



SUMMARY ON COURTS OF LAW AMENDMENT ACT 2017

Amendment of Section 57, 58 and 65 of the Act 32 of 1944

The Court of Law Amendment Bill has been enacted and has been gazetted under Gazette number 41017. (Attached herewith for your perusal and reference).

It must be noted that the amendment affects civil debt only and no changes have been made to the Maintenance Act 99 of 1998. (Criminal Procedure Act).

The intention of the amendment is directed more to control the deductions from the employee/defendants salary. As you are aware the provisions of Section 65 reached proportionate abuse from various credit providers, loan sharks and money lenders etc.

Included in the amendments was Section 1 of the Magistrate's Court Act, 1944, is hereby amended-

- (a) By the insertion after the definition of the "court" of the following definition :
'court day ' means any day other than a Saturday, Sunday or public holiday and only court days shall be included in the computation of any time expressed in days prescribed by this Act or fixed by any order of court;.

Sheriffs must pay careful attention to this amendment as it will affect our calculation on the time limit for service of processes with court dates.

Section 57, 58, 65 and 65 (e) has been amended to regulate the manner in which the judgment debtor complies with the settlement of his/her debt and also the processes that must be followed by the judgement creditor when getting the debtor to acknowledge liability towards the debt under Section 57 of the Act.

The Act makes provisions for the debtor to be served with a letter of demand and the debtor is now required to respond in writing to the letter of demand and make certain offer in settlement of debt. Further he/she is required to confirm his/her financial ability to settle the debt in instalments if required.



Basically, there is much more control over the manner in which the judgement creditor gets the Section 57 notice completed and used in obtaining an Emoluments Attachment Order.

Amendment of Section 65(j) of the Act 32 of 1944.

EMOLUMENTS ATTACHMENT ORDERS (EAO)

The amendment of Section 65 (J) is intended also to regulate the manner in which the EAO is issued and the processes that must be followed by the creditor, employer and courts before and after the order is granted.

We have noticed that the amended Act places a huge responsibility on the employer, when it relates to granting of the emoluments attachment order.

It is therefore extremely important that we as Sheriffs and deputy sheriffs understand these amendments so that we are able to explain the requirements if and when the employer refuses to accept the EAO.

We will now highlight some of the major amendments:

- 1. Section 65 (j) (1) (a) Jurisdiction - A Judgement Creditor may cause an order (emoluments attachment order) to be issued from the Court of the district in which the Judgement Debtor resides, carries on business or is employed.**

(The act has now been amended to ensure that the order is **not** granted at a court to the convenience of the judgment creditor. This issue has been a major concern for Sheriffs and stakeholders alike).

2. Section J (1) (b) (i) – The EAO must attach the Emoluments at present or in future owing or accruing to the employee by the employer , to the amount necessary to cover the judgement and the costs of the attachment , whether the judgement was obtained in the court concerned or in any other court.

3. Section 65j(1A)(a)- **The responsibility of the Employer** – He must check that the EAO applied for may NOT exceed 25% of the employees basic salary (annual gross salary) which amount excludes overtime or other allowances e.g. cell phone allowance, travel allowance etc.

(Another control mechanism added to the amendment to ensure that the entire Salary of the employee is not attached). The employer has a role to play in ensuring that he informs the relevant people that the employee cannot

manage any further attachments to his salary, in this way not over burdening the employee).

4. Section 65 J (2A) (a) the judgement creditor or his attorney must serve, on the judgement debtor and on his or her employer, a notice, which informs them of his intention to seek an EAO.
 - (b) Inform them of the full amount of the Capital debt, interest and cost Outstanding.
 - (c) The judgement debtor or his employer must serve and file a notice of intention to oppose the issuing of the emoluments attachment order within 10 days, failing which the EAO will be issued.

(Another control measure added to the amendments. In this case the employee can communicate timeously with the employer and oppose the issuing of the EAO).

5. Section 65J (2C) (a) – The notice of intention to oppose must set out the grounds for oppositions i.e.
 - A). that the amounts claimed are erroneous and not in accordance with the law
 - b). that the amount claimed will exceed the 25% of the basic salary limit.
6. Section 65J(2C)(a) – The intention to oppose must accompany a certificate by the EMPLOYER stating:
 - A). All existing court order against the employee or agreements with other creditors for payment of a debt and costs in instalments.
 - b). A monthly financial budget of the amount needed by the employee for his or her necessary expenditure and that of their dependents.
 - c). the contact details of all the judgement creditors or their attorneys that have EAO'S against the employee.
 - d). Latest payslip

7. Section 65J ((2E) – The Court may after hearing all parties

- A). Rescind the EAO or amend it
- b). Divide the amount the employee has available to all the EAO'S ensuring that the amount is appropriate and does not exceed 25% of the employees gross salary.

8). Section 65J (3) (a) (b)-

(a) The emoluments attachment order must be prepared and signed by the judgment creditor or his or her attorney.

(b). **The Clerk of the Court must ensure that:**

- i). the Court has authorised the EAO

ii). that the Court has jurisdiction

(As you can see the granting of the order is done by the court and the clerk of the Court must now ensure that the EAO has been granted by the Court before signing same. He or she must also ensure that the court has jurisdiction).

9). Section 65J (3)(c) - The EAO must be served by the Sheriff of the Court in the manner prescribed in the rules.

10). Section 65J (6) - If the employer, after service of the EAO, becomes aware that the employee will not have sufficient means to sustain himself or his dependents or that the amounts are incorrect or not in accordance with the law or that the total EAO deductions now exceeds 25% of the employee's salary, the employer must inform the judgment creditor and all interested parties in writing accordingly.

(This Section is very important for all Sheriffs and Deputy Sheriffs to note as we might see an increase in employers trying to avoid accepting the EAO, based on errors etc, just to get away from the burden. This section clearly states that process he or she must follow in order to rectify any errors or omissions).

11). Section 65J (10) (a) - The employer may still recover 5% Employers Commission for his services rendered from the amount that is paying to the judgement creditor.

12) Section 65J (10)(b). - This is an addition to this Section

LAIBILITY OF THE GARNISHEE

i). A garnishee who unreasonably fails to timeously deduct the amounts of the EAO or

ii) Unreasonably fails to timeously stop the deductions when the judgement debt and cost have been paid in full

Is liable to repay to the judgement debtor any additional costs and interest which have been accrued or any amount deducted from the salary of the judgement debtor after the judgement debt and costs have been paid in full as a result of such failure.

(This section is also important for us as Sheriffs and Deputy Sheriffs to understand as we will at some point be required to inform the Garnishee/ Employer of this requirement. Especially if the judgement debtor tries to obtain judgment for the excess amounts deducted from his salary and call on the Sheriff to attach property of the employer to recover the amount due to him).

Colleagues , we trust that this simplified explanation of the amendments is of assistance to you and call upon you to read this document in conjunction with the attached- Courts of Law Amendment Act ,2017 under gazette number 41017 dated 2 August 2017.Vol. 626.

Compiled by Allan Murugan o.b.o. of SASS.

Source material :

- Government Gazette number 41017
- Profile Corporate Service : explanation document issued to all employers.