

# **CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008**

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## **EXPLANATORY NOTES**

### **SUMMARY OF MEASURES IN THE ACT**

#### *Child Maintenance*

#### *Collection and Enforcement*

#### *Current position*

38. In the majority of cases an application for payment of child support maintenance is made by the person with care. The applicant supplies to the CSA details of the children for whom maintenance is sought, and sufficient details of the non-resident parent to enable the CSA to contact them in order to calculate a maintenance liability.
39. The CSA will then attempt to contact the non-resident parent and obtain details of income and any other relevant information. Once a calculation is made, arrangements can be set up with the non-resident parent for payment of maintenance.
40. In some cases the non-resident parent will refuse to provide enough information to the CSA, or if it has been made available and a maintenance calculation made, they attempt to avoid payment. In these instances the CSA will use enforcement powers available to it in order to collect maintenance.
41. The enforcement powers available to the CSA are as follows:
  - A deduction from earnings order to recover money directly from a non-resident parent's salary at source is usually the first action to be taken. This requires the employer to deduct amounts from a non-resident parent's income and pay them to the CSA.
  - Where this is inappropriate or proves ineffective, the CSA can apply to a magistrates' court (in England and Wales) or a sheriff (in Scotland) for a liability order. In England and Wales, this is the gateway to the use of bailiffs to recover the debt and/or an application to the county court to take further enforcement action. In Scotland, a liability order can be enforced by 'attaching' the debtor's assets and selling them, 'arresting' funds such as bank accounts and having them transferred to the CSA, and 'inhibiting' the debtor from dealing in heritable property until the debt is satisfied.
  - In England, the next stage of enforcement available is an application made to the county court for a third party debt order or charging order. A third party debt order requires a third party, for example a bank or building society, to pay an amount held on behalf of the non-resident parent, for example funds in a bank account, to the CSA. A charging order secures payment of arrears from funds or property belonging to the non-resident parent.

*These notes refer to the Child Maintenance and Other Payments  
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

- In Scotland, an application can be made to the sheriff for an arrestment order, which freezes a debtor's moveable assets held by a third party who are then instructed to pay the money to the creditor, or a Bill of inhibition which means that the outstanding debt can be claimed from the proceeds of the sale of land or property.
- Where the arrears remain outstanding after enforcement action, the CSA can begin proceedings against the non-resident parent in the magistrates' court in England and Wales (or in Scotland, the Sheriff), the result of which could be committal to prison for up to six weeks or disqualification from holding or obtaining a driving licence for up to two years.

### ***Changes***

42. The Act introduces several changes to enforcement powers, with both changes to existing powers and new powers introduced. Changes to existing powers include:
- regulations may provide for a deduction from earnings order to be specified as an initial method of collection unless there is a good reason not to in a particular case; and
  - liability orders will be administrative and will no longer require an application to a magistrates' court or the sheriff.
43. New powers to be introduced include:
- a regular deduction order applied to an account (including a joint account) held by the non-resident parent with a deposit-taker such as a bank, which can be used to take regular deductions to collect on going child maintenance and/or arrears;
  - a lump sum deduction order which can be used to collect arrears through a single deduction directly from an account of the non-resident parent (including a joint account), held with a deposit taker or third party such as conveyancer;
  - the ability to apply to the High Court in England and Wales (or, in Scotland, the Court of Session or the sheriff) to freeze property held by a non-resident parent, or to set aside a disposition;
  - the ability to apply to the magistrates' court in England and Wales (or, in Scotland, the sheriff) for the imposition of a curfew on a non-resident parent, which will be monitored; and
  - the ability to apply to the magistrates' court in England and Wales (or, in Scotland, the sheriff) to disqualify a non-resident parent from holding or obtaining a travel authorisation, which may be a UK passport and/or an ID card issued under the Identity Cards Act 2006 that records that the person to whom it is issued is a British Citizen.