



# Child Maintenance and Other Payments Act 2008

## 2008 CHAPTER 6

### PART 3

#### CHILD SUPPORT ETC.

##### *Collection and enforcement*

PROSPECTIVE

#### 28 Curfew orders

After section 39G of the Child Support Act 1991 (c. 48) (inserted by section 27 of this Act) insert—

##### **“39H Applications for curfew orders**

- (1) The [<sup>F1</sup>Secretary of State] may apply to the court for an order requiring a person to remain, for periods specified in the order, at a place so specified (a “curfew order”) 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.
- (2) For the purposes of subsection (1)(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

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charging order has been made, whether or not any further steps have been taken to recover the amount.

- (3) On an application for a curfew order the court shall (in the presence of the person from whom the [<sup>F3</sup>Secretary of State] has sought to recover the amount) inquire as to—
  - (a) the person's means; and
  - (b) whether there has been wilful refusal or culpable neglect on the part of the person.
- (4) On an application for a curfew order the court shall not question—
  - (a) the liability order by reference to which the [<sup>F3</sup>Secretary of State] acted as mentioned in subsection (1)(a); or
  - (b) the maintenance calculation by reference to which that liability order was made.
- (5) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom the [<sup>F3</sup>Secretary of State] has sought to recover the amount, it may make a curfew order against the person.
- (6) The court may not make a curfew order against a person who is under the age of 18.
- (7) In this section and sections 39I to 39O “the court” means—
  - (a) in England and Wales, a magistrates' court;
  - (b) in Scotland, the sheriff.

### **39I Curfew orders: duration etc.**

- (1) The periods and places specified as mentioned in section 39H(1) may include different periods and different places for different days, but shall not include periods which amount to less than 2 hours or more than 12 hours in any one day.
- (2) A curfew order shall specify the period for which the requirements imposed by the order shall have effect.
- (3) The period so specified—
  - (a) shall not exceed 6 months; and
  - (b) shall begin to run with the day on which the order is made unless the order provides (subject to such conditions, if any, as may be specified in the order) for it to begin to run with a later day.
- (4) The court shall (so far as practicable) ensure that any requirement imposed by a curfew order is such as to avoid—
  - (a) any conflict with the religious beliefs of the person against whom the order is made; and
  - (b) any interference with the times (if any) at which that person normally works or attends any educational establishment.
- (5) On making a curfew order—
  - (a) a magistrates' court may not specify in the order any place outside England and Wales; and

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- (b) the sheriff may not specify in the order any place outside Scotland.

### **39J Recovery of costs relating to curfew orders**

- (1) On making a curfew order the court shall also make an order requiring the person against whom the curfew order is made to pay an amount (determined in accordance with regulations made by the Secretary of State) specified in the order in respect of—
- (a) the costs of the application for the curfew order; and
  - (b) the costs of monitoring compliance with the requirements imposed by the curfew order.
- (2) The provisions of this Act with respect to—
- (a) the collection of child support maintenance; and
  - (b) the enforcement of an obligation to pay child support maintenance,
- apply equally (with any necessary modifications) to amounts which a person is required to pay by an order under this section.

### **39K Curfew orders: the amount due**

- (1) A curfew order shall specify the amount in respect of which it is made, which shall be the aggregate of—
- (a) the amount sought to be recovered as mentioned in section 39H(1)(a), or so much of it as remains unpaid; and
  - (b) the amount which the person against whom the curfew order is made is required to pay by the order under section 39J.
- (2) If part of the amount in respect of which a curfew order was made is paid to any person authorised to receive it, the court may, on an application by the [F4Secretary of State] or the person against whom the curfew order was made, by order—
- (a) reduce the period for which the requirements imposed by the curfew order have effect;
  - (b) provide for that period to begin to run with a day later than that with which it would otherwise have begun to run;
  - (c) suspend the running of that period, or provide for any existing such suspension to be extended, until a day specified in the order; or
  - (d) revoke the curfew order.
- (3) An order under subsection (2)(b) or (c) may include provision for its effect to be subject to specified conditions.
- (4) On the hearing of an application made under subsection (2) the [F4Secretary of State] may make representations to the court as to which of the powers conferred by that subsection it would be appropriate for the court to exercise, and the person against whom the curfew order was made may reply to those representations.
- (5) If the whole of the amount in respect of which a curfew order was made is paid to any person authorised to receive it, the court shall, on an application by the [F4Secretary of State] or the person against whom the order was made, by order revoke the curfew order.

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- (6) The [<sup>F4</sup>Secretary of State] may make a further application under section 39H if the amount in respect of which a curfew order was made has not been paid in full when the requirements imposed by the order cease to have effect.

### **39L Power to order search**

- (1) On making a curfew order, the court may order the person against whom the order is made to be searched.
- (2) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the amount in respect of which the curfew order is made; and the balance (if any) shall be returned to the person searched.
- (3) The court shall not allow the application under subsection (2) of money found on a search under this section if it is satisfied that the money does not belong to the person searched.
- (4) The court may exercise the powers conferred on it by section 39K(2) and (5) without the need for an application where money found on a search under this section is applied towards payment of the amount in respect of which a curfew order is made.

### **39M Monitoring of curfew orders**

- (1) A curfew order shall—
- (a) provide for a person's compliance with the requirements imposed by the order to be monitored; and
  - (b) make a person specified in the order responsible for that monitoring.
- (2) The court may not make a curfew order unless—
- (a) it has been notified by the [<sup>F5</sup>Secretary of State] that arrangements for monitoring compliance with the requirements imposed by such orders are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn;
  - (b) it is satisfied that the necessary provision can be made under those arrangements; and
  - (c) it has the consent of any person (other than the person against whom the order is to be made) whose co-operation is necessary to secure the monitoring of compliance with the requirements imposed by the order.
- (3) If a curfew order cannot be made because of the absence of any consent required by subsection (2)(c), the court may treat the application for the order as an application under section 40 (or, in the case of an application made to the sheriff, as an application under section 40A).
- (4) The Secretary of State may by regulations make provision as to—
- (a) the cases or circumstances in which the person responsible for monitoring a person's compliance with the requirements imposed by a curfew order may allow that person to be absent from the place specified in the curfew order during a period so specified; and
  - (b) the requirements which may be imposed in connection with such an absence.

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### **39N Breaches of curfew orders**

- (1) The person responsible for monitoring a person's compliance with the requirements imposed by a curfew order, or the [<sup>F6</sup>Secretary of State], may apply to the court where it appears that the person subject to the requirements in question has failed to comply with—
  - (a) any of those requirements; or
  - (b) any requirements imposed by virtue of section 39M(4).
- (2) On any such application the court shall (in the presence of the person subject to the requirements in question) inquire as to whether the person has failed without reasonable excuse to comply with any of those requirements.
- (3) If the court is of the opinion that the person has failed without reasonable excuse to comply with any of those requirements, it may—
  - (a) issue a warrant of commitment against that person; or
  - (b) by order provide for the requirements imposed by the curfew order to have effect for a specified further period.
- (4) A warrant issued under subsection (3)(a) shall order the person against whom it is issued—
  - (a) to be imprisoned for a period specified in the warrant; but
  - (b) to be released (unless in custody for some other reason) on payment of the amount in respect of which the curfew order in question was made.
- (5) A warrant issued under subsection (3)(a) may be directed to such person or persons as the court issuing it thinks fit.
- (6) The power conferred by subsection (3)(b) may not be exercised so as to provide for the requirements imposed by the curfew order to have effect for a period exceeding 6 months after the making of the order under that subsection.
- (7) Where, following the issue of a warrant under subsection (3)(a), part of the amount specified in the curfew order is paid to any person authorised to receive it, the court may, on an application by the [<sup>F6</sup>Secretary of State] or the person against whom the warrant was issued—
  - (a) reduce the period specified in the warrant; or
  - (b) order the release of the person against whom the warrant was issued.
- (8) On the hearing of an application made under subsection (7) the [<sup>F6</sup>Secretary of State] may make representations to the court as to which of the powers conferred by that subsection it would be appropriate for the court to exercise, and the person against whom the warrant was issued may reply to those representations.

### **39O Effect of custody on curfew orders and power to make curfew orders**

- (1) The court may not make a curfew order against a person at any time when the person is in custody for any reason.

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- (2) The running of the period during which the requirements imposed by a curfew order have effect shall be suspended for the whole of any day during any part of which the person against whom the order is made is in custody for any reason.
- (3) If the period during which the requirements imposed by a curfew order have effect would have begun to run but for its being suspended by virtue of this section, that period shall instead begin to run with the first day when its running is no longer suspended.

### **39P Power to make supplementary provision about curfew orders: England and Wales**

- (1) The Secretary of State may by regulations make provision for England and Wales with respect to curfew orders.
- (2) The regulations may, in particular, make provision—
  - (a) as to the form and content of a curfew order;
  - (b) allowing an application for a curfew order to be renewed where no curfew order is made;
  - (c) that a statement in writing to the effect that wages of any amount have been paid during any period to a person, purporting to be signed by or on behalf of that person's employer, shall be evidence of the facts stated;
  - (d) that a justice of the peace may issue a summons to a person to appear before a magistrates' court and (if that person does not appear) may issue a warrant for that person's arrest;
  - (e) that, for the purpose of securing a person's presence before a magistrates' court, a justice of the peace may issue a warrant for that person's arrest without issuing a summons;
  - (f) as to the execution of a warrant for arrest;
  - (g) for the amendment or revocation of requirements imposed by a curfew order, on an application made to a magistrates' court by the [F7Secretary of State] or the person against whom the order was made;
  - (h) similar to that made by sections 39J, 39L and 39M(2) and (3), in relation to any amendment of a curfew order;
  - (i) as to the exercise by a magistrates' court of the powers conferred by sections 39K(2) and (3) and 39N(7).
- (3) Regulations under subsection (2)(g) may confer power on a magistrates' court to substitute for the place or places specified in the order a place or places in Scotland.
- (4) Where a magistrates' court exercises such a power, the functions of the magistrates' court in relation to the order as so amended shall be exercisable instead by the sheriff.

### **39Q Power to make supplementary provision about curfew orders: Scotland**

- (1) The Secretary of State may by regulations make provision for Scotland with respect to curfew orders.

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- (2) The regulations may, in particular, make provision—
- (a) as to the content of a curfew order;
  - (b) that a statement in writing to the effect that wages of any amount have been paid during any period to a person, purporting to be signed by or on behalf of that person's employer, shall be sufficient evidence of the facts stated;
  - (c) for the amendment or revocation of requirements imposed by a curfew order, on an application made to the sheriff by the [<sup>F8</sup>Secretary of State] or the person against whom the order was made;
  - (d) similar to that made by sections 39J, 39L and 39M(2) and (3), in relation to any amendment of a curfew order;
  - (e) as to the exercise by the sheriff of the powers conferred by sections 39K(2) and (3) and 39N(7).
- (3) Regulations under subsection (2)(c) may confer power on the sheriff to substitute for the place or places specified in the order a place or places in England and Wales.
- (4) Where the sheriff exercises such a power, the functions of the sheriff in relation to the order as so amended shall be exercisable instead by a magistrates' court.
- (5) The power of the Court of Session by Act of Sederunt to regulate the procedure and practice in civil proceedings in the sheriff court shall include power to make provision—
- (a) as to the form of a curfew order;
  - (b) allowing an application for a curfew order to be renewed where no curfew order is made;
  - (c) that the sheriff may issue a citation to a person to appear before the sheriff and (if the person does not appear) may issue a warrant for the person's arrest;
  - (d) that, for the purpose of securing a person's presence before the sheriff, the sheriff may issue a warrant for the person's arrest without issuing a citation;
  - (e) as to the execution of a warrant of arrest.”

#### Textual Amendments

- F1** Words in s. 28 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. 81(2)(a)**
- F2** Words in s. 28 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. 81(2)(a)**
- F3** Words in s. 28 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. 81(2)(b)**
- F4** Words in s. 28 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. 81(3)**

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- F5** Words in s. 28 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. 81(4)**
- F6** Words in s. 28 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. 81(5)**
- F7** Words in s. 28 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. 81(6)**
- F8** Words in s. 28 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. 81(7)**



**Status:**

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**Changes to legislation:**

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