1980 No. 13

JUDICATURE, NORTHERN IRELAND MAGISTRATES' COURTS

Magistrates' Courts (Attachment of Earnings) Rules (Northern Ireland) 1980

Made	*2nd January 1980*
Coming into operation	*1st February 1980*

The Lord Chancellor, in exercise of the powers conferred on him by section 23 of the Magistrates' Courts Act (Northern Ireland) 1964(**a**) on the advice of the Magistrates' Courts Rules Committee and after consultation with the Lord Chief Justice, hereby makes the following rules:

Citation and commencement

1. These rules may be cited as the Magistrates' Courts (Attachment of Earnings) Rules (Northern Ireland) 1980 and shall come into operation on 1st February 1980.

Interpretation

2.—(1) Any reference in these rules to "the Act" is a reference to the Judgments (Enforcement) Act (Northern Ireland) 1969(**b**).

(2) Any reference in these rules to a "maintenance order" shall include a reference to any order mentioned in section 110(9) of the Magistrates' Courts Act (Northern Ireland) 1964.

(3) Any reference in these rules to a form in the Schedule to these rules shall include a reference to a form to the like effect with such variations as the circumstances may require.

Attachment of earnings order

3.—(1) An attachment of earnings order under section 77 D(1)(*b*) of the Act, shall be in the form numbered 1 in the Schedule to these rules.

(2) The clerk of petty sessions for the petty sessions district in which a court of summary jurisdiction was sitting when it made an attachment of earnings order may sign such order.

Service of orders and notices

4.—(1) Where a court of summary jurisdiction makes an attachment of earnings order or an order varying or discharging such an order, the clerk of petty sessions shall cause a copy of the order to be served on the employer and shall send a copy of the order to the defendant.

(2) Where an attachment of earnings order made by a court of summary jurisdiction ceases to have effect as provided in section 77 D(4)(*b*) or (5) of the Act, the notice of the cessation required by section 77 D(6) of the Act shall be given to the employer.

(a) 1964 c. 21 (N.I.)
(b) 1969 c. 30 (N.I.) as amended by S.I. 1979/296 (N.I. 3)

(3) The notice required by the preceding paragraph shall be given by the clerk of petty sessions.

(4) A copy of Schedule 1A to the Act shall be served with or annexed to the attachment of earnings order.

(5) Where under section 77 of the Act (which relates to statements of earnings, etc.) a direction is given to the defendant or to a person appearing to be an employer of the defendant or where under these rules a copy of an order is to be served or a notice is to be given to any person—

(*a*) service may be effected on, or the direction or notice may be given to a person, other than a corporation, by delivering it to the person to whom it is directed or by sending it by post in a letter addressed to him at his last known or usual place of abode, or, in the case of an employer or a person appearing to be an employer of the defendant, at his place of business;

(*b*) service may be effected on, or the direction or notice given to, a corporation by delivering the document at, or sending it to—

(i) such office or place as the corporation may, for the purpose of this rule, have specified in writing to the court in relation to the defendant or to a class or descripton of person to which he belongs, or

(ii) the registered office of the corporation if that office is in Northern Ireland or, if there is no registered office in Northern Ireland, any place therein where the corporation trades or conducts its business.

Particulars of defendant

5. The particulars of the defendant for the purpose of enabling him to be identified which, so far as they are known, are to be included in an attachment of earnings order shall be—

(*a*) full name and address;

(*b*) place of work;

(*c*) nature of work and works number, if any.

Notice of application for appropriate variation order

6.—(1) Where an application is made under section 76(1) of the Act for the appropriate variation of an attachment of earnings order, the clerk of petty sessions shall give notice in writing of the time and place appointed for the hearing of the application to the person entitled to receive payment under the related maintenance order (whether directly or through the officer of any court).

(2) An application for an order varying (including suspending or reviving) or discharging an attachment of earnings order shall be in writing.

Variation of attachment of earnings order on change of employment

7. Where an attachment of earnings order has lapsed under section 76(6) of the Act on the debtor's ceasing to be in the employment of the person to whom the order was directed and it appears to the court that the defendant has subsequently entered the employment of a person (whether the same as before or another), the court may, of its own motion, vary the order by directing it to that person and may make any consequential amendment to the order made necessary by this variation.

Discharge of attachment of earnings order by court of its own motion

8.—(1) Where it appears to a court of summary jurisdiction that the defendant is not in the employment of the person to whom the attachment of earnings order is directed and that the likelihood of the defendants' entering the employment of any person is not such as to justify preserving the order, the court may, of its own motion, discharge the order.

(2) Where a court of summary jurisdiction has made an attachment of earnings order and the related maintenance order ceases to have effect because of the remarriage of the person entitled to receive payments under it, the court may, of its own motion, discharge the attachment of earnings order, if there are no arrears to be recovered.

Temporary variation of protected earnings rate

9.—(1) A court of summary jurisdiction which made the attachment of earnings order may, on a written application made by the defendant on the ground of a material change in the defendant's resources and needs since the order was made or last varied, by order (hereinafter referred to as a temporary variation order) vary the attachment of earnings order for a period of not more than thirteen weeks by an increase of the protected earnings rate.

(2) A temporary variation order shall be in the form numbered 2 in the Schedule to these rules.

(3) The clerk of petty sessions shall cause a copy of any temporary variation order to be served on the employer and shall give him notice if the temporary variation order is discharged and the clerk of petty sessions shall also send a copy to the person entitled to receive payments under the related maintenance order (whether directly or through an officer of any court).

(4) Where an application for the variation or discharge of an attachment of earnings order is made to a magistrates' court and there is in existence a temporary variation order in respect of the attachment of earnings order, the court may, of its own motion, discharge the temporary variation order.

Consolidated attachment orders

10.—(1) Where a court of summary jurisdiction has power to make more than one attachment of earnings order in respect of the liabilities of a defendant it may make a consolidated attachment order to discharge those liabilities.

(2) Where a court of summary jurisdiction has power to make an attachment of earnings order in respect of a defendant who is already subject to such an order (whether or not it is itself a consolidated attachment order) made by any such court, the court may, subject to the provisions of this rule, discharge the existing order and make a consolidated attachment order in respect of that defendant.

(3) Where two or more attachment of earnings orders (whether or not they are themselves consolidated attachment orders) made by courts of summary jurisdiction are in existence in respect of one defendant, a court of summary jurisdiction acting for the same petty sessions district as one of those courts may, subject to the provisions of this rule, discharge the existing orders and make a consolidated attachment order in respect of that defendant.

(4) A court of summary jurisdiction may exercise the powers conferred under paragraphs (1) to (3) of this rule either of its own motion or on the application of the defendant.

(5) A defendant may apply to a court of summary jurisdiction for a consolidated attachment order, by complaint.

(6) Where an employer applies in writing to the clerk of petty sessions for the court which has power to make a consolidated attachment order requesting the court to make such an order, the clerk shall bring the application before the court, and, if it appears to the court that the application is justified, the court shall proceed as if it had determined of its own motion to make such an order.

(7) Before a court of summary jurisdiction exercises of its own motion the powers conferred under paragraph (3) of this rule, it shall cause written notice to be given to the defendant of his right to make representations to the court.

(8) Where a court of summary jurisdiction makes a consolidated attachment order, it shall specify in the order such normal deduction rate as the court thinks reasonable and this rate may be less than the sum of the normal deduction rates specified in any attachment of earnings orders discharged by the court.

Disposal of sums paid under consolidated attachment orders

11.—(1) A clerk of petty sessions receiving a payment under a consolidated attachment order shall, subject to paragraph (2) below, apply the money in payment of the sums secured by the order, paying first any sums previously secured by an attachment of earnings order which was discharged in consequence of the making of the consolidated attachment order.

(2) Where two or more attachment of earnings orders were discharged in consequence of the making of the consolidated attachment order the sums due under the orders shall be paid in the chronological sequence of the orders.

Method of making payment under attachment of earnings order

12.—(1) A clerk of petty sessions to whom any payment under an attachment of earnings order is to be made shall notify the employer and the person entitled to receive payments under the related maintenance order of the hours during which, and the place at which, payments are, subject to the provisions of this rule, to be made and received.

(2) If an employer sends by post any payments under an attachment of earnings order to a clerk of petty sessions, he shall do so at his own risk and expense.

(3) A clerk of petty sessions may send by post any payment under an attachment of earnings order to the person entitled to receive payments under the related maintenance order at the request and at the risk of that person.

Enforcement of Judgments Office records

13.—(1) Where a clerk of petty sessions causes a copy of an order or notice to be given to any person under rule 4 of these rules, he shall cause a copy of the order or notice to be given also to the Enforcement of Judgments Office.

(2) Where the clerk of petty sessions for the court which has made an attachment of earnings order is informed of a defendant's change of address he shall notify the new address to the Enforcement of Judgments Office.

Transitional provisions

14. Where a court of summary jurisdiction before the coming into force of these rules made an attachment of earnings order, which has not ceased to have effect or been discharged, the clerk of petty sessions shall send to the employer and to the Enforcement of Judgments Office a copy of the order in the form numbered 3 in the Schedule.

Dated 2nd January 1980

Hailsham of St. Marylebone, C.