



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

*Mar a leasaíodh i gCoiste
As amended in Committee*

ARRANGEMENT OF SECTIONS

Section

1. Definition.
 2. Amendment of Enforcement of Court Orders Act 1940.
 3. Short title and collective citation.
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ACTS REFERRED TO

Criminal Justice (Legal Aid) Act 1962	1962, No. 12
Enforcement of Court Orders Act 1940	1940, No. 23
Enforcement of Court Orders Acts 1926 and 1940	



**AN BILLE UM FHORFHEIDHMIÚ ORDUITHE CÚIRTE
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ENFORCEMENT OF COURT ORDERS (AMENDMENT)
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entitled

AN ACT TO AMEND THE ENFORCEMENT OF COURT
ORDERS ACT 1940.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10 **1.**—In this Act “Act of 1940” means Enforcement of Court Orders Act 1940. Definition.

2.—(1) The following sections are substituted for section 6 of the Act of 1940: Amendment of Enforcement of Court Orders Act 1940.

15 “Failure to comply with instalment order.”

20 **6.**—(1) 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 the debtor fails to make the payment or fails to pay any one or more of the instalments due while that order is in force at the time or times appointed by it, the creditor may, at any time while it is in force or within 12 months after it has ceased to be in force, apply to a District Court clerk for the District Court area where the debtor resides for a summons directing the debtor to appear before the District Court.

25 (2) A summons referred to in subsection (1) shall—

(a) be issued by the District Court clerk concerned,

30 (b) contain details of the consequences, under this section, of a failure to comply with an instalment order and in particular the possibility of imprisonment,

(c) state that the debtor may be arrested if he or she fails to appear before the District Court as directed, and

(d) be served on the debtor by personal service. 5

(3) If a debtor fails, without reasonable excuse, to appear before the court in answer to the summons, on the application of the creditor, the judge of the District Court, if satisfied that the debtor was served in accordance with subsection (2), shall— 10

(a) issue a warrant for the arrest of the debtor, or

(b) if the judge thinks it appropriate in all the circumstances, fix a new date for the hearing at which the debtor will be required to attend and direct that he or she be notified of that date. 15

(4) A debtor arrested under subsection (3)(a) shall be brought as soon as practicable before the District Court. 20

(5) Where a debtor is arrested and brought before the District Court under subsection (3)(a), the judge shall fix a new date for the hearing of the summons and direct that the creditor be informed by the District Court clerk by notice in writing of the date so fixed, and shall explain to the debtor in ordinary language— 25

(a) that he or she—

(i) is entitled to apply to the court for a certificate of legal aid under section 6A, and 30

(ii) must attend before the court at the date next fixed for the hearing of the summons, 35

and

(b) the consequences, under this section, which may follow a failure—

(i) to comply with an instalment order and in particular the possibility of imprisonment, or 40

(ii) to attend before the court as required under paragraph (a)(ii).

(6) At the hearing of the summons, where both the creditor and the debtor are present in court, before hearing their evidence, the judge shall explain to the debtor in ordinary language— 45

(a) that he or she is entitled to apply to the court for a certificate of legal aid under section 6A, and

(b) the consequences, under this section, which may follow a failure to comply with an instalment order, and in particular the possibility of imprisonment.

(7) On hearing the creditor and the debtor and such evidence, if any, as they may respectively adduce, a judge may, if he or she is satisfied that the debtor has failed to comply with the instalment order—

(a) treat the proceedings on the summons as an application under section 5 for a variation of the instalment order, in which case section 5 applies as if the proceedings were such an application,

(b) if he or she considers it appropriate, request the creditor and the debtor to seek resolution by mediation, within such period as the judge may specify and, if not resolved by that method and within the period so specified, the creditor may apply to the District Court clerk concerned to re-enter the proceedings,

(c) if he or she considers it appropriate, and subject to subsection (8), make an order fixing a term of imprisonment for any period not exceeding 3 months (which order shall specify the amount of the outstanding debt and costs, including the costs of that order), and postpone the execution of that order until such time and on such conditions, if any, as to the payment of the outstanding debt and costs as he or she thinks just, or

(d) if he or she considers it appropriate, and subject to subsection (8), order the arrest and imprisonment of the debtor for any period not exceeding 3 months (which order shall specify the amount of the outstanding debt and costs, including the costs of that order), and the debtor shall be arrested and imprisoned accordingly.

(8) A judge shall not make an order under subsection (7)(c) or (d) unless he or she is satisfied, beyond reasonable doubt, on the evidence presented, that the creditor has established that—

(a) the failure to pay the sum in respect of which the debtor has made default is not due to his or her mere inability to

pay but is due to his or her wilful refusal or culpable neglect, and

(b) the debtor has no goods which could be taken in execution under any process of the court by which the judgment, order or decree for the debt was given. 5

(9) Where an order fixing and postponing a term of imprisonment has been made under subsection (7)(c) with a condition as to payment of the debt and costs by the debtor, he or she may, if his or her ability to comply with the terms of the order has changed, apply to the District Court clerk concerned to re-enter the matter and the District Court judge, on notice to the creditor, shall deal with the matter as if it was an application under section 5 for a variation of an instalment order. 10 15

(10) Where a debtor is imprisoned on foot of an order made under subsection (7)(c) or (d), he or she— 20

(a) may, if his or her ability to re-pay the outstanding debt and costs as specified in that order has changed, apply to the District Court clerk concerned to re-enter the matter and the District Court judge, on notice to the creditor, shall deal with the matter as if it was a rehearing of the summons referred to in subsection (1), and 25

(b) is entitled to be released immediately upon payment by him or her or on his or her behalf to the District Court clerk concerned or to the Governor of the Prison for the District Court clerk, of the sum of money 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. 30 35

(11) 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 clerk to the creditor on request. 40

(12) Failure by a debtor to comply with subsection (5)(a)(ii), without reasonable excuse, constitutes contempt of court, and the District Court judge may deal with the matter accordingly. 45

Entitlement to legal aid.

6A.—(1) If it appears to a judge of the District Court in proceedings on a summons under section 6 that the means of a debtor are insufficient to enable him or her to obtain legal aid, the judge shall, on application being made by the debtor in that behalf, grant to the debtor— 50

(a) a certificate for free legal aid (in this section referred to as a 'debtor's legal aid certificate'),

5 (b) where the debtor appeals an order for his or her imprisonment made under section (7)(c) or (d) and applies to the judge for legal aid in connection with the appeal, a certificate for free legal aid in respect of the appeal (in this section referred to as a 'debtor's legal aid (appeal) certificate'), or

10 (c) where the judge refers a question of law arising in the proceedings to the High Court by way of case stated or states a case in relation to the proceedings for the opinion of the High Court and the debtor applies to the judge for legal aid in connection with that reference or case stated, a certificate for free legal aid in respect of the reference or case stated (in this section referred to as a 'debtor's legal aid (case stated) certificate').

15 (2) (a) Where a certificate has been granted under subsection (1) the debtor concerned shall be entitled to legal aid and to have legal representation assigned to him or her for that purpose.

20 (b) Where a debtor, in respect of whom an order for imprisonment is made, is refused a debtor's legal aid (appeal) certificate, he or she may apply for the certificate to the court to which an appeal from imprisonment lies either—

25 (i) by letter addressed to the registrar of that court setting out the facts of the case and the grounds of the application, or

30 (ii) to the court itself.

35 (3) The Criminal Justice (Legal Aid) Act 1962 and regulations made under section 10 of that Act shall, where appropriate and with such modifications as may be necessary, apply to a certificate granted under subsection (1) and to such legal aid.

40 (4) The Minister may make regulations as are necessary for the purpose of this section to prescribe all or any of the following:

45 (a) the form of debtor's legal aid certificates,

50 (b) the rate of payment of any fee, costs or other expenses payable,

(c) the manner in which legal representatives may be assigned pursuant to such certificates, or

(d) anything that by this Act is required or permitted to be prescribed.”. 5

(2) Section 8 of the Act of 1940 is amended—

(a) in subsection (1) by substituting “treat the application as an application for a summons under section 6, in which case section 6 applies as if the application was made under it” for “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”, 10

(b) in subsection (2)(d) by substituting “shall treat the failure to discharge the amount as a failure to appear before the court in answer to a summons issued under section 6(2), in which case section 6 applies accordingly” for “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”, and 15 20

(c) in subsections (3) and (5) by substituting “section 6 for failing to pay the sum or sums due under an order referred to in subsection (1)” for “this section”. 25

(3) The following section is substituted for section 9 of the Act of 1940:

“Release of person imprisoned for non-payment of money.

9.—(1) Where a person is in prison under an order of a court made on account of the failure of the person to pay a sum of money, the Minister may, at any time and for any reason which appears to him or her sufficient, direct that the person be released either (as the Minister thinks proper) immediately or after payment of a specified part of that sum of money. 30 35

(2) The Minister may, before releasing a person under this section, if he or she considers it appropriate and proper in all the circumstances consult with the judge who made the order for imprisonment of the person. 40

(3) Where the Minister directs that a person be released from prison, the person shall be released in accordance with the direction.

(4) In this section ‘Minister’ means Minister for Justice, Equality and Law Reform.”. 45

3.—(1) This Act may be cited as the Enforcement of Court Orders (Amendment) Act 2009. Short title and collective citation.

(2) The Enforcement of Court Orders Acts 1926 and 1940 and this Act may be cited together as the Enforcement of Court Orders Acts 1926 to 2009.