



**AN BILLE UM FHORFHEIDHMIÚ ORDUITHE CÚIRTE
(UIMH. 2) 2004
ENFORCEMENT OF COURT ORDERS (NO. 2) BILL 2004**

*Mar a tionscnaíodh
As initiated*

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[No. 53 of 2004]

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ACTS REFERRED TO

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



**AN BILLE UM FHORFHEIDHMIÚ ORDUITHE CÚIRTE
(UIMH. 2) 2004
ENFORCEMENT OF COURT ORDERS (NO. 2) BILL 2004**

BILL

5 *entitled*

AN ACT TO PROVIDE FOR THE MAKING OF ATTACH-
MENT OF EARNINGS ORDERS, ATTACHMENT OF
WELFARE ORDERS AND INSTALMENT ORDERS BY
THE COURTS TO FACILITATE THE ENFORCEMENT OF
10 UNDISCHARGED COURT ORDERS, FINES AND
OTHER DEBTS AND TO PROVIDE FOR RELATED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

15 **PRELIMINARY AND GENERAL**

1.—(1) This Act may be cited as the Enforcement of Court Or- Short title and
ders Act 2004. commencement.

(2) This Act comes into operation on such day or days as the
Minister may appoint by order or orders either generally or with
20 reference to any particular purpose or provision and different days
may be so appointed for different purposes or provisions.

2.—(1) In this Act— Interpretation.

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

25 “Act of 1983” means the Criminal Justice (Community Service)
Act 1983;

“court order” means a judgment, decree, administrative fine, or
order made by a court declaring a sum to be due and owing;

“creditor” means a person in whose favour an undischarged court
order exists;

30 “debtor” means a person who has not fully discharged the amount
due on foot of a court order;

“Minister” means the Minister for Justice, Equality and Law Reform;

“relevant court” means the court which made the antecedent order which it is sought to enforce.

(2) In this Act—

- (a) a reference to a Part or section is a reference to a Part or section of this Act, unless it is indicated that a reference to some other enactment is intended, 5
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and 10
- (c) a reference to any enactment or regulations shall be construed as a reference to that enactment or those regulations, as the case may be, as amended, adapted or extended whether before or after the commencement of this subsection, by or under any subsequent enactment. 15

Persons to whom
Act applies.

3.—This Act applies to a person who has defaulted on payment of a sum due on foot of a court order.

PART 2

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ATTACHMENT OF EARNINGS ORDERS

Attachment of
Earnings Orders.

4.—(1) On application to the relevant court, by a creditor named in a court order, the court may make an attachment of earnings order.

(2) An attachment of earnings order— 25

- (a) 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 debtor in his or her employment, and
- (b) shall operate as a direction to that person to make, at such intervals as may be specified in the order, deductions of specified amounts. 30

(3) An attachment of earnings order shall not be made without the consent of the debtor unless the court is satisfied that the debtor has, without reasonable excuse, defaulted in the making of any payment under the court order. 35

(4) An attachment of earnings order shall—

- (a) specify the normal deduction rate, that is to say, the amount of the debtor’s earnings which the court considers reasonable to be applied in satisfying the court order, but such rate should be no greater than is necessary for the purpose of— 40
- (i) securing payment of the sums falling due from time to time under the court order, and

- (ii) securing payment within a reasonable period of any sums already due and unpaid under the court order and any costs incurred in proceedings relating to the order which are payable by the debtor,

5 (b) specify the protected earnings rate, that is to say, the rate below which, having regard to the resources and the needs of the debtor, the court considers it proper that the debtor's earnings should not be reduced by a payment made in pursuance of the attachment of earnings order,

10 (c) contain such particulars as the court considers appropriate for the purpose of enabling the debtor 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 court order that have not been made and that, but for the attachment of earnings order, would fall to be made under the court order.

5.—(1) A 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 debtor and such service may be effected by leaving the order at, or sending the order or a copy of the order by pre-paid registered post to his or her place of business or residence in the State.

Compliance with
Attachment of
Earnings Orders.

(2) Where an attachment of earnings order or an order varying it is made, the employer for the time being affected by it shall comply with it within 10 days of it being served on him or her.

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

30 (4) Where an attachment of earnings order is served on any person and—

(a) the debtor is not in his or her employment, or

(b) the debtor subsequently ceases to be in his or her employment,

35 that person shall, within ten days from the date of service or, the date of cesser, give notice of that fact to the court.

6.—Upon application to the court for an attachment of earnings order, or at any subsequent time which the court deems fit, the court may—

Statement as to
Earnings.

40 (a) order the debtor to give to the court, within a specified period, a statement in writing signed by him or her of—

(i) the name and address of any person by whom earnings are paid to him or her,

45 (ii) specified particulars as to his or her earnings and projected earnings and as to his or her resources and needs, and

(iii) specified particulars for enabling the debtor to be identified by any other employer, including any future employer,

(b) order any person appearing to the court who has the debtor in his or her employment to give to the court, within a specified period, a statement signed by that person, or on his or her behalf, of specified particulars of the debtor's earnings and projected earnings. 5

Notifications of changes of employment and earnings.

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

(a) the debtor shall notify the court in writing, within 10 days of every occasion, in which he or she leaves any employment, or becomes employed or re-employed, 10

(b) the notice referred to in paragraph (a) shall include particulars of his or her earnings and projected earnings from the relevant employment, 15

(c) any person who becomes an employer of the debtor and has knowledge that an order is in force shall, within ten days of acquiring that knowledge, notify that court in writing that he or she is the debtor's employer, and include in the notification a statement of the debtor's earnings and projected earnings. 20

Power to determine whether particular payments are earnings.

8.—(1) Where an attachment of earnings order is in force, the relevant court shall, on the application of—

(a) the employer concerned,

(b) the debtor, or 25

(c) the person to whom payments are being made under the order,

determine whether payments (or any portion thereof) to the debtor of a particular class or description specified by the application are 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. 30

(2) Where an application under this section is made by the employer, he or she shall not incur any liability for non-compliance with the order as respects any payments (or any portion thereof) of the class or description specified by the application which are made by him or her to the debtor 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 abandons the appeal. 35 40

Persons in service of State, local authority etc.

9.—(1) Where a debtor 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— 45

- 5 (a) in a case where a debtor 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 debtor in his or her employment,
- 10 (b) in a case where a debtor 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 debtor in his or her employment,
- 15 (c) in any other case, where a debtor 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 debtor in his or her employment, and
- 20 (d) any earnings of a debtor 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
- 25 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 debtor 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.

35 (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.

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

45 **10.—(1)** The relevant court may, if it thinks fit, on the application of the creditor or the debtor, make an order discharging or varying the antecedent order.

Discharge, variation and lapse of Attachment of Earnings Orders.

(2) Where an order varying an attachment of earnings order is made under this section, the employer shall, within ten days of it having been served upon him or her, comply with its terms.

50 (3) Where an employer affected by an attachment of earnings order ceases to have the debtor in his or her 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).

(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 court order. 5

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

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 court order against the debtor shall lapse and any warrant or order issued or made under that section in any such proceedings shall cease to have effect. 10

(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 court order against the debtor. 15

Enforcement.

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

(a) fails to comply with an order made under *section 4*, or an order made under *section 6*, or *section 7* or *section 10(2)*, or 20

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

he or she is guilty of an offence and is liable on summary conviction to a fine not exceeding €500 or, to imprisonment for a term not exceeding three months or to both. 25

(2) A person who contravenes *section 5(3)* is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €500.

Attachment of
Welfare Orders.

14.—(1) The Minister for Social and Family Affairs shall make regulations to address circumstances where— 30

(a) a person who is entitled to income support, and

(b) has defaulted on the discharge of a court order,

so as to enable the court to make an order directing the Minister for Social and Family Affairs to deduct sums from any amounts, not below the protected welfare rate, payable to the debtor by way of income support, in order to secure the payment of any sum which is or forms part of the court order. 35

(2) The regulations shall specify the protected welfare rate, that is to say, the rate below which, having regard to the resources and the needs of the debtor, the Minister for Social and Family Affairs considers it proper that the debtor's income support should not be reduced by a payment made in pursuance of the attachment of earnings order and for the purpose of this section the protected welfare rate shall be prescribed by the Minister, to be reviewed annually. 40 45

- (3) The regulations may include provision—
- (a) that, before making an application, the court shall make an enquiry as to the debtor's means,
 - 5 (b) allowing or requiring adjudication as regards an application, and provision as to appeals and reviews,
 - (c) as to the circumstances and manner in which and the times at which sums are to be deducted and paid,
 - 10 (d) as to the calculation of such sums (which may include provision to secure that amount payable to the debtor by way of income support do not fall below prescribed figures),
 - (e) as to the circumstances in which the Minister is to cease making deductions,
 - 15 (f) requiring the Minister to notify the debtor, in a prescribed manner and at any prescribed time, of the total amount of sums deducted up to the time of notification,
 - (g) that, where the whole amount to which the application relates has been paid, the court shall give notice of that fact to the Minister.
- 20 (4) In this section, "Minister" means Minister for Social and Family Affairs.

PART 3

MISCELLANEOUS

- 25 **15.**—The Act of 1983 is amended by inserting the following after section 2—
- "Application of the Act. 2A.—This Act shall also apply to a person where—
- 30 (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 debt."

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

- 35 **16.**—(1) Upon application by the debtor, the relevant court may allow further time within which the debt must be discharged.

Extension of time for repayment.

(2) A court to which an application is made under *subsection (1)* may not allow further time for payment where it is satisfied that—

- (a) the failure of the debtor to make payment has been wilful, or
- 40 (b) the debtor has no reasonable prospect of being able to pay if further time is allowed.

17.—(1) Where a court of summary jurisdiction has made an order requiring the payment of a monetary sum, the court may on the application of the debtor, order payment of that fine by installment of such amounts and at such time and intervals as it may think fit, and it shall be the duty of the court to inform the debtor of his or her right to make an application as aforesaid. 5

(2) Where any installment is not paid within the time permitted, the debtor shall be deemed to be in default of payment.

18.—(1) Where a person has been allowed time to discharge an order requiring the payment of a monetary sum, the court may, either on the occasion of the imposition of that order or on a subsequent occasion, order that the debtor 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. 10

(2) An order made under *subsection (1)* shall remain in force so long as the person to whom it relates remains liable to pay the fine or the order ceases to have effect under *subsection (3)*. 15

(3) Where an order under this section is in force, the court shall not impose further sanction in default of the payment of the fine unless the court has obtained a report from the probation and welfare officer on the debtor's conduct and means, and shall consider any report so obtained. 20

(4) Where a court has made an order under *subsection (1)*, the debtor shall be notified in writing by the clerk of the court.

(5) The probation and welfare officer appointed under this section shall communicate with the debtor with a view to assisting and advising him or her in regard to payment of the fine, and where the debt remains undischarged after the expiry of the time allowed by the court for payment, the probation and welfare officer shall report to the court as to the conduct and means of the debtor. 25
30