



DÁIL ÉIREANN

AN BILLE UM FHORFHEIDHMIÚ ORDUITHE CÚIRTE (LEASÚ) 2009 ENFORCEMENT OF COURT ORDERS (AMENDMENT) BILL 2009

LEASUITHE COISTE COMMITTEE AMENDMENTS

[It is proposed to take all stages of this Bill on 10/7/09. Accordingly, this list of amendments is circulated in advance of the conclusion of the Second Stage.]

DÁIL ÉIREANN

AN BILLE UM FHORFHEIDHMIÚ ORDUITHE CÚIRTE (LEASÚ) 2009 —AN COISTE

ENFORCEMENT OF COURT ORDERS (AMENDMENT) BILL 2009 —COMMITTEE STAGE

Leasuithe Amendments

SECTION 2

1. In page 3, before section 2, to insert the following new section:

“2.—The Act of 1940 is amended—

(a) by the repeal of sections 6 and 9, and

(b) by the insertion of the following sections after section 5:

“Failure to
comply with
instalment
order.

6.—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 accruing due while such an 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 12 months after it has ceased to be in force, apply to a Justice of the District Court for an Attachment of Income Order.

Definition.

7.—‘Attachment of Income Orders’ means an Order made under section 8 or section 17.

Attachment of
Income Orders.

8.—(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—

(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.

(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 a court order.

(4) An attachment of earnings order shall—

[SECTION 2]

- (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—
 - (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,
- (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,
- (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) The particular of an attachment to earnings order may be agreed on consent by the debtor and the creditor in advance the hearing of an application under this section and may be ruled on by the Court as an order under this section.

(6) 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.

Compliance
with
Attachment of
Earnings
Orders.

9.—(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.

(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.

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

[SECTION 2]

- (a) the debtor is not in his or her employment, or
- (b) the debtor subsequently ceases to be in his or her employment, that person shall, within ten days from the date of service or, the date of cesser, give notice of that fact to the court.

(5) An order made under subsection (1) shall be confidential and the employer shall not make it known to any person other than those persons necessary for the payment of wages, and such persons shall themselves have a duty not to disclose the existence of an attachment of earnings order.

Statement as to Earnings.

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

- (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,
 - (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.

Notifications of changes of employment and earnings.

11.—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,
- (b) the notice referred to in paragraph (a) shall include particulars of his or her earnings and projected earnings from the relevant employment,
- (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.

[SECTION 2]

Power to determine whether particular payments are earnings.

12.—(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
- (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.

(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.

Persons in service of State, local authority etc.

13.—(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—

- (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,
- (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,

[SECTION 2]

- (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
- (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 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.

(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 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.

Discharge,
variation and
lapse of
Attachment of
Earnings
Orders.

14.—(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.

(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.

(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.

[SECTION 2]

Cesser of Attachment of Earnings Orders. 15.—(1) An attachment of earnings order shall cease to have effect upon the discharge of the court order.

(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. 16.—(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.

(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.

Attachment of Welfare Orders. 17.—(1) The Minister for Social and Family Affairs shall make regulations to address circumstances where—

- (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 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.

(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 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.

(3) The regulations may include provision—

- (a) that, before making an application, the court shall make an enquiry as to the debtor's means,
- (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,
- (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),

[SECTION 2]

- (e) as to the circumstances in which the Minister is to cease making deductions,
- (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.

(4) In this section, ‘Minister’ means Minister for Social and Family Affairs.”.”.

—Charles Flanagan.

2. In page 5, between lines 30 and 31, to insert the following:

“(c) If he or she considers it appropriate, where another person is indebted to the debtor or the debtor is in receipt of payments from such third person by reason of employment or otherwise, make an order that all debts or payments owing and/or accruing from such third person to the debtor shall be attached to answer the judgment or order, but where such third person disputes a liability to the debtor, instead of making an order that execution shall issue in that case, may order that any issue or question necessary for determining any such liability be first tried before the court.”.

—Charles Flanagan.

Section opposed.

—Charles Flanagan.

SECTION 3

3. In page 8, before section 3, to insert the following new section:

“3.—The Enforcement of Court Orders Act 1926 is hereby amended by the insertion of the following section, after section 17:

“17A.—All installment orders made under the aforementioned section must be served, personally, on the judgment debtor and must contain a notification of the consequences of failure to comply with such an order, including the possibility of imprisonment pursuant to section 6 of the Enforcement of Court Orders (Amendment) Act 1940, as amended by section 2 of the *Enforcement of Court Orders (Amendment) Act 2009* and the District Court Rules applicable to such proceedings may make provision for same.”.”.

—Charles Flanagan.