

STATES OF JERSEY



DRAFT MAINTENANCE ORDERS (ENFORCEMENT) (AMENDMENT No. 2) (JERSEY) LAW 200-

**Lodged au Greffe on 8th September 2006
by the Chief Minister**

STATES GREFFE



Jersey

**DRAFT MAINTENANCE ORDERS
(ENFORCEMENT) (AMENDMENT No. 2)
(JERSEY) LAW 200-**

European Convention on Human Rights

The Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Maintenance Orders (Enforcement) (Amendment No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.H. Walker**

REPORT

Maintenance orders come in the shape of those made by the Royal Court –

- (a) under Article 25, 29, 31, 32 or 33 of the Matrimonial Causes (Jersey) Law 1949; or
- (b) under Schedule 1 to the Children (Jersey) Law 2002,

and those made by the Petty Debts Court under Article 2, 4, 5 or 7 of the Separation and Maintenance Orders (Jersey) Law 1953.

Article 9 of the Payment of Wages (Jersey) Law 1962 provides that –

“Save as may be expressly authorised by or under any enactment, no distraint may be made on wages by virtue of a provisional order issued by the Bailiff or the Judge of the Petty Debts Court, and a distraint on wages may only be made by virtue of a judgement or order of the Royal Court or the Petty Debts Court to the extent to which authority so to do is given by the judgement or order.”

At present, when the Royal Court or the Petty Debts Court makes a maintenance order, it has no statutory power at that point to order an arrest (distrain) on wages. The Court is empowered quite simply to make the order for maintenance. It is only when the person ordered to pay maintenance defaults in his or her obligation that the recipient can issue proceedings for recovery of the arrears. The recipient cannot ask the Viscount to effect an arrest on wages only on the strength of the original order of the Royal Court or of the Petty Debts Court.

The Maintenance Orders (Enforcement) (Jersey) Law 1999, however, enabled the recipient to apply *ex parte* to the Bailiff or to the Petty Debts Court Judge for an *ordre provisoire* to distraint upon the movable property of the payer and to make a provisional arrest of his or her wages. Such an application must be supported by an affidavit setting out the terms of the maintenance order and the circumstances of the alleged failure to comply with the order.

If the application is granted, the Viscount can go ahead and make the distraint and a provisional arrest on wages. But the recipient must still bring the matter back to the Royal Court or the Petty Debts Court (as the case may be) for the distraint and provisional arrest of wages to be confirmed. When the action is returned, the Court is empowered under the 1999 Law to order that the *original* maintenance order have effect as if it authorised an arrest to be made on the wages of the payer in such amount as the Court thinks just. In this way the arrest on wages is able to take effect on an ‘ongoing’ basis so that the recipient does not have to keep returning to the Court every time arrears have built up.

The 1999 Law empowers the Court to make the same type of order on the return of an ordinary summons as well as on the return of an *ordre provisoire*. The effect is that, if the payer defaults only once, the Court can order an arrest on his or her wages as though the arrest attached to the *original* maintenance order. In this way the arrest on wages continues in force for as long as the maintenance order remains in force.

But still the 1999 Law does not empower the Court to order an arrest on wages when the Court makes the maintenance order in the first place.

It was noted that, in Guernsey, the Matrimonial Causes (Guernsey) (Amendment) Law 2003, which came into force throughout that Bailiwick at the end of 2003, provided that –

“When making a [maintenance] order, or at any time thereafter, the Court may, upon the application of or on behalf of the payee, or of its own motion (having, where reasonably practicable and possible, given both parties the opportunity to be heard), make a wage arrest order.”

A wage arrest order was defined as an order that a proportion, not exceeding one half, of the wages of the party liable to make payment under a [maintenance] order, having regard to that party’s means, shall be arrested to facilitate the recovery of the payment as an *arrêt de gages*.

There is no reason in principle why a similar provision cannot be enacted in the Maintenance Orders (Enforcement) (Jersey) Law 1999. If there were such a power in the Court, there would need to be provision for the Court to give both parties the opportunity to be heard and there would need to be a similar monetary ceiling on an initial wages arrest order.

On general principles, the Court would not make an order for an arrest on wages as a matter of course; it would have to satisfy itself that there was good reason to do so. It would try to make some assessment of the reliability of the payer and, generally, look at all the circumstances.

This *projet de loi* would, therefore, empower the Royal Court or, as the case may be, the Petty Debts Court to authorize an arrest of (up to no more than half of) the wages of the payer on the making of a maintenance order or at any time thereafter. This reform would provide a quicker, less expensive way of enforcing maintenance obligations. It would save court time and bureaucracy; but more importantly it would provide a more effective means for spouses and parents, often in difficult financial straits, to recover maintenance and relieve them of the financial and emotional drain of having to have constant recourse to the courts.

There are no additional financial or manpower implications for the States arising from this draft Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Minister in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 4th September 2006 the Chief Minister made the following statement before Second Reading of this *Projet* in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Maintenance Orders (Enforcement) (Amendment No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law would empower the Royal Court and the Petty Debts Court to authorize an arrest of the wages of the payer on the making of a maintenance order or at any time afterwards.



Jersey

**DRAFT MAINTENANCE ORDERS
(ENFORCEMENT) (AMENDMENT No. 2)
(JERSEY) LAW 200-**

Arrangement

Article

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Jersey

MAINTENANCE ORDERS (ENFORCEMENT) (AMENDMENT No. 2) (JERSEY) LAW 200-

A LAW to amend further the Maintenance Orders (Enforcement) (Jersey) Law 1999.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, “principal Law” means the Maintenance Orders (Enforcement) (Jersey) Law 1999¹.

2 Article 1 amended

In Article 1 of the principal Law –

(a) after the definition “maintenance order” there shall be inserted the following definitions –

“ ‘payer’ means, in relation to a maintenance order, the person liable to make payments under the order;

‘recipient’ means, in relation to a maintenance order, the person for whose benefit the order is made;”;

(b) for the definition “wages” there shall be substituted the following definition –

“ ‘wages’ has the same meaning as in the Employment (Jersey) Law 2003² save that it shall include pensions contributions paid by the employer and any other ancillary non-monetary benefits.”.

3 Article 2 amended

In paragraph (1) of Article 2 of the principal Law –

- (a) for the words “a person (hereafter referred to as the ‘payer’)” there shall be substituted the words “the payer”;
- (b) for the words “the person for whose benefit that order was made (hereafter referred to as the ‘recipient’)” there shall be substituted the words “the recipient”.

4 Article 2A inserted

After Article 2 of the principal Law there shall be inserted the following Article –

“2A Order for arrest of wages attaching to maintenance order

- (1) The Royal Court or the Petty Debts Court, as the case may be, when making a maintenance order or at any time after that, may on the application of the recipient or of its own motion authorize an arrest to be made on the wages of the payer.
- (2) The Court shall not authorize an arrest under paragraph (1) –
 - (a) on the application of the recipient, unless it has given the payer an opportunity to be heard; or
 - (b) of its own motion, unless it has given the parties an opportunity to be heard.
- (3) The Court shall not authorize an arrest under paragraph (1) unless it has had regard to the means of the payer.
- (4) An arrest under paragraph (1) may not exceed one half of the wages of the payer.
- (5) Paragraph (4) shall not affect the discretion of the Court under Article 2(5) to make an order for an arrest of wages in such amount as the Court thinks just.”.

5 Citation and commencement

This Law may be cited as the Maintenance Orders (Enforcement) (Amendment No. 2) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

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- ¹ *chapter 12.500*
² *chapter 05.255*