



# Child Maintenance and Other Payments Act 2008

## 2008 CHAPTER 6

### PART 3

#### CHILD SUPPORT ETC.

##### *Collection and enforcement*

PROSPECTIVE

#### **29 Commitment to prison**

(1) In section 40 of the Child Support Act 1991 (c. 48) (commitment to prison), before subsection (3) insert—

“(2A) The [<sup>F1</sup>Secretary of State] may apply to a magistrates' court for the issue of a warrant committing a person to prison where—

- (a) [<sup>F2</sup>the Secretary of State] has sought to recover an amount from the person by means of taking enforcement action by virtue of section 35 or 38, or by means of a third party debt order or a charging order by virtue of section 36;
- (b) the whole or any part of the amount remains unpaid; and
- (c) the [<sup>F1</sup>Secretary of State] is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom [<sup>F2</sup>the Secretary of State] has sought to recover the amount (“the liable person”).

(2B) For the purposes of subsection (2A)(a), the [<sup>F3</sup>Secretary of State] is to be taken to have sought to recover an amount by means of a charging order if an interim charging order has been made, whether or not any further steps have been taken to recover the amount.

*Status: This version of this provision is prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Section 29. (See end of Document for details)*

- (2C) On an application under subsection (2A) the court shall (in the presence of the liable person) inquire as to—
- (a) the liable person's means; and
  - (b) whether there has been wilful refusal or culpable neglect on the part of the liable person.
- (2D) On an application under subsection (2A) the court shall not question—
- (a) the liability order by reference to which the [<sup>F3</sup>Secretary of State] acted as mentioned in paragraph (a) of that subsection; or
  - (b) the maintenance calculation by reference to which that liability order was made.”
- (2) For subsection (10) of that section, substitute—
- “(10) On acting as mentioned in subsection (3), the court may order the liable person to be searched.
- (10A) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the relevant amount; and the balance (if any) shall be returned to the person searched.
- (10B) The reference in subsection (10A) to the relevant amount is—
- (a) where the order under subsection (10) is made by virtue of the court acting under subsection (3)(a), to the amount mentioned in subsection (4)(a);
  - (b) where the order under subsection (10) is made by virtue of the court acting under subsection (3)(b), to the amount mentioned in subsection (4)(a)(i).
- (10C) The court shall not allow the application under subsection (10A) of money found on a search under subsection (10) if it is satisfied that the money does not belong to the person searched.”
- (3) In section 40A of that Act (commitment to prison: Scotland), before subsection (1) insert—
- “(A1) The [<sup>F4</sup>Secretary of State] may apply to the sheriff for the issue of a warrant committing a person to prison where—
- (a) [<sup>F5</sup>the Secretary of State] has sought to recover an amount from the person by means of taking enforcement action by virtue of section 35 or 38, or by means of a third party debt order or a charging order by virtue of section 36;
  - (b) the whole or any part of the amount remains unpaid; and
  - (c) the [<sup>F4</sup>Secretary of State] is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom [<sup>F5</sup>the Secretary of State] has sought to recover the amount (“the liable person”).
- (A2) For the purposes of subsection (A1)(a), the [<sup>F6</sup>Secretary of State] is to be taken to have sought to recover an amount by means of a charging order if an interim charging order has been made, whether or not any further steps have been taken to recover the amount.

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- (A3) On an application under subsection (A1), the sheriff shall (in the presence of the liable person) inquire into—
- (a) the liable person's means; and
  - (b) whether there has been wilful refusal or culpable neglect on the part of the liable person.
- (A4) On an application under subsection (A1), the sheriff shall not question—
- (a) the liability order by reference to which the [<sup>F6</sup>Secretary of State] acted as mentioned in paragraph (a) of that subsection; or
  - (b) the maintenance calculation by reference to which that liability order was made.”
- (4) After subsection (7) of that section, insert—
- “(7A) On acting as mentioned in subsection (1), the sheriff may order the liable person to be searched.
- (7B) Any money found on such a search shall, unless the sheriff otherwise directs, be applied towards payment of the relevant amount; and the balance (if any) shall be returned to the person searched.
- (7C) The reference in subsection (7B) to the relevant amount is—
- (a) where the order under subsection (7A) is made by virtue of the court acting under subsection (1)(a), to the amount mentioned in subsection (2)(a);
  - (b) where the order under subsection (7A) is made by virtue of the court acting under subsection (1)(b), to the amount mentioned in subsection (2)(a)(i).
- (7D) The sheriff shall not allow the application under subsection (7B) of money found on a search under subsection (7A) if the sheriff is satisfied that the money does not belong to the person searched.”

#### Textual Amendments

- F1** Words in s. 29(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(2)(a)**
- F2** Words in s. 29(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(2)(a)**
- F3** Words in s. 29(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(2)(b)**
- F4** Words in s. 29(3) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(3)(a)**
- F5** Words in s. 29(3) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(3)(a)**

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- F6** Words in s. 29(3) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(3)(b)**

**Status:**

This version of this provision is prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Section 29.