

Action of Furthcoming: [Contents](#)

[Action of Furthcoming: Overview](#)

[Action of Furthcoming: Decision Making Guidance](#)

[Action of furthcoming: Overview](#)

[1991/48](#) Section 38(1)(b) of the Child Support Act 1991

[1987/18](#) Section 73A of the Debtors (Scotland) Act 1987

What is action of furthcoming?

Action of furthcoming is the process required to obtain a decree of furthcoming. This decree orders an arrestee (i.e. a bank or third party that is holding arrested funds or assets) to release those funds to the CMG, without the non-resident parent's consent. This will be necessary if:

- a non-resident parent fails to return the probative mandate allowing arrested funds to be released; and
- the funds need to be released before the 14 week automatic release period expires (successful action of furthcoming may release funds in 6 - 7 weeks, depending on how busy the court is); or
- a movable asset has been arrested. In these circumstances, an action of furthcoming is required, as the moveable asset will not be automatically released.

NOTE: although they can be taken in respect of physical assets, the majority of furthcoming actions will be in respect of arrested funds.

Refer to the Decision Making Guidance for further advice on the circumstances in which it may be appropriate to apply for a decree of furthcoming.

Action of furthcoming: Process Overview

Any action of furthcoming must be raised by solicitors acting for the CMG by preparing a writ, which is lodged by the solicitor in the sheriff court.

The non-resident parent and the arrestee will then be served with a citation / summons, by recorded delivery or in person. (Solicitors serve by recorded delivery, sheriff officers personally serve).

There will then be a court hearing to determine whether the decree of furthcoming should be granted. Both the non-resident parent and the arrestee will have the opportunity to make representations to the court, if they wish to do so.

Representations can also be made by the other account holder / owner in cases where funds have been arrested in a joint account or the asset is jointly owned.

[Return to Contents](#)

[Action of furthcoming: Decision Making Guidance](#)

Deciding whether to make a furthcoming application

If funds are arrested they are automatically released to the Child Maintenance Service 14 weeks after service of the schedule of arrestment unless:

- the non-resident parent gives consent for them to be released sooner; or
- they successfully challenge the arrestment.

It is therefore **only** appropriate to apply for furthcoming if:

- there are robust reasons not to wait for this 14 week period to elapse; and
- the amount that will be collected means that it will be cost effective to proceed with this action; or
- a moveable asset has been arrested. These assets are not automatically released.

REMEMBER: the legal expense for furthcoming actions are high and it is therefore essential that you only pursue this action where it is both cost effective and appropriate to do so.

When you are deciding whether to pursue an action for furthcoming, you must consider the welfare of any child/ren that may be affected by your decision and record the reasons for your decision in full. Refer to the Discretionary Decision Making Guidance for further advice.

Furthcoming Application: Instructing Solicitors

If you decide to apply for furthcoming, you will need to complete a letter of instruction to our solicitors and provide them with a supporting file containing all relevant information and documents.

NOTE: different rules / forms apply to the process for making a furthcoming application, depending on the amount that has been arrested.

- cases with a value up to and including £5000 are dealt with under Summary Cause rules;

- cases with a value exceeding £5000 are dealt with under Ordinary Cause rules.

In **all** cases, an action of furthcoming can only proceed if it is demonstrated to the court that they have jurisdiction over the individual in question. It is therefore necessary in all cases:

- to include a statement confirming the defender has been resident in the relevant sheriffdom for more than 3 months prior to the action being raised; and
- to be confident that there is no agreement assigning jurisdiction over the application to another court; and
- to be confident that there are no proceedings pending before another court, which involve the same cause of action.

Next Steps

Solicitors will inform you when the first hearing date is due to take place.

At this hearing, the arrestee, non-resident parent and any joint account holder (if applicable) will have the opportunity to make representations in court as to why a decree of furthcoming should not be granted. If the non-resident parent or arrestee objects to the decree, solicitors will contact you to inform you of the objection grounds and to request any additional information needed for them to respond.

Outcomes

Our solicitors will inform you when an outcome has been reached. Your next action will depend on whether or not the decree of furthcoming has been granted.

Decree of Furthcoming Granted

If the decree of furthcoming is granted, it will be retained by the court for 14 days, to allow the non-resident parent or arrestee the opportunity to appeal against it if they wish to do so. If an appeal is not made, the decree will be issued to our solicitors, who will send their report and the extract decree to the CMG.

When the extract decree is received, you should check whether the non-resident parent has paid their arrears. If not, a copy should be sent to the arrestee with a covering letter informing them how to make payment. The case should then be monitored to ensure that payment is received or that appropriate reminders are sent.

Decree of Furthcoming Not Granted

If the decree of furthcoming is not granted, you will need to consider whether the decision should be appealed. If so, our solicitors must be instructed within 7 days of the sheriff's decision, to ensure they have sufficient time for the appeal to be made.

If you decide an appeal is not appropriate, you should issue a letter to the arrestee, informing them the attached funds must be released back to the non-resident parent, in accordance with the sheriff's decision.

[Return to Contents](#)

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