

**Committee on the Administration of Justice**

# **Debt - An Emergency Situation?**

A history of the Payments for Debt Act in  
Northern Ireland and its effects on public  
employees and people on state benefits

**CAJ Pamphlet No. 13**

JUNE 1989

£2.00

# **Acknowledgements**

The CAJ is particularly grateful to Les Allamby who generously took on the task of writing the finished version of this pamphlet and conducted invaluable research.

The initial work was carried out by members of the CAJ's social legislation sub-group, including Brice Dickson, Mary McMahon, Dominic Gates, Pat Johnston and Kevin Smyth. Sandy Barron, Martin O'Brien, Hazel Gordon and Liam Lynch worked on editing and production.

# **Committee on the Administration of Justice**

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# **Introduction**

## **'Emergency' legislation**

In 1986, black tenants near Cape Town, South Africa began withholding rent in protest at the breaking up of the Crossroads Squatter camp and the raid on homes where displaced black people lived with legally settled tenants. The struggle against forcible expulsion from urban areas into 'homelands' was coming to a head. The South African Government announced its intention to introduce emergency laws enabling it to deduct wages and other monies at source from individuals, in order to cover their rent payments. Emergency legislation introduced in N.Ireland 15 years earlier provided an ideal working model for this plan.

The Payments for Debt (Emergency Provisions) Act (Northern Ireland) 1971 (PDA) was enacted in October 1971 to counter a rent and rates strike which had been called in protest against the introduction of internment in August 1971. The legislation stated that the Act was to stay in force until six months after the end of the emergency that had caused the Act. The Governor of Stormont was given powers, by Order in Council, to declare that the emergency which had caused the introduction of the Act was over. This power was transferred to the Secretary of State for N. Ireland in 1974.

Internment ended in December 1975. The rent and rates strike was officially called off by the Civil Rights Association on 29 March 1976. Over 12 years later, the PDA remains in use and on the statute book as emergency legislation. Since 1975 the scope of the Act has been extended. More recently, in 1988 the government created ordinary powers to cover many of the deductions from social security benefits that were previously made under emergency legislation.

## **How the Act Works**

The Act works broadly in four ways. First, direct deductions from what used to be supplementary benefit (now re-designed as income support) can be taken from individuals, to pay for their current rent and fuel bills, as well as any arrears they might have. New legislation introduced in

Britain and N. Ireland in November 1980 allowed many of these kinds of deductions to be made under ordinary laws, which led to a decline in the use of the PDA in this area.

Secondly, direct deductions from all other social security benefits can be made to pay current rent and fuel bills, and arrears. Until April 1988, no powers existed under any circumstances in Britain to deduct money at source from invalidity benefit, retirement and widows pensions, child benefit, unemployment sickness and other benefits. The introduction of the amended benefits regulations in April 1988 has extended powers to make deductions from a range of social security benefits in both Britain and N. Ireland. Nevertheless, general powers to deduct from a wide range of benefits remain far more extensive in N. Ireland. The government has also announced its intention in Britain to use ordinary powers to collect poll tax payments and arrears direct from social security benefits.

Thirdly, the Act is used to make direct deductions from the wages of people working in local or public authorities. The Act stands alongside the ordinary judicial method of recovering debts through the courts and the Enforcement of Judgments Office.

Finally, the Act is used to withhold other payments to individuals from public bodies. Student grants, court awards against government departments; improvement, repair, home loss, disturbance, and redecoration grants from the Northern Ireland Housing Executive, can all be withheld in part or in whole to pay for electricity, rent or other arrears to public bodies.

The legislation does not place any limit on the amount that can be taken out of a person's wages or benefits. A person cannot appeal either against the decision to deduct itself, or against the amount taken from their benefit, except if a dispute arises that arrears are owed in the first place. No notice has to be given of a decision to deduct money from a person's benefit, and no account is taken of peoples financial circumstances or of the reasons why they find themselves in arrears. Public bodies in Britain have no powers to by-pass the courts and deduct wages and other public payments at source in this way.

## **Implications**

The use of the PDA must be placed in the context of economic and social conditions in N. Ireland. Unemployment and reliance on social security benefits have been consistently higher than in any other region of Britain.

Average wages are significantly lower in N. Ireland and a greater percentage of the population relies upon the public sector for employment. For evidence of this see Tables 1 and 2.

Once adjustments are made for housing costs, the cost of living in N. Ireland is generally more expensive. In particular, the real cost of fuel is over 40 per cent higher than the average in Britain. This is reflected in recent Family Expenditure survey figures on fuel. (See Table 3)

People on low incomes are faced with the unenviable and often impossible task of making ends meet. Debt is not usually a product of financial mismanagement: it is a sign of inability, rather than unwillingness to pay.

Public debt in N. Ireland runs at a significant level but arrears problems are not substantially greater than in some parts of Britain. In 1987, figures for rent arrears show 44% of tenants in Belfast in arrears, 56% in Camden, 68% in Hackney and 46% in Manchester. The PDA guarantees that Northern Ireland Electricity and the Northern Ireland Housing Executive get paid. It pays little regard to the consequences of forced payments on the individuals or households concerned. The PDA offers neither recognition of nor appeal against the reasons why debts are accrued by low income households in the first place.

This pamphlet gives an historical account of the PDA, highlights the extent of its use in comparison with other debt collection methods, offers case-examples of its impact on individuals and families, and examines the case for repeal and alternatives.

**Table 1****Unemployment as percentage of the workforce**

NI	Dec 1988	15.5%
GB	Dec 1988	7.0%

**Social security benefits as a percentage of household income in 1984.**

NI	23.6%
UK	13.9%

*Source - Northern Ireland Economic Council*

**Table 2****Percentage distribution of households by household income, 1985 - 1986**

	Percentage of households in each income group										Number of households in samples
	Average income £ per week		Weekly income of household, £								
	per person	per household	under 60	60 but under 80	80 but under 125	125 but under 175	175 but under 225	225 but under 275	275 but under 375	375 or more	
United Kingdom	87.5	225.4	12.9	8.6	12.8	12.4	11.7	10.5	15.8	15.3	14,190
North	74.9	187.7	16.8	10.1	15.4	11.4	13.4	10.3	14.0	8.5	871
Yorkshire & Humberside	76.3	193.3	16.6	9.6	13.8	14.5	12.3	9.6	13.5	10.0	1,346
East Midlands	82.1	217.2	11.4	9.1	13.3	12.0	13.8	11.5	16.5	12.2	1,013
East Anglia	87.5	224.5	10.2	7.1	13.3	13.5	14.7	9.8	17.6	13.8	518
South East	106.3	269.1	9.4	7.5	9.6	11.4	10.5	10.6	17.4	23.5	4,089
South West	90.1	232.6	10.3	8.0	13.3	11.0	12.3	12.2	18.0	14.8	1,120
West Midlands	77.4	208.7	14.1	8.7	15.2	12.3	12.0	10.2	14.8	12.7	1,319
North West	80.0	203.7	15.6	9.4	13.2	13.9	10.6	10.3	16.0	11.1	1,610
England	89.3	229.2	12.4	8.5	12.4	12.3	11.7	10.5	16.2	15.9	11,886
Wales	77.7	202.6	12.4	9.1	16.5	12.8	12.4	11.7	14.1	11.1	759
Scotland	81.7	210.2	16.6	8.6	12.4	12.8	11.0	9.8	14.2	13.5	1,288
Northern Ireland	66.4	192.8	17.1	11.7	15.6	14.8	11.7	5.8	9.7	13.6	257

*Source: Regional Trends*

**Table 3****Weekly expenditure on fuel in N. Ireland and United Kingdom 1985/86**

	N. Ireland 1985-86	United Kingdom 1985-86
Average weekly income per household	£192.78	£225.37
Expenditure on fuel, light and power	£15.52	£10.20

*Source: Family Expenditure Survey*



# Payments for Debt Act - A History.

## Rent and rates strike

In the early hours of 9th August 1971, the British Army arrested 342 men and held them without trial or charges being brought. Internment had begun. The response in the communities affected was swift. A campaign of civil disobedience organised by the NI Civil Rights Association and Nationalist political parties got underway. The centre-piece of the campaign was withholding rent and rates payments to public authorities. By September 1971 government figures suggested that around 26,000 families were on rent strike.

The official response to the campaign was immediate. Emergency legislation was rushed through the Stormont Parliament and the Senate in six days. Introducing the Bill in Stormont John Taylor, the Minister of Home Affairs, made the Stormont government's position clear

*"If the strikers don't like what we are doing the remedy lies in their own hands...we shall explain...that the special procedures will be cancelled as soon as they withdraw from the strike and discharge any arrears which may be due".*

Concluding his speech, Mr. Taylor announced:

*"The sooner the campaign ends, the sooner will this emergency measure lapse".*

Few reservations were expressed about the need for the legislation. A note of caution was, however, sounded by Robert O'Neill, the member for North Antrim:

*"How is one going to prevent a situation arising whereby...normal arrears...are collected through the extraordinary powers in this Bill? I hope that the enormous powers put into the Bill will not be used other than against those who are deliberately participating in civil disobedience"*

On 14 October 1971 the Payments for Debt (Emergency Provisions) Act reached the statute books. The Act was made retrospective to cover any rent or rates outstanding from 1 April 1971.

## **Powers**

Sections 1 and 2 of the Act allowed government departments and public bodies who owed money to individuals to divert that money to pay the individual's rent debts (including any fuel or service charges, and rates). Interest and cost of collecting rent and rates could also be deducted from public monies.

Definition of local and public authority was drawn widely to include any local authority, any body exercising powers under any transferred provision, any body or person appointed wholly or partly by the N.Ireland government (or government department after 1974) and any body whose accounts were audited, examined or reported on, by or on behalf of the Auditor-General for N. Ireland.

Sections 3 to 8 gave the Enforcement of Judgments Office sweeping powers to make emergency enforcement orders against anyone withholding taxes, rent, rates or mortgage interest wilfully. The Enforcement Office had discretion to give a debtor at least seven days' notice to show why an emergency order should not be made. If no payment or explanation was forthcoming, the Enforcement Office could make orders to enforce direct deductions from wages, seize assets, place a charge on property, stocks, shares, or other personal funds and appoint a receiver. The Act effectively allowed the normal judicial process for the collection of certain debts to be by-passed.

Section 9 provided a limited right of appeal against emergency enforcement orders. Appeals could be made to the courts when a person could show there was no liability for rent, rates or other payments in the first instance. An appeal had to be made within 12 months of the decision to make an emergency enforcement order.

Sections 10 to 15 set out how emergency orders were to be served, imposed penalties on employers who refused to co-operate in deducting monies from employees' wages, provided powers to order witnesses to attend personal hearings and to allow expenses incurred by the Enforcement Office or government department to be met out of monies provided by Parliament.

Section 16 provided a set of definitions.

Section 17 provided subsidiary powers for the Minister of Finance and Development and Ministry of Home Affairs (Department of Finance and Personnel from 1974) to make directions to clarify and give full effect to the Act. Directions were to become a regular feature of the operation of the Act.

Section 18 sets out that the Act was to continue until six months after the "present emergency" had ended. The "present emergency" was defined as beginning on 1st October 1971 and finishing whenever the Governor (Secretary of State for N. Ireland after 1974) would declare, by Order in Council, that the emergency had ended.

The effectiveness of the Act was without question. The Department of Health and Social Services (DHSS) set up a Benefits Allocation Branch (BAB) and by April 1972, 12,700 people were having deductions made from benefits. These included 5,500 from child benefit, 2,000 from supplementary benefit, 1,200 from sickness benefit and 1000 from unemployment benefit. The remainder of the deductions came from a variety of other benefits.

Long before internment ended in December 1975 the rent and rates strike had been curtailed. Severe hardship was made worse by government directions that rent and rates rebates and exceptional needs payments (replaced by single payments in 1980) were not to be paid to anyone having deductions made under the Payments for Debt Act.

## **Act extended**

The decision of the N.I. Civil Rights Association to officially call off the strike on 29 March 1976 prefaced the extension rather than termination of the Act. On 5 April 1976 Don Concannon, the Labour Minister of State at the Northern Ireland Office, announced that the Act was being extended to cover anyone owing over £20 in rent or rates.

The Payments for Debt (Costs of Collection) Order (NI) 1976 imposed a 50p weekly charge on the collection of weekly deductions. A circular issued by the Department of Finance to public and local authorities stated that the charge was

*"to cover all cases where normal methods of collection and enforcement are unlikely to work and not merely those taking part in the civil disobedience campaign".*

The circular took advantage of the wide powers created by Section I of the Act. No changes in legislation were necessary to implement the extension. In January 1977, 5,680 people were having deductions made under benefit allocation. Almost half the deductions were from child benefit.

In February 1977, following a widespread campaign against the Act, the Labour administration announced procedural changes to it. An internal review and informal advisory tribunal were introduced to consider appeals against deductions made by Benefit Allocation Branch. The informal appeal tribunal was given no statutory powers but could recommend a lower deduction where severe hardship was occurring. In practice, because of a lack of publicity and a lack of enforcement powers, very few appeals were ever initiated. In the ten years since the appeals mechanism was set up, barely 150 appeals have been heard. Other changes included restoring the right to receive exceptional needs payments. Separated wives would no longer have deductions made from their benefits in respect of husbands. Deductions from child benefit were only to be made in limited circumstances and money would no longer be deducted from mobility allowance and attendance allowance, invalid care allowance, and certain industrial injuries benefits, maternity and death grants.

These minor improvements, however, were soon to be followed by a major extension of the Act. Criminal injuries legislation allowed debts to be deducted directly from criminal injuries compensation under the Act. In December 1977 Secretary of State Roy Mason, announced his intention to amend and extend the use of the Act. In June 1978 the Payments for Debt (Amendment) (NI) Order 1978, widened the Act to include electricity and gas arrears. A further Costs of Collection Order permitted a 50p collection charge from electricity and gas debts. Guidance on these charges allowed only one deduction to be made from a person's benefit. Priority was to be given to rent and rates.

## **Social Security changes**

In March 1980 Secretary of State Humphrey Atkins announced that the right to receive a rent rebate would be restored to those having deductions made under the PDA. A more significant change was to occur later in the year. A major review of social security legislation in the late 1970s led to substantial changes to social security benefits. One significant change was the introduction of direct deductions from supplementary benefit to cover rent and fuel charges. In Britain, the powers to make such deductions were new. In N.Ireland the legislation allowed many of the deductions previously made under the PDA to be made under ordinary social security legislation.

Direct deductions from other social security benefits continued to be made under the PDA. Fuel and rent direct allowed for the deduction of rent and weekly fuel consumption plus a small amount towards arrears. Deductions were limited to 25% of supplementary benefit (not including housing costs paid to owner - occupiers). Under and over estimates of weekly fuel consumption could be adjusted after 26 weeks by additional or reduced deductions. The Department of Finance and Personnel issued directions on benefit allocation to other government departments on 10 November 1982. Further amendments were made on 24 July 1984 that benefit allocation was to operate broadly along the lines of fuel and rent direct schemes. But significant differences remained. The 25% upper limit under the fuel direct scheme could be breached where a claimant gave consent to higher deductions (eg: when threatened with disconnection ). The additional deductions from supplementary benefit were made by BAB under the PDA. At 31 March 1987, 2,110 deductions of 25% or more were being made from supplementary benefit. No equivalent facility to breach the maximum existed in Britain. Powers to adjust deductions to compensate for previous inaccurate assessments of weekly fuel consumption were discretionary under the fuel direct scheme but mandatory under the administration of benefit allocation. Additional deductions could be avoided under the fuel direct scheme on grounds of financial hardship. Such a defence was not so easily available under benefit allocation.

The transfer of many deductions from the PDA to social security legislation in 1980 did not lead to use of the Act coming to an end. More unemployment and consequent reliance upon social security benefits ensured that the Act continued to be used to a significant effect, and between 1983 - 1987 numbers of deductions from wages and benefit actually increased.

The value of amounts being deducted also continued to rise steadily in spite of the introduction of the rent and fuel direct scheme. The increase in fuel and rent charges in the early 1980s, and the increase in the numbers on benefit, both contributed to the rise. Tables 4, 5, and 6 set out the numbers and value of deductions made under the Payments for Debt Act in the 1980's.

The PDA continued to have an impact elsewhere. In December 1981 the Department of Finance and Personnel issued a direction ordering Education and Library Boards to accede to requests from public bodies for direct deductions from student grants.

In 1982, a long-standing campaign to end the transfer of NIHE redecoration grants to offset clients arrears failed to move the Housing Executive or Department of the Environment. All tenants with arrears of over £150 would have the redecoration grant offset against rent arrears under the

Payments for Debt Act. The policy remains unchanged today. Direct deductions also continue to be made from self-help repair grants and from other Housing Executive payments.

Regular directives were issued setting out the maximum that could be deducted directly from wages towards arrears. The maximum now stands at weekly rent or fuel consumption plus £12.20 towards arrears. The value of deductions from public sector earnings in 1985/86 was 1.74m increasing to 1.8m in 1986/87, and a further 1.43m in the first nine months of 1987. In one case in 1985 a Belfast City Council cleaner received a note from her employer saying that her whole wage had been deducted and that she owned the council 40p following a request by NIHE for deductions for rent and district heating payments plus arrears.

The value of deductions from other public monies is set out in Table 7. withholding of other public monies is set out in Table 7.

The major review of social security benefits initiated in 1985 has added yet another twist to use of the PDA. As part of the changes finally introduced in April 1988, the DHSS enacted legislation expanding the fuel and rent direct schemes to cover other specified benefits. Unemployment, sickness, invalidity, retirement pension, and severe disablement allowance, widows pension and widowed mothers allowance as well as income support can all have deductions made directly under the Claims and Payments (Amendment) regulations (N.Ireland) 1988.

Much of the work of Benefit Allocation Branch has thus been transferred from the PDA to social security legislation. Deductions from benefit under the Act remains for arrears only where the claimant is no longer a fuel consumer or tenant. This transfer of deductions from emergency to ordinary legislation is in part a response to the adverse publicity generated by revelations that over £1 million in deductions came directly from invalidity benefit (a benefit paid to those with prolonged ill-health). In Britain, increased powers to deduct from benefits have also been taken. However, the scope for deductions there falls far short of the powers available in Northern Ireland. Deductions can only be made from 'specified' benefits if they are paid in addition to income support. No such restriction is placed on deductions from widows, retirement pensions and other benefits in N.Ireland.

## **Social policy**

Thirteen years (in 1989) after its introduction, over 12 years after the ending of the rent and rates strike in response to internment, the Payments for Debt Act remains on the statute books. The position of the

government has been to transfer powers to make deductions from benefits under the Act from emergency to ordinary legislation without addressing the real causes of debt in N.Ireland. Such a strategy has not been employed, however, in respect of direct deductions from wages, court claims, student, NIHE grants and other payments. The development of the PDA from a piece of legislation to deal with a specific issue to an integral part of social policy sets a worrying precedent and continues to cause serious concern, not least to those who find themselves at the sharp end of the Act in practice.

**Table 4**

**No's of deductions from social security benefits made by Northern Ireland Housing Executive (N.I.H.E.) and Northern Ireland Electricity (N.I.E.) under fuel direct and Payments for Debt Act (1980 - 1983).**

		1980	1981	1982	1983
N.I.H.E.	Rent Direct	n/a	5,153	10,538	15,102
	Benefit Allocation	n/a	2,190	2,741	* 3,104
	Direct deduction from wages	n/a	967	1,374	*1,501
N.I.E.	Fuel Direct	n/a	100	5,900	8,300
	Benefit Allocation	500	2,000	2,000	2,400
	Direct deduction from wages	100	200	300	400

**Notes**

1. Figures are for financial years ending in March.

\* denotes annual number to end of June 1983

2. NIE figures rounded to nearest 100.

*Source: Correspondence from NIE and NIHE to Assembly member, and correspondence from DHSS to Belfast Law Centre.*

**Table 5**

**Methods used to recover arrears by NIHE, NIE., Dept of Environment Rating Division and local authority Gas Departments at 31 March 1983 and 1987.**

Method of recovery	No. of cases	
	31 Mar '83	31 Mar 87
Voluntary agreements (1)	35,485	n/a
Coin operated collection devices	30,407	n/a
Direct deductions from Supplementary Benefit	25,883	25,203
Referred for legal action	17,977	n/a
Benefit allocation (2)	8,275	12,650
Disconnection/Notice to Quit	2,083	2,897
Deductions from public employees' Salaries/wages (2)	1,999	2,135

**Notes**

1. Figures exclude agreement with rates department

2. Deductions made under PDA

*Source: Twenty Fourth Report of the House of Commons Public Accounts Committee 1983 - 1984 and correspondence between DHSS and Belfast Law Centre*



**Table 6****Total deductions made from various benefits under the Payments for Debt (Emergency Provisions) Act 1971**

Amount in £'s

1978/79 - 1987/88

Financial year	supplementary benefit	child benefit	unemployment benefit	sickness benefit	invalidity benefit	retirement benefit	widow's benefit	Deductions from all benefits
1978-79	764280.45	11801.49	122419.34	12715.25	132306.44	39759.89	60279.09	1,143,562
1979-80	1015276.95	62124.02	105634.97	13261.44	182840.67	58894.62	71729.47	1,501,762
1980-81	1477225.14	70435.71	211779.09	15740.65	256734.06	83339.53	105914.09	2,221,170
1981-82	263668.48	62794.57	265196.95	9524.73	436747.48	149433.14	1559433.14	1,343,233
1982-83	474264.89	86299.35	367573.98	16694.64	872123.58	379438.35	322442.86	2,518,837
1983-84	646155.59	92449.35	256869.10	13246.89	1073954.06	535781.87	407457.58	3,025,911
1984-85	724889.61	73860.16	121855.50	12935.62	1015112.09	44285.60	352482.35	2,743,306
1985-86	824101.13	77374.67	134636.92	14159.11	1104443.51	541382.58	358682.17	3,060,764
1986-87	991135.65	69529.60	157726.37	17815.43	1288668.52	664986.12	427617.83	3,617,079
1987-88	1044693.97	71168.79	139249.94	16134.69	1422780.18	678406.70	431945.61	3,804,380

Source: *Parliamentary Answer to Jim Marshall MP, 22 February 1988; and correspondence between Department of Finance and Personnel, and CAJ.*

**Table 7****Value of deductions made direct from court awards and other payments under the Payments for Debt Act 1981/82 - 1987/88.**

Financial Year	Criminal Injury Payments	Criminal Damage Payments	Other Court awards	Repair, re-development, re-decoration & other grants
	£	£	£	
1981/82	76,362	328,137	n/a	
1982/83	113,638	1,518,210 <sup>1</sup>	n/a	
1983/84	119,143	202,042	n/a	
1984/85	98,074	146,038	n/a	
1985/86	102,223	64,296	126,746	1,478,471
1986/87	139,720	72,805	n/a	
1987/88	106,748	112,005	127,447	

**Note**

(1) The increase in accounted for by one deduction made from a claim worth £1.2m.

Source: *Parliamentary question by Jim Marshall MP dated 12 February 1988. Correspondence with DHSS.*

# Public Debt and the P.D.A

The original justification for the Payments for Debt Act has long since passed. Two other arguments must, however, be examined: first - the adequacy of judicial methods for recovering public debt and second, the justification for keeping the Act on the statute book.

## Judicial method for recovering public debt

Debt collection through the courts in N. Ireland is quite different from Britain and the rest of Europe. A creditor must normally establish in the courts that a debt is actually owed. Once such an order is obtained the debt can be enforced through a separate body, the Enforcement of Judgments Office (EJO). Uncontested small debts can be referred direct to the EJO in certain circumstances.

Enforcement begins when a creditor issues a notice of intention to enforce a judgement. This allows the debtor 10 days to pay the outstanding monies owed. If the sum is not paid then, enforcement proceedings can begin. A custody warrant may be issued by the EJO. This transfers the ownership of goods and possessions of the debtor to the Enforcement Office. Certain items are exempt from transfer. Goods are not removed from the premises and indeed it rarely becomes necessary to do so. An Enforcement Officer will interview and examine the financial circumstances of the debtor.

The EJO has a wide range of powers to deal with the outstanding debt. These powers include:

*Attachment of Earnings Order - direct deductions from wages which employers are obliged to co-operate with.*

*Instalment Order - instalments which can be paid either direct to the creditor or through the Enforcement Office.*

*Seizure Order - allows for the removal of possessions and property from a person in debt.*

*Order charging land - this order turns an insecure debt into a secure one by ensuring that when property or land is sold the creditor is paid. The courts can force the sale of property or land in certain circumstances.*

*Attachment of Debts Order - the EJO can seize monies held in bank and building society accounts.*

*Receiver Order - the EJO can appoint a receiver to transfer and realise financial assets. This applies to people in debt with business interests.*

In addition to these powers, the Enforcement Office can issue a certificate of unenforceability, effectively preventing the enforcement of the courts judgment. A certificate is issued when a person in debt has no assets and is living on an income at or commensurate with social security level. The debt is frozen but the order can be reconsidered if the circumstances of the debtor change. In practice, the issuing of a certificate of unenforceability leads to a debt being written off. In 1986, 10.5% of all applications resulted in the issuing of a certificate of unenforceability. Details of the number of cases processed through the Enforcement Office are provided in Table 8.

The EJO was established by the Judgments (Enforcement) Act (Northern Ireland) 1969 and has been in operation since 1971. Criticism of its early workings led to the setting up of an internal working party in 1976. Changes were implemented through amendments to the legislation in 1979 and the enforcement legislation was in the Judgments Enforcement (N.Ireland) Order of 1981. In February 1985 Lord Hailsham, then Lord Chancellor appointed a review committee to consider changes in the law and practice of enforcing judgements by the EJO

The review body was not asked to consider the abolition of the EJO and significantly no evidence was submitted suggesting such a move.

Under the chairmanship of Master Hunter, the review body found that almost half of the work in the EJO deals with public debt. A statistical survey carried out over 393 cases in 1985 for the review board revealed that within approximately one year full recovery was made in 40.5% and partial recovery in 19.1% applications. A follow up study completed by the Enforcement Office showed that after another 13 months the full recovery rate had increased to 46.6%.

The EJO has been criticised by creditors because it is slow, requires money from creditors in advance of any enforcement action and the issuing of certificates can render pursuit of a debt fruitless. However, the strength of the EJO is its recognition that enforcing debt must start from

an assessment of the debtors financial and personal circumstances. Certificates of unenforceability assist in distinguishing those who cannot pay from those who will not pay.

What emerges from an analysis of the Enforcement Office is that judicial methods of recovery of public debt, combined with ordinary legislative powers to deduct money from social security benefits, provide a strong and adequate framework for the recovery of public debt. Most telling of all is the government's decision not to use the PDA against those who refused to pay rates and other public debts as a protest against the Anglo-Irish agreement. Judicial methods and, in some cases, imprisonment proved a sufficient counter to that strike.

## **The level of public debt in N. Ireland**

Throughout the 1970s and early 1980s rent and rates were on the rise. The trend applied in both Britain and N.Ireland. The Department of Environment in Britain commissioned major research into rent arrears which was published in October 1983. "**Preventing Rent Arrears**" by Keith Kirby and Sue Durcan found that rent arrears occurred because of a number of reasons. In particular, arrears occur in families with dependent children, in single parent households and in homes where there had been a recent reduction in the number of wage earners. Unemployment at the head of the household, higher than average levels of rent, unpopular housing, the presence of other arrears, lower than average take up of rebates, and collection of arrears by giro rather than door to door were all associated with rent arrears. The report concluded that rent arrears were seldom the result of extravagance by tenants.

In March 1981 the NIHE carried out a similar survey on the characteristics of tenants in arrears and arrived at similar conclusions. No political or protest dimension was identified as a cause of arrears. In April 1984 the Permanent Secretary to the Department of Finance and Personnel, Dr Quigley, giving evidence to the Public Accounts Committee, outlined that

*"our last assessment would be that there is really no political element now in the rents and rates problem".*

Comparisons between levels of rent owed to the NIHE and local authorities in Britain need to be treated with caution. Figures for arrears include technical arrears (i.e. money in transit from local social security offices under rent direct and in N.Ireland from Castle Buildings Stormont under benefit allocation). In Britain, annual figures for England and Wales are collected and published by the Chartered Institute of Public Finance Accountants (CIPFA). The figures rely in part upon complete returns from

local authorities but still represent the most accurate guide available on rent and rates arrears in the public sector. Figures for the year ending 31 March 1987 are the most recent which allow for a meaningful comparison between England, Wales and N. Ireland.

Analysis of overall arrears position confirms the view that the NIHE arrears problems, though above average for England and Wales as a whole, are less than in many London boroughs and Metropolitan districts. Table 9 sets out the figures for England, Wales and N.Ireland. Table 10 provides a comparison between N.Ireland and a number of local authorities in England. Table 11, which provides a breakdown of the amounts owed by tenants, illustrates that trends differ little between N.Ireland and England and Wales.

A breakdown of the amounts owed by tenants illustrates that trends differ little between N.Ireland and England and Wales.

In N.Ireland 2.8% tenants owe over £500 compared with 2.4% of tenants for all local authorities. A significant proportion of arrears in England, Wales and N.Ireland are therefore owed by a small percentage of tenants. Rent arrears per tenant in N.Ireland are on average higher than in England and Wales, reflecting little more than the above average economic and social deprivation. Many local authorities, particularly in London, are faced with much greater rent arrears difficulties. Preliminary investigation of the other major type of arrears pursued under the PDA reveals that electricity arrears in N.Ireland do not run far in excess of all fuel boards in Britain. Comparative figures on electricity are more difficult to obtain than for rent arrears. Arguments that the PDA remains essential either to combat endemic arrears on a scale unique to N.Ireland, or to shore up ineffective judicial methods of recovering public debt, simply do not stand up to careful scrutiny.

**Table 8****Enforcement of Judgements statistics**

	1984	1985	1986			
	No.	No.	No.			
1. Notice of intention issued	17,380	19,894	26,020			
2. Preliminary applications (Art. 23, money judgements)	275	381	512			
3. Emergency applications Money judgements	7,199	8,527	8,677			
Judgements for delivery of possession of land	191	308	360			
Judgements for delivery of goods	18	14	20			
Total	7,683	9,230	9,569			
	No.	%	No	%	No.	%
4. Enforcement Orders made						
a. On enforcement of money judgements						
Instalment orders	740	15	836	14	654	13
Seizure orders	143	3	149	3	201	4
Authorisation to seize	477	10	656	11	548	11
Orders charging land	2,269	46	2,904	50	2,406	48
Receiver Orders	256	5	314	5	250	5
Orders Under s.27(1) Crown Proceedings Act	77	2	46	1	50	1
Attachment of Debts Orders	41	1	52	1	28	-
Provisional attachment of earnings orders	747	15	774	13	775	15
Suspended attachment of earnings orders	172	3	131	2	150	3
Total	4,992	100	5,862	100	5,062	100
b. On enforcement of other judgements						
Orders for delivery of possession of land	221	91	299	93	331	95
Orders for delivery of goods	22	9	24	7	17	5
Total	243	100	323	100	348	100
5. Certificates of Unenforceability	1,517		1,449		1,076	

**Table 9**

**Rent and Rates arrears owed by former and current tenants by type of local authority in England, Wales and N.Ireland**

	Greater London local authorities	Metropolitan districts	Non-Metropolitan districts	N.I.H.E.
<b>Former tenants</b>				
Number	77,943	124,867	129,189	20,106
Amount owed (£)	29.05m	22.22m	18.54m	2.96m
Average owed (£)	373	178	144	147.12
<b>Current tenants</b>				
Number	360,393	483,888	642,256	77,510
Amount owed	88.35m	57.62m	51.41m	11.395m
Average owed	245	119	80	147.01
<b>Percentage of tenants in arrears</b>	48%	36.1%	26.3%	44.9%

*Source: Housing Rent statistics - report of CIPFA. Correspondence with N.I.H.E.*

**Table 10**

**Comparison of rent and rates arrears between individual London, Metropolitan and non-Metropolitan authorities and NIHE.**

Housing Authority	Number	Former Tenants		Current Tenants			
		Amount owed	Average amount owed	Number	Amount owed	Average amount owed	%tenants in arrears
Hackney	4,733	2.996m	£633	7,472	£10,858m	£395	68%
Camden	4,141	2.625m	£634	18,298	£5.789m	£396	56.4%
Manchester	5,979	1.685m	£282	44,666	£8.898m	£199	48.2%
Tower Hamlets	2,412	0.891m	£369	21,179	£2.811m	£133	46.8%
N.Ireland	20,106	2.958m	£147	77,510	£11.395m	£147	44.9%
Birmingham	1,147	0.250m	£218	45,546	£7.651m	£168	38.2%
Brighton	342	0.036m	£105	3215	£0.274m	£85	28.4%
Leeds	10,218	1.655m	£162	20,172	£1.308m	£65	22.5%
Basingstoke	563	0.111m	£197	1,528	£0.162m	£106	13.5%

*Source: CIPFA. Report of Housing rent statistics 1987, and correspondence with NIHE.*

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**Table 11**

**Percentage of tenants owing levels of arrears by housing authorities in England, Wales and N.Ireland.**

Authority	Tenants owing (%)		
	Less than 100	Between 100-500	More than 500
Greater London Metropolitan District	26.8	13.2	7.6
Non-Metropolitan District	25.2	8.4	2.7
NIHE	20.5	5.2	0.6
	n/a	(1)7.4	2.8

Note. (1) Figure is for tenants owing more than 13 weeks full charge.

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## **The Case for Repeal of the PDA**

The repeal of the PDA is long overdue. The Act was introduced as emergency legislation to combat a rent and rates strike which has now been over for more than 12 years. The use of emergency legislation as a tool of convenience to deal with the ordinary civil matter of the recovery of debt, sets an unwarranted and unhealthy precedent. The Act is wholly inappropriate. It does not, nor was it designed, to make any attempt to balance the needs and circumstances of debtor and creditor. No provision is made for the examination of personal, financial and other circumstances surrounding the debt. No account is taken of ability to repay. No formal right of appeal exists against the level of deduction from income or entitlements. The impact of the Act on households and families can be devastating. The use of such legislation on many poorly paid public sector workers adds insult to the injury of low pay. The inequity of treatment between public and private sector workers as regards public debt policy is difficult to justify.

Further, diverting self-help repair, redecoration and other Housing Executive grants to reduce arrears makes for a short-sighted housing policy. The essence of paying redecoration and self-help repair grants is to protect the housing stock. The use of the Act undermines such intentions. Direct deductions from student grants disrupt peoples' attempts to enhance their employment prospects and find a route out of the financial difficulties caused by a low income existence. Payments of court claims direct to public authorities are made in spite of long-standing and unbroken voluntary agreements already in existence between the debtor and public authorities. Public debt levels which are comparable to parts of Britain, and the existence of sufficient judicial methods of recovering debt, further render recourse to emergency legislation unnecessary and undesirable. Retention of the PDA and its additional powers exposes the sham of parity with Britain as a principle for making legislative changes in N.Ireland. Parity is a principle proclaimed by government when convenient, and readily forgotten when not.

## The law and the Payments for Debt Act

The legal arguments for the repeal of the Act are twofold. The first is based on the fact that the Act has since ceased to be used for the purpose for which it was originally enacted. The second concentrates on the Act's overriding approach to basic principles of natural justice.

A persuasive line of argument against the PDA, and one which is likely to be tested shortly (summer 1989) in the courts, is that the Act has outlived its *raison d'être*. The PDA was seen by members of Stormont as a direct response to the rent and rates strike begun in 1971. To ensure that debts incurred a long time before that strike should not be covered by the Act, the Government inserted a clause, at the insistence of the Senate, to the effect that

*"references in this Act to moneys or sums due include...moneys due at any time on or after the 1st April 1971 but not moneys becoming due before that date." (section 16.3)*

The Act itself came into operation on October 1st 1971 and by section 18(2) its provisions were to continue in force

*"until six months after the end of the period of the present emergency".*

This was defined in section 18(3) as

*"the period beginning with the 1st October 1971 and ending on such date as the Governor (now the Secretary of State - my parenthesis) may by Order in Council declare to be the date on which the emergency that was the occasion of the enactment of that provision came to an end."*

So far no such Order in Council has been issued. Yet it is perfectly clear that the "emergency" that was the occasion of the Act's provisions, ended as long ago as 1976. It may therefore now be possible to apply to the courts for an order of mandamus directing the Secretary of State to make the required declaration under section 18(3) or at least for a declaration specifying that, in the court's view the emergency in question is now at an end. The area of law involved in such court actions is administrative law, which has developed to such an extent in the past 20 years or so that one can now say if a Minister can be shown to have no reasonable grounds for taking, or refusing to take, some action, the courts can issue an injunction requiring him or her not to act, or to act, in the prescribed manner.

Attempts have been made to persuade Secretaries of State to admit to Parliament that the emergency for which the PDA was passed is now at an end, but all have been to no avail. Judicial action may now be a preferable course of action to adopt.

## **Does the Act breach principles of natural justice?**

The PDA pays little attention to the fairness or otherwise of particular deductions. In particular, the following principles of natural justice seem to be breached:

- a) that no penalty should be imposed upon a person except under due process of law. The PDA, by ignoring the necessity for due process of law, in both proving the existence of a debt and in dealing with it, gives power over people's lives - the poorest people's lives - to administrative rather than judicial officials, who do not have publicly available policy guidelines to work to. Debtors do not even know what case they have to answer, or when.
- b) that anyone accused of breaking the law should be given the opportunity of presenting his or her case. In the context of the PDA no formal notice needs to be given to debtors that the PDA procedures are about to be implemented, and even when it is given the debtor is given no opportunity to argue against the use of the procedures. There is therefore no right to a fair hearing.
- c) that no-one should be judge in his or her own cause. Under the PDA we often see one government department - or at any rate a public body funded entirely by government - applying to the Department of Finance or the Department of Health and Social Services for direct deductions to be made from a particular debtor's wages or benefits. There is no independent assessment by a court of law or otherwise, of the appropriateness of these deductions.
- e) that anyone suffering a penalty should have the possibility of appealing against its imposition. We have seen that there is an inadequate appeal mechanism for deductions from wages under the PDA, and no statutory appeal mechanism at all in cases of deductions from benefits.
- e) that no person should suffer a penalty imposed on account of someone else's wrongs. The PDA allows men and women to suffer deductions from their wages and benefits even when it is the other spouse who is the debtor. Under section 11(3), moreover, an employer of a debtor who fails to comply with an attachment of earnings order becomes liable, in person, for the full amount of the sum due by the debtor.

- f) that no Act should be retrospective in operation. The PDA was not enacted until 14th October 1971 but by section 18(1) it was deemed to have come into operation on 1st October 1971 and by section 16 (3) it was recognised as applicable to moneys due at any time on or after April 1 1971. Debtors had no notice that these extreme measures would be taken.

## **Government policy on public debt**

Public debt policy has been to keep the PDA in place whilst strengthening judicial methods of debt recovery and introducing and increasing powers to make deductions from social security benefits under ordinary legislation. Increased powers of deduction under social security legislation introduced in April 1988 have almost completed the policy on benefits. Benefit allocation has been rendered almost obsolete by the shift from emergency to ordinary legislation. Ordinary legislation with its limit on the level of deduction and a statutory right of appeal possesses safeguards, but fails to address the underlying causes of public debt.

The impact of present public debt policy ensures that public authorities receive payment while individuals are left often below poverty level. Lack of money for basic other items becomes a problem for the individual and/or their family, their informal network of friends, relatives and neighbours, charities, voluntary organisations, social services and other statutory agencies of an increasingly hard-pressed welfare state. Ensuring public bodies get paid in spite of the economic and social cost to consumers and tenants is the over-riding policy of the government. Therefore, repeal of the PDA must neither be an isolated piece of action nor a prelude for the transferring of remaining functions of the Act into ordinary legislation.

## **Recommendations**

A package of legislative and policy measures must be introduced as part of a strategy to deal with public and other debt. Such a strategy would need to acknowledge low household income as a basic cause of financial problems and distinguish between those who have the means to re-pay and those who do not. An end to policies which mistake economic freedom of the individual as general freedom of the individual, which reward those least in need disproportionately whilst elsewhere encouraging low wages and depressing social security benefits, is an essential pre-requisite to major reform.

Immediate changes in addition to repealing the PDA should include reducing the powers to deduct money from social security benefits to at least those operated in Britain. A statutory code of conduct for NIE, and legislation preventing disconnection of electricity without a court order and evidence of a means to pay, would distinguish between the wilful and helpless debtor. Those who cannot pay should be issued with the equivalent of a certificate of unenforceability, to freeze the debt.

Placing a greater incentive upon NIE and others to reach reasonable agreements together with more limited powers of deductions, will ensure only a small number of people going through the courts. Provision of comprehensive money advice services are vital in encouraging those with financial problems to seek independent advice as early as possible. In spite of belated recent initiatives by the DHSS, no statutorily and securely funded specialist money advice service exists anywhere in N.Ireland.

Measures outlined above, of themselves, will not tackle the roots of the problem. Government must recognise that it has responsibility not just for the collection and repayment of public debt, but for the creation of the social and economic conditions in which such debt occurs. Radical restructuring of the tax and social security system in favour of low income households, and the introduction of measures to attack, rather than subsidize, low pay will need to be undertaken. At that point real changes will have been implemented freeing low income households from the shackles of public debt. An end to the Payments for Debt Act should be the first very small, but important, step.

# Appendix 1

## Case studies

### *Mature students, 1985*

Alan and Jane Hull were married with two young children. After two years of unemployment Alan decided to return to study. He enrolled in a local college of Further Education to do a 'B' Tech Diploma in electronics. It was a two year course which could lead to university. The Local Education and Library Board awarded him a lesser value student award worth just over £3,000.

The Hull family lived in a three bedroom Housing Executive property. At the start of the course in September 1985 the rent account was just over £20 in advance. As a student, Alan Hull could not claim supplementary benefit as he was not classed as available for work for benefit purposes. In any event Alan and his family were just slightly better off on their grant and child benefit than on supplementary benefit.

Alan claimed Housing Benefit and received the first shock of his academic career. During term-time, students were required to pay the first £15.75 of their rent out of the grant. Only the balance would be eligible for Housing Benefit. Alan wrote to the Housing Executive. The reply set out that a student grant included an amount of £15.75 a week towards housing costs which was to be used to pay the rent. The Housing Executive suggested he write to the Local Education and Library Board. He did. The Board's reply said that only full grant awards included an amount towards housing costs, so his grant was not supposed to cover rent. He should write to his local Housing Executive Office, the Board advised.

It turned out that the Hull's had to pay over £550 from their grant towards rent, and became in fact much worse off than when they were on supplementary benefit. Paying the rent meant living below supplementary benefit level. Something had to give. The rent account moved into arrears.

Alan passed his exams and got another lesser value award worth just over £3,200 for the academic year beginning in September 1986. The first instalment arrived in September. This year, under Housing Benefit regulations, the Hull family was expected to pay £13.60 a week towards rent during term-time and the Christmas and Easter vacations. No money towards rent was included in the grant.

On November 12 1986 the Housing Executive wrote to The Education and Library Board seeking £642 to be deducted from the final two instalments of the student grant towards rent arrears. The bad news reached the Hull family a week later. Letters to the Board and Housing Executive were to no avail. There was no right of appeal. In January 1987 £320 was deducted from the spring term's grant. Unable to live well below supplementary benefit level, the grant ran out before the end of term. Alan could not claim supplementary benefit. Jane Hull made a claim for emergency payments for herself and the children from the DHSS because Alan was unable to maintain her. The claim itself left Alan open to prosecution by the DHSS for failing to maintain his family. No other alternative existed. The DHSS made emergency payments until the next instalment of grant arrived.

In April the final instalment was paid minus another £320. Before the end of term the grant ran out again and further emergency payments were claimed from the DHSS. Alan passed his exams and secured a place in the local university. In December 1987, further deductions of over £550 were made from his grant, at the request of the Housing Executive. The strain of two years of running between Housing Executive, Library Board and DHSS and living below supplementary benefit levels told. In spite of passing his first year exams Alan quit the course. He still rues the day he decided to go back to study.

Note: The names of the family involved have been changed to protect their identity.

### ***Widow, 1986***

Ms A. was a widow with two grown up children at home, one in full-time work, the other on supplementary benefit. She had a widow's pension of £34 a week plus a pension from her deceased husband of £9 a week. She was behind with her electricity and rent bills. Under the Housing Benefit scheme, Ms A was expected to collect £15 a week from her sons and pay this to the Housing Executive. Both NIHE and NIE sought direct deductions from Ms. A's widows pension. Benefit allocation Branch deducted £16.55 towards housing costs and £8.50 for electricity. When Ms A received her widow's pension book back, she had only £9.45 left.

### *Single parent, 1984*

Ms M was a single parent with two children. She worked part-time as a cleaner at a Belfast hospital. Her take-home pay was £35 a week. Her only other income was Supplementary Benefit and child Benefit. Ms M. owed rent and district heating arrears to the Housing Executive, who wrote to the hospital, demanding deductions under the PDA to cover full District Heating charges, plus arrears, and for rent arrears. The deduction came to £28.16, leaving Ms. M with a wage packet of under £7 at the end of the week.

### *Attacked woman, 1988*

Ms. B was in her 50's. One night, walking home, she was attacked and left with minor injuries and was badly shaken. She reported the matter to the police and sought the advice of a solicitor. A claim was lodged for compensation. Ms. B did not want to face the ordeal of going to court and accepted the offer of £700 from the Northern Ireland Office. The money was to be used to visit family in England and to recuperate. She arranged to collect the cheque through her solicitor. on arrival at his office, she was told that NIE had claimed nearly £650 to clear electricity arrears under the PDA. Ms. B had already been having deductions made under the PDA from her invalidity pension, to clear electric arrear. She received just over £50 from her solicitor.

### *Tenants, 1987*

Mr. and Mrs. I were NIHE tenants. They had a lot of work which needed to be done to their home. They decided to take advantage of the Housing Executive's self-help repairs scheme. They were in arrears, but this was being paid off through a voluntary agreement. The Housing Executive gave the go-ahead and Mr. I engaged a local builder to help him do the work. Further work was necessary and the Housing Executive agreed to the additional work. The work was done and passed satisfactorily by Housing Executive inspectors. Two weeks later, a letter arrived. The Housing Executive had deducted the £375 worth of grant from rent arrears. Mr. I was left to talk to the builder.



## Appendix 2

### Further reading

1. Brian P. McElholm Public Debt Collection and the Welfare State: QUB Law Faculty, 4th year undergraduate research paper.
2. Belfast Law Centre, Briefing paper on the Payments for Debt (Emergency Provisions) Act (NI) 1971.
3. Monica McWilliams and Mike Morrissey, Debt and debt management in Northern Ireland (1983).
4. Eileen Evason, On the Edge (1986)
5. Belfast Law Centre Proposed changes in debt legislation for Northern Ireland (1980) (unpublished discussion paper)
6. Dr Michael Salter The Legal Framework of Debt in Northern Ireland (Citizens Advice Bureau, 1989).