



**An Bille um Fhiachas Sibhialta
(Nósanna Imeachta), 2015
Civil Debt (Procedures) Bill 2015**

*Meabhrán Mínitheach
Explanatory Memorandum*



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Background to and purpose of the Bill

The Bill provides for the enforcement of certain categories of civil debts by means of attachment of earnings or deductions from certain social welfare payments where the debtor has capacity to repay the moneys owed.

The Law Reform Commission (LRC) Report published in 2010 on *Personal Debt Management and Debt Enforcement* made a number of recommendations for wide scale reform of the existing personal insolvency and debt enforcement regimes. Key elements of that Report were implemented through the enactment of the Personal Insolvency Act 2012.

The Civil Debt (Procedures) Bill 2015 seeks to implement further recommendations of the LRC Report aimed at enforcement and recovery of debts which could be developed to streamline the existing enforcement procedures. The Bill provides that creditors may apply to the court for an order enabling either attachment of earnings or deductions from social welfare payments, as appropriate, for the purpose of enforcement of debts to which the legislation will apply. Attachment of earnings would arise where a court orders the debtor's employer to deduct specified sums from the debtor's earnings to pay over to the creditor. Deduction from social welfare payments would arise where the court orders the Department of Social Protection to deduct specified sums from the debtor's social welfare payments to pay over to the creditor. However, these provisions are subject to a number of safeguards for debtors and will have regard to the debtor's capacity to repay the amount owed.

Provisions of the Bill

The following paragraphs contain a brief description and an outline of the provisions proposed in each section.

Section 1 (Definitions) defines terms used in the Bill. Among the terms defined is "net scheme payments" which is required for the purposes of dealing with deductions from certain social welfare payments. "Debt" is also defined.

Section 2 (Regulations) is a standard provision dealing with the making of regulations under the Bill and the laying of said regulations before the Houses of the Oireachtas.

Section 3 (Expenses) is a standard provision.

Section 4 (Jurisdiction) This section provides that the provisions of this Bill come within the jurisdiction of the District Court.

Section 5 (Service of documents) concerns the method of service of documents on a person or company for the purposes of this Bill.

Section 6 (Power of judgment creditor to apply to court) provides that a creditor, having first obtained a judgment against a debtor in respect of a debt, may make application to the court for an attachment of earnings order or a deduction from payments where the judgment concerned is for a liquidated sum of not less than €500 but no greater than €4,000 and the debt remains unsatisfied in whole or in part. Subsection (2) sets out the application requirements and also provides that the application must be on notice to the debtor.

Section 7 (Statement of means) sets out the requirements in relation to the information to be provided to the court by the judgment debtor on his or her financial circumstances. The judgment debtor, on receipt of a notice under *section 6*, is required to complete a statement of earnings form providing particulars as to their income and financial commitments (subsection (1)). Where the debtor is a social welfare recipient he or she will be required to request a certificate from the Department of Social Protection verifying their payments (subsection (3)). This certificate will not be disclosed by the court to the judgment creditor (subsection (5)). The court is empowered to request further supporting documentation from the debtor or his employer (subsection (6)). Subsection (7) provides that the statement of means provided to the court and the verifying certificate from the Department of Social Protection shall be admissible in evidence.

Section 8 (Adjournment etc. of application under section 6) provides for the adjournment of the court proceedings for such period or periods as the court thinks reasonable if it appears to the court that the judgment debtor is likely to be able to pay the debt within a reasonable period. Subsection (2) provides that such adjournment or suspension may be subject to such terms and conditions as the court thinks fit. Subsection (3) provides that the court may revoke or vary any term or condition imposed under subsection (2).

Section 9 (Court may not make concurrent attachment of earnings order and deduction from payments orders) provides that an attachment of earnings order and a deduction from payments order cannot be in effect concurrently in respect of the same judgment debt.

Section 10 (Attachment of earnings order) empowers the court to make an order directing the employer of the judgment debtor to deduct certain specified amounts from the debtor's earnings and to pay the sums deducted in the manner specified to the judgment creditor (subsection (1)). Subsection (2) provides that before deciding whether to make or refuse an attachment of earnings order, the court must give the judgment debtor an opportunity to make representations. Subsection (3) provides that in specifying the amount of deductions, the court shall have regard to the "normal deduction rate" and the "protected earnings rate". Subsection (4) provides that the court shall not make an attachment of earnings order unless it is satisfied that the judgment debtor is a person to whom earnings fall to be paid and that regard has been given to his or her particular circumstances, including financial circumstances. Subsection (5) sets out the particulars which are to be specified in the attachment of earnings order.

Section 11 (Service of attachment of earnings order) concerns the service of an attachment of earnings order on the person to whom it is directed.

Section 12 (Compliance with attachment of earnings order) deals with compliance with an attachment of earnings order. Subsection (1) requires the employer to comply with the order but provides that he or she is not liable for non-compliance during the first 10 days. This is to allow for

the situation where the person served with the order is not the person's employer, in which case under subsection (2) the person concerned is required to notify the court accordingly. Subsection (3) requires the employer to give the judgment debtor a statement of the total amount of every deduction made in compliance with the attachment order. Subsection (4) addresses the implications for an attachment of earnings order in the event of a change of employer, while subsection (5) provides that the lapse of an order under subsection (4) does not prevent its remaining in force for other purposes.

Section 13 (Attachment of earnings order: notification of changes) concerns notification of changes in the judgment debtor's employment and employment status. Subsection 1 (a) provides that where an attachment of earnings order is in force, the judgment debtor must notify the creditor within 10 days of an increase of not less than €50 in earnings. Subsection 1 (b) provides for notification to the creditor in the event of the judgment debtor becoming employed or re-employed or of leaving employment accompanied, in the case of employment or re-employment (sub-section 2), by particulars of earnings or anticipated earnings. Section (3) provides that any person who becomes the employer of the judgment debtor and knows that an attachment order is in force is required to notify the judgment creditor in writing that she or he is the debtor's employer and to provide details of the debtor's earnings and expected earnings.

Section 14 (Power to determine whether particular payments are earnings) empowers the court, on application by the employer concerned, the judgment debtor or the judgment creditor, to rule on whether certain types of payments are earnings for the purpose of an attachment of earnings order in force (subsection (1)). The employer concerned is not liable for non-compliance in relation to such payments until an application by the employer or any appeal has been determined by the court (subsection (2)).

Section 15 (Persons in service of State, local authority etc.) sets out the provisions which are to apply in relation to judgment debtors who are in the service of the State, local authorities, etc. It provides that for employees of the State or certain state bodies (subsection (1)), specified persons are to be regarded, for the purposes of making an attachment of earnings order, as the relevant employer (subsection (2)). A question as to who should be the employer may be referred to the Minister for Public Expenditure and Reform for determination but the Minister is not obliged to respond unless the matter is referred to him or her by the court (subsection (3)). A document represented as an accurate statement of a determination by the Minister is admissible as such in evidence unless proven otherwise (subsection (4)).

Section 16 (Deduction from payments order) empowers the court on application to make an order directing the Minister for Social Protection, subject to the provisions of section 18, to deduct certain specified amounts from the judgment debtor's net scheme payments in the manner set out in the order and to pay the sums deducted in the manner specified in the order to the judgment creditor (subsection (1)). Subsection (2) provides that before deciding whether to make or refuse a deduction from payments order, the court must give the judgment debtor an opportunity to make representations. The court shall not make a deduction from payments order unless it is satisfied that the debtor is a person to whom net scheme payments fall to be paid and that regard has been given to the debtor's particular circumstances, including financial circumstances (subsection (3)). Subsection (4) sets out the particulars which are to be specified in the deduction from payments order.

Section 17 (Service of deduction from payments order) concerns the service of a deduction from payments order on the Minister for Social Protection.

Section 18 (Compliance with deduction from payments order) deals with compliance with a deduction from payments order. Subsection (1) requires the Minister for Social Protection to comply with the order as soon as practicable after it is made. Subsection (2) provides that the Minister for Social Protection shall not make deductions to the extent that the deduction has the effect of reducing the net scheme payments to the judgment debtor below a certain level. Subsection (3) provides that the Minister for Social Protection is required to comply with a request from the judgment debtor, where the order ceases to have effect, for a statement of the total amount deducted in compliance with the deduction order.

Section 19 (Deduction from payments order: notification of changes) provides that where a deduction from payments order is in force, the judgment debtor is required to notify the court and the judgment creditor of significant changes to his or her net scheme payment, or if he or she becomes employed.

Section 20 (Variation of relevant order) allows the court to vary an attachment of earnings order or a deduction from payments order on the application of the judgment debtor or the judgment creditor. The Minister for Social Protection is to be notified of an application where relevant.

Section 21 (Cesser of relevant order) concerns the effect of payment of the balance of the debt or the reaching of the date on which the order ceases to have effect.

Section 22 (Other remedies) provides that the making of an attachment of earnings order or a deduction from payments order causes proceedings commenced in respect of the judgment debt concerned under section 17 of the Enforcement of Court Orders Act 1926 to lapse (subsection (1)). Should an order be made under the 1926 Act, an attachment of earnings order or a deduction from payments order lapses (Subsection (2)).

Section 23 (Application of sums paid under relevant order) specifies the sequence in which the payments made under an attachment/deduction order are to be applied.

Section 24 (Enforcement) provides for a number of penalties in respect of the making of false or misleading statements or contraventions of the provisions.

Section 25 (Minister for Social Protection may prescribe scheme for purpose of Act) allows for the prescription of the relevant schemes by the Minister for Social Protection.

Section 26 (Repeals) provides for the repeal of Parts I and IV of the Debtors Act (Ireland) 1872.

Section 27 (Short title and commencement) is a standard provision. It proposes that the Act shall come into operation on such day or days as the Minister may appoint by order.

*An Roinn Dlí agus Cirt agus Comhionannais,
Meitheamh, 2015.*

