

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER M15

MAINTENANCE ORDERS (COLLECTION) ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—
Act 8/2019, in force 7 September 2020

Published by the
Attorney General's Chambers
Printed under Authority by
The Regional Law Revision Centre Inc.
ANGUILLA



ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER M15

MAINTENANCE ORDERS (COLLECTION) ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—
Act 8/2019, in force 7 September 2020

Published by the
Attorney General's Chambers
Printed under Authority by
The Regional Law Revision Centre Inc.
ANGUILLA

© Government of Anguilla

All rights reserved. No part of this publication may be reproduced in any form or by any means (including photocopying) without the written permission of the Government of Anguilla except as permitted by the Copyright Act or under the terms of a licence from the Government of Anguilla.

MAINTENANCE ORDERS (COLLECTION) ACT

TABLE OF CONTENTS

SECTION

1. Interpretation
2. Powers of courts to make orders attaching earnings
3. Alternative orders
4. Variation and discharge of orders
5. Liabilities of persons to whom attachment of earnings orders are directed
6. Powers of courts to obtain statements of earnings
7. Power of courts to determine whether payments are earnings
8. Court may order monthly or other periodical payments
9. Payments made to be paid out to persons entitled
10. Modifications in relation to earnings falling to be paid by the Government
11. Offences
12. Citation

SCHEDULE: Attachment of Earnings Order

MAINTENANCE ORDERS (COLLECTION) ACT

Interpretation

1. (1) In this Act—

"attachment of earnings order" has the meaning assigned to it by section 2(1);

"defendant", in relation to a maintenance order or a related attachment of earnings order, means the person liable to make payments under the maintenance order;

"earnings", in relation to a defendant, means any sums (other than excepted sums) payable to him—

(a) by way of wages or salary (including any fees, bonus, commissions, overtime pay or other emoluments payable in addition to wages or salary by the person paying the wages or salary or payable under a contract of service); or

(b) by way of pension (including an annuity in respect of past service, whether or not the services were rendered to the person paying the annuity, and including periodical payments by way of compensation for loss, abolition, or relinquishment, or any diminution in the emoluments of any office or employment);

"employer" means a person by whom, as a principal and not as a servant or agent, earnings fall to be paid to a defendant, and reference to "payment of earnings" shall be construed accordingly;

"maintenance order" means—

(a) an order for alimony, maintenance or other payments made or deemed to be made by a court in Anguilla under—

(i) the Matrimonial Proceedings and Property Act,

(ii) the Guardianship of Infants Act,

(iii) the Maintenance of Children Act,

(iv) the Magistrate's Code of Procedure Act, or

(v) the Hospitals and Poor Relief Act; or
(Act 8/2019, s. 56(2))

(b) an order registered or confirmed in a court in Anguilla under—

(i) the Maintenance Orders (Facilities for Enforcement) Act 1920 (U.K.) as applied to Anguilla by S.I. 1921 No. 962, or

(ii) the Maintenance Orders (Reciprocal Enforcement) Act;

and includes any costs payable and any such order which has been discharged if any arrears or costs are recoverable thereunder.

(2) Any reference in this Act to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive such payments either directly or through another person or for transmission to another person.

(3) Any reference in this Act to proceedings relating to an order includes a reference to proceedings in which the order may be made.

(4) Any reference in this Act to any enactment is a reference to that enactment as amended by or under any subsequent enactment, and any relevant enactment consolidating or replacing such enactment.

Powers of courts to make orders attaching earnings

2. (1) If at the time of making a maintenance order, or at any subsequent time, it appears to a court that the defendant is a person to whom earnings fall to be paid, the court may, if it thinks fit, by an order or orders require the person to whom the order in question is directed, being a person appearing to the court to be the defendant's employer in respect of those earnings or a part thereof, to make out of those earnings or that part thereof periodical payments in accordance with the terms of the order and such an order is referred to in this Act as an "attachment of earnings order".

(2) If an attachment of earnings order is not made at the time of making the maintenance order, any subsequent application for making or varying such order shall be by way of complaint and summons and the provisions of section 142 of the Magistrate's Code of Procedure Act shall apply.

(3) In the absence of cause to the contrary, any maintenance order may be enforced by the procedure mentioned in subsection (2).

(4) An attachment of earnings order shall, so far as practicable, be in the form set out in the Schedule.

(5) An attachment of earnings order shall—

(a) specify the deduction rate, that is to say, the rate at which the court making or varying the attachment of earnings order thinks it reasonable that the earnings to which that order relates should be applied from time to time in satisfying the requirements of the maintenance order, not exceeding the rate appearing to that court to be necessary for the purpose of—

(i) securing payment of the sums falling due from time to time under the maintenance order, and

(ii) securing payment within a reasonable period of any sums already due and unpaid under the maintenance order and any costs incurred in proceedings relating to the maintenance order which are payable by the defendant;

(b) designate the person to whom any payment under the Schedule is to be made, being—

(i) the Community Development Officer, or

(ii) such other fit and proper person as may be selected and nominated by the court for this purpose; and

(c) contain, so far as they are known to the court making the order, such particulars as may be necessary for the purpose of enabling the defendant to be identified by the person to whom the order is directed.

(6) An attachment of earnings order shall not come into force until the expiration of 7 days from the date when a copy of the order is served on the person to whom the order is directed.

Alternative orders

3. Without prejudice to the powers to make attachment of earnings orders conferred by section 2, where proceedings are brought to enforce the payment of any sum ordered to be paid by a maintenance order, and it appears to the court that, at the date when the proceedings were begun, an amount was due under the maintenance order and unpaid and that the defendant is a person to whom earnings fall to be paid, then, the court may, if it thinks fit, make an attachment of earnings order instead of making any other order to enforce the making of payments under the maintenance order.

Variation and discharge of orders

4. (1) The court by which an attachment of earnings order has been made may if it thinks fit, on the application of the defendant or a person entitled to receive payments under the related maintenance order, make an order discharging or varying the attachment of earnings order.

(2) An attachment of earnings order shall cease to have effect—

(a) upon the cancellation or transfer from Anguilla of the relevant maintenance order by virtue of action under the Maintenance Orders (Reciprocal Enforcement) Act; or

(b) upon the making of an order of committal or the issue of a warrant of committal for the enforcement of the related maintenance order;

and where an attachment of earnings order ceases to have effect as aforesaid the proper officer of the court shall give notice of the cessation to the person to whom the order was directed, but, where the related maintenance order is discharged and it appears to the court discharging the order that arrears or costs thereunder will remain to be recovered after the discharge, that court may, if it thinks fit, suspend the discharge of the attachment of earnings order until arrears and costs arising under the relevant maintenance order have been recovered.

Liabilities of persons to whom attachment of earnings orders are directed

5. (1) A person to whom an attachment of earnings order is directed shall, notwithstanding anything in any other enactment but subject to the following provisions of this Act, comply with the order, or, if the order is subsequently varied under section 4, with the order as so varied.

(2) Where on any occasion on which earnings fall to be paid to a defendant there are in force 2 or more attachment of earnings orders relating to those earnings, the employer shall comply with each order.

(3) An employer who, in pursuance of an attachment of earnings order, makes a payment under the order shall give to the defendant a statement in writing specifying the amount of that payment.

(4) A person to whom an attachment of earnings order is directed who, at the time when a copy of the order is served on him or at any time thereafter, has on no occasion during the period of 3 weeks immediately preceding that time been the defendant's employer shall forthwith give notice in writing to that effect to the court which made the order, by completing the certificate on the attachment of earnings order and returning the same to the Magistrate's Court.

Powers of courts to obtain statements of earnings

6. (1) Where proceedings relating to an attachment of earnings order are brought in any court, the court may, either before or at the hearing—

(a) order the defendant to give the court, within such period as may be specified by the order, a statement signed by him of—

(i) the name and address of his employer, or of each of his employers, if he has more than one,

(ii) such particulars as to the defendant's earnings as may be so specified, and

(iii) such particulars as may be required for the purpose of enabling the defendant to be identified by any employer of his; and

(b) order any person appearing to the court to be an employer of the defendant to give to the court, within such period as may be specified by the order, a statement signed by him or on his behalf of such particulars as may be specified by the order of all earnings of the defendant which fell to be paid by that person during such period as may be specified.

(2) Any document purporting to be such a statement as is mentioned in subsection (1) shall, in any such proceedings as are so mentioned, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.

Power of courts to determine whether payments are earnings

7. (1) The court by which an attachment of earnings order has been made shall, on the application of the person to whom the order is directed or of the defendant, or of the person in whose favour the order was made, determine whether payments to the defendant of a particular class or description specified by the application are earnings for the purpose of that order; and the person to whom the order is directed shall be entitled to give effect to any determination for the time being in force under this subsection.

(2) A person to whom an attachment of earnings order is directed who makes an application under subsection (1) shall not incur any liability for failing to comply with the order as respects any payments of the class or description specified by the application which are made by him to the defendant while the application is pending, but this subsection shall not apply as respects such payments if the person subsequently withdraws the application.

Court may order monthly or other periodical payments

8. Notwithstanding the provisions of section 134 of the Magistrate's Code of Procedure Act or any other applicable legislation, the court making an attachment of earnings order may order that the payments due thereunder shall be made by the employer at times to correspond with a defendant's payday, which is the day on which any earnings to which an attachment of earnings order relates fall to be paid, and accordingly the order may be made in terms of a monthly, or other periodical payment, instead of a weekly payment as to the court shall appear reasonable.

Payments made to be paid out to persons entitled

9. (1) The officer to whom an employer pays any sum of money in pursuance of an attachment of earnings order shall pay that sum to such person entitled to receive payments under the related maintenance order as is specified by the attachment of earnings order.

(2) Any sums received by virtue of an attachment of earnings order by the person aforesaid shall be deemed to be payments made by the defendant, so as to discharge first any sums for the time being due and unpaid under the related maintenance order being discharged before a sum due at a later date and second any costs incurred in proceedings relating to the maintenance order which were payable by the defendant when the attachment of earnings order was made or last varied.

(3) In cases where the employer is not the Government, on any occasion when an employer makes a payment in respect of a defendant, the employer may, notwithstanding anything in any other enactment, retain for his own use out of any balance of the defendant's earnings remaining after making that payment the sum of 50¢.

Modifications in relation to earnings falling to be paid by the Government

10. In relation to earnings falling to be paid by the Government of Anguilla, this Act shall have effect subject to the following modifications—

(a) the earnings shall be treated as falling to be paid by the chief officer for the time being of the department, office or other body concerned;

(b) if any question arises with regard to the defendant's compliance with the provisions of section 6(1)(a) or there is any uncertainty with regard to what department, office, or other body is concerned for the purpose of this section, or as to who for those purposes is the chief officer thereof, the court may make reference to the Accountant General;

(c) a document purporting to set out a determination of the Accountant General under paragraph (b) and signed by an official of the Treasury shall, in any proceedings under this Act, be admissible in evidence and deemed to contain an accurate statement of such determination unless the contrary is shown.

Offences

11. (1) A person who—

(a) fails to comply with section 5(1) or (4), or an order of the court under section 6;

(b) gives any notice or statement arising out of the operation of section 5(4) which he knows to be false in a material particular; or

(c) recklessly gives such a notice or statement which is false in a material particular;

shall, subject to subsection (2), be liable to a fine of $250, and in the case of a second or subsequent conviction to a fine of $1,250.

(2) It shall be a defence for a person charged with failing to comply with section 5(1) to prove that he took all reasonable steps to comply with the attachment of earnings order to which the failure relates.

Citation

12. This Act may be cited as the Maintenance Orders (Collection) Act, Revised Statutes of Anguilla, Chapter M15.

———————

SCHEDULE

(Section 2(4))

Anguilla

IN THE MAGISTRATE'S COURT

MAINTENANCE ORDERS (COLLECTION) ACT

ATTACHMENT OF EARNINGS ORDER

Magistrate's Court Case No. …...../20…….

To ..... *(Employer's name)* of .....*(Employer's address)*

It appears to the Court that you are the EMPLOYER of .....…..... *(Employee's name)* of .....…….....…..... *(Employee's address)* (herein called the "Defendant") and you are HEREBY REQUIRED to make deductions from any earnings due to him at any time, and to pay the amount deducted to ..... quoting the above Magistrate's Court Case number on every occasion.

……

……...…….

(Identification of Defendant)

The amount you are required to deduct from the Defendant's earnings is the sum of EC$ …… weekly/monthly.

……..

Magistrate

Date .....

Please read these NOTES carefully

s. 11	1.	This is a Court Order, and disobeying it will render you liable to a fine.
s. 9(3)	2.	Whenever you make a payment to the officer named above, you may retain a further 50¢ from the defendant's remaining earnings, for your own use but you *must* on each occasion give the Defendant a written note stating the deductions made.
s. 2(6)	3.	This Order comes into force on the expiration of 7 days from the date when the order is served upon you.
s. 5(4)	4.	If the named defendant has not at any time within the last 3 weeks been employed by you, you *must now* complete the following certificate and return the whole document to the Magistrate's Court.

CERTIFICATE OF NON-EMPLOYMENT

I, ...……....., being the person named as the Employer, hereby certify that on no occasion during the period immediately preceding the ..... day of ....., 20 ..... have I been the employer of the named Defendant, that is, …….. and I owe him no earnings.

.....….….....
Employer

5. If you are in any doubt about the meaning of this Order, or your obligations regarding it, take it to the Magistrate's Court, or to the Community Development and Welfare Office.

PROCESS SERVER'S CERTIFICATE OF SERVICE

I, ... *(Process Server's Name)* hereby certify that on the ..... day of ....., 20....., I served the within named ..... with a copy of this Order by—

*(a) delivering the same to him personally; or

(b) leaving the same with .....…….... at ..... being his usual place of business/abode.

…….
Process Server

DATED this ..... day of ....., 20 .....

* *Delete one of these*