if it thinks fit, on the application of the civil creditor or the civil debtor or the fine defaulter, make an order discharging or varying that order. 10

(2) Where an order varying an attachment of earnings order is made under this section, the employer shall, if it has been served upon him, comply with it, but he shall be under no liability for non-compliance before ten days have elapsed since the service. 15

(3) Where an employer affected by an attachment of earnings order ceases to have the civil debtor or fine defaulter in his employment, the order shall, in so far as that employer is concerned, lapse (except as respects deductions from earnings paid after the cesser by that employer and payment to the person in whose favour the order was made of deductions from earnings made at any time by the employer). 20

(4) The lapse of an order under *subsection (3)* shall not prevent its remaining in force for other purposes.

Cesser of
Attachment of
Earnings Orders.

11.—(1) An attachment of earnings order shall cease to have effect upon the discharge of the relevant antecedent order, except as regards payments under the attachment of earnings order in respect of any time before the date of the discharge. 25

(2) Where an attachment of earnings order ceases to have effect, the clerk or registrar of the Court that made the order shall give notice of the cesser to the employer. 30

Provisions in
relation to
alternative
remedies.

12.—(1) Where an attachment of earnings order has been made, any proceedings commenced under section 8(1) of the Act of 1940, for the enforcement of the relevant antecedent order against the civil debtor shall lapse and any warrant or order issued or made under that section in any such proceedings shall cease to have effect. 35

(2) An attachment of earnings order shall cease to have effect upon the making of an order under section 8(1) of the Act of 1940, for the enforcement of the relevant antecedent order against the civil debtor. 40

Enforcement.

13.—(1) Where, without reasonable excuse, a person—

(a) fails to comply with *subsection (1)* or *(2)* of *section 4* or *section 7* or an order under *section 6* or *section 10(2)*, or

(b) gives to a court a statement pursuant to *section 6(1)*, or a notification under *section 7*, that is false or misleading, 45

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £200 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both.

(2) Where a person gives to a Court—

- 5 (a) a statement pursuant to *section 6*, or
- (b) a notification under *section 7*,

that is to his knowledge false or misleading,

(3) A person who contravenes *section 5(3)* shall be guilty of an offence and shall be liable on summary conviction to a fine not
10 exceeding £100.

14.—(1) The Minister for Social, Family and Community Affairs shall by regulations provide that where a person has defaulted on a penalty imposed by a court or on payment of a civil debt and that person is entitled to income support—

Attachment of
Welfare Orders.

- 15 (a) the court may apply to the Minister for Social, Community and Family Affairs asking him to deduct sums from any amounts payable to the defaulter by way of income support, in order to secure the payment of any sum which is or forms part of the fine; and
- 20 (b) the Minister for Social, Community and Family Affairs shall deduct sums from any such amounts and pay them to the court towards satisfaction of any such sum.

(2) The regulations may include—

- 25 (a) provision that, before making an application, the court shall make an enquiry as to the defaulter's means;
- (b) provision allowing or requiring adjudication as regards an application, and provision as to appeals and reviews;
- (c) provision as to the circumstances and manner in which and the times at which sums are to be deducted and paid;
- 30 (d) provision as to the calculation of such sums (which may include provision to secure that amount payable to the offender by way of income support do not fall below prescribed figures);
- 35 (e) provisions as to the circumstances in which the Minister for Social, Community and Family Affairs is to cease making deductions;
- (f) provision requiring the Minister for Social, Community and Family Affairs to notify the defaulter, in a prescribed manner and at any prescribed time, of the total amount
40 of sums deducted up to the time of notification;
- (g) provision that, where the whole amount to which the application relates has been paid, the court shall give notice of that fact to the Minister for Social, Community and Family Affairs.

PART III

Miscellaneous

Amendment of
Criminal Justice
(Community
Service Orders)
Act, 1983.

15.—The Act of 1983 is hereby amended by the insertion after section 2 of the following section:

“2A.—This Act shall also apply to a person where— 5

(a) that person has defaulted on payment of a penalty imposed by the District Court; or

(b) that person has defaulted on payment of a civil debt.”.

Extension of time
for repayment.

16.—(1) An application by a person for further time in which to pay a fine adjudged to be paid by him to a court of summary jurisdiction, shall be made to that court. 10

(2) A court to which an application is made under the foregoing subsection may allow further time for payment of the fine unless it is satisfied that the failure of the defaulter to make payment has been wilful or that the person in default has no reasonable prospect of being able to pay if further time is allowed. 15

(3) An application made under this section to a court of summary jurisdiction may be made orally or in writing.

Repayment by
instalment.

17.—(1) Without prejudice to particular instances in which the court may expressly direct that no time shall be allowed for payment, where a court of summary jurisdiction has imposed a fine on a defaulter, the court may, of its own accord or on the application of the defaulter, order payment of that fine by instalment of such amounts and at such time as it may think fit, and it shall be the duty of the court to inform the defaulter of his right to make an application as aforesaid. 20 25

(2) Where any instalment is not paid by the time so ordered, the defaulter shall, subject to the provisions of the last foregoing section, be deemed to be in default of payment of a fine of the amount of the unpaid balance and dealt with accordingly through further sanction. 30

Money Payment
Supervision Orders.

18.—(1) Where a person has been allowed time for payment of a fine by a court, the court may, either on the occasion of the imposition of the fine or on a subsequent occasion, order that he be placed under the supervision of a probation and welfare officer for the purpose of assisting and advising such person in regard to payment of the fine. 35

(2) An order made in pursuance of the foregoing subsection shall remain in force so long as the person to whom it relates remains liable to pay the fine or any part of it unless the order ceases to have effect or is discharged under the next following subsection. 40

(3) Where an order under this section is in force in respect of such a person the court shall not impose further sanction in default of the payment of the fine unless the court has, before so doing, taken such steps as may be reasonably practicable to obtain from the probation and welfare officer appointed for the supervision of the payment of his fine a report, which may be oral, on such person’s conduct and means, and shall consider any report so obtained. 45

(4) When a court of summary jurisdiction shall have made an order under *subsection (1)* placing such person under the supervision of a probation and welfare officer, such person shall be notified in writing by the clerk of the court.

- 5 (5) The probation and welfare officer appointed to supervise such person shall communicate with him with a view to assisting and advising him in regard to payment of the fine, and unless the same or any instalment thereof shall have been paid to the clerk of the court within the time allowed by the Court for payment, the person
- 10 so appointed shall report to the Court without delay after the expiry of such time, as to the conduct and means of the offender.



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AN BILLE UM FHEIDHMIÚ ORDUITHE CÚIRTE, 1998
ENFORCEMENT OF COURT ORDERS BILL, 1998

EXPLANATORY MEMORANDUM

General

The Enforcement of Court Orders Bill, 1998, is designed to give alternatives to imprisonment where courts are required to deal with civil debtors or fine defaulters.

Section 4 empowers a Court to make an attachment of earnings order where it is satisfied that the fine defaulter or civil debtor is a person to whom earnings fall to be paid. This order shall compel an employer to make specific periodical deductions from his employee's earnings to guarantee that they fulfil their legal obligations.

Provision is made in the Bill for the variation, discharge and lapse of Attachment of Earnings Orders; for the determination of whether particular payments are earnings and for changes of employment and earnings.

It is an offence for a person to knowingly give false or misleading information to a Court.

Section 14 provides that where a fine defaulter is receiving social welfare assistance, the Court may, with the consent of the Minister for Social, Community and Family Affairs, make an attachment to welfare order. This would provide for periodic deductions from the defaulter's welfare payments while ensuring that his income did not fall below a certain level.

The Court's authority to extend Community Service Orders to fine defaulters and civil debtors is achieved in *section 15* by the amendment of the 1983 Act.

Sections 16 and *17* empower the Court to extend the time for repayment of fines or allow payment by instalment.

Section 18 sees the introduction of Money Payment Service Orders to this jurisdiction — a Court could require a probation and welfare officer to assist a fine defaulter in repayment of fines thereby introducing a rehabilitative element into this Bill.

An Teachta Séamus Ó hUiginn,
Bealtaine, 1998.