
STATUTORY INSTRUMENTS

1992 No. 1989

The Child Support (Collection and Enforcement) Regulations 1992

PART IV

LIABILITY ORDERS

Extent of this Part

26. This Part, except regulation 29(2), does not apply to Scotland.

Notice of intention to apply for a liability order

27.—(1) The Secretary of State shall give the liable person at least 7 days notice of his intention to apply for a liability order under section 33(2) of the Act.

(2) Such notice shall set out the amount of child support maintenance which it is claimed has become payable by the liable person and has not been paid and the amount of any interest in respect of arrears payable under section 41(3) of the Act⁽¹⁾.

(3) Payment by the liable person of any part of the amounts referred to in paragraph (2) shall not require the giving of a further notice under paragraph (1) prior to the making of the application.

Application for a liability order

28.—(1) An application for a liability order shall be by way of complaint for an order to the magistrates' court having jurisdiction in the area in which the liable person resides.

(2) An application under paragraph (1) may not be instituted more than 6 years after the day on which payment of the amount in question became due.

(3) A warrant shall not be issued under section 55(2) of the Magistrates' Courts Act 1980⁽²⁾ in any proceedings under this regulation.

Liability orders

29.—(1) A liability order shall be made in the form prescribed in Schedule 1.

(2) A liability order made by a court in England or Wales or any corresponding order made by a court in Northern Ireland may be enforced in Scotland as if it had been made by the sheriff.

(3) A liability order made by the sheriff in Scotland or any corresponding order made by a court in Northern Ireland may, subject to paragraph (4), be enforced in England and Wales as if it had been made by a magistrates' court in England and Wales.

(1) See The Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992, S.I.1992/1816.

(2) 1980 c. 43.

(4) A liability order made by the sheriff in Scotland or a corresponding order made by a court in Northern Ireland shall not be enforced in England or Wales unless registered in accordance with the provisions of Part I of the Maintenance Orders Act 1950(3) and for this purpose—

- (a) a liability order made by the sheriff in Scotland shall be treated as if it were a decree to which section 16(2)(b) of that Act applies (decree for payment of aliment);
- (b) a corresponding order made by a court in Northern Ireland shall be treated as if it were an order to which section 16(2)(c) of that Act applies (order for alimony, maintenance or other payments).

Enforcement of liability orders by distress

30.—(1) A distress made pursuant to section 35(1) of the Act may be made anywhere in England and Wales.

(2) The person levying distress on behalf of the Secretary of State shall carry with him the written authorisation of the Secretary of State, which he shall show to the liable person if so requested, and he shall hand to the liable person or leave at the premises where the distress is levied—

- (a) copies of this regulation, regulation 31 and Schedule 2;
- (b) a memorandum setting out the amount which is the appropriate amount for the purposes of section 35(2) of the Act;
- (c) a memorandum setting out details of any arrangement entered into regarding the taking of possession of the goods distrained; and
- (d) a notice setting out the liable person's rights of appeal under regulation 31 giving the Secretary of State's address for the purposes of any appeal.

(3) A distress shall not be deemed unlawful on account of any defect or want of form in the liability order.

(4) If, before any goods are seized, the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the Secretary of State, the Secretary of State shall accept the amount and the levy shall not be proceeded with.

(5) Where the Secretary of State has seized goods of the liable person in pursuance of the distress, but before sale of those goods the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the Secretary of State, the Secretary of State shall accept the amount, the sale shall not be proceeded with and the goods shall be made available for collection by the liable person.

Appeals in connection with distress

31.—(1) A person aggrieved by the levy of, or an attempt to levy, a distress may appeal to the magistrates' court having jurisdiction in the area in which he resides.

(2) The appeal shall be by way of complaint for an order.

(3) If the court is satisfied that the levy was irregular, it may—

- (a) order the goods distrained to be discharged if they are in the possession of the Secretary of State;
- (b) order an award of compensation in respect of any goods distrained and sold of an amount equal to the amount which, in the opinion of the court, would be awarded by way of special damages in respect of the goods if proceedings under section 35(6) of the Act were brought in trespass or otherwise in connection with the irregularity.

(4) If the court is satisfied that an attempted levy was irregular, it may by order require the Secretary of State to desist from levying in the manner giving rise to the irregularity.

Charges connected with distress

32. Schedule 2 shall have effect for the purpose of determining the amounts in respect of charges in connection with the distress for the purposes of section 35(2)(b) of the Act.

Application for warrant of commitment

33.—(1) For the purposes of enabling an inquiry to be made under section 40 of the Act as to the liable person's conduct and means, a justice of the peace having jurisdiction for the area in which the liable person resides may—

- (a) issue a summons to him to appear before a magistrates' court and (if he does not obey the summons) issue a warrant for his arrest; or
- (b) issue a warrant for his arrest without issuing a summons.

(2) In any proceedings under section 40 of the Act, a statement in writing to the effect that wages of any amount have been paid to the liable person during any period, purporting to be signed by or on behalf of his employer, shall be evidence of the facts there stated.

(3) Where an application under section 40 of the Act has been made but no warrant of commitment is issued or term of imprisonment fixed, the application may be renewed on the ground that the circumstances of the liable person have changed.

Warrant of commitment

34.—(1) A warrant of commitment shall be in the form specified in Schedule 3, or in a form to the like effect.

(2) The amount to be included in the warrant under section 40(4)(a)(ii) of the Act in respect of costs shall be such amount as in the view of the court is equal to the costs reasonably incurred by the Secretary of State in respect of the costs of commitment.

(3) A warrant issued under section 40 of the Act may be executed anywhere in England and Wales by any person to whom it is directed or by any constable acting within his police area.

(4) A warrant may be executed by a constable notwithstanding that it is not in his possession at the time but such warrant shall, on the demand of the person arrested, be shown to him as soon as possible.

(5) Where, after the issue of a warrant, part-payment of the amount stated in it is made, the period of imprisonment shall be reduced proportionately so that for the period of imprisonment specified in the warrant there shall be substituted a period of imprisonment of such number of days as bears the same proportion to the number of days specified in the warrant as the amount remaining unpaid under the warrant bears to the amount specified in the warrant.

(6) Where the part-payment is of such an amount as would, under paragraph (5), reduce the period of imprisonment to such number of days as have already been served (or would be so served in the course of the day of payment), the period of imprisonment shall be reduced to the period already served plus one day.