

Legal Enforcement (Scotland): Overview

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Legal Enforcement: Scotland

[Introduction](#)

This guidance provides an overview of the different civil enforcement actions that can be taken against non-resident parents living in Scotland and provides links to decision making guidance, giving detailed advice on each option.

Civil enforcement proceedings can be taken against a non-resident parent to recover payments of arrears of maintenance owed to the parent with care, the Secretary of State, or a child in Scotland.

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[When should Enforcement be considered?](#)

Cases should be referred for enforcement proceedings to be considered as soon as:

A payment is not received from the non-resident parent, and

- a deduction from earnings order / request or regular deduction order is not applicable or has proved unsuccessful
- where a DEO is not collecting the full amount of regular maintenance an/or arrears (this is known as parallel action)
- when payments of regular maintenance are being made regularly which are not for the full amount of the maintenance calculation thus accruing arrears

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[Scottish enforcement terms and actions](#)

Use the following sections for further information about Scottish enforcement terms and actions:

Diligence

Diligence is the term for various processes of debt enforcement in Scottish law. The CMG (the creditor) can use diligence if the non-resident parent (the debtor) has failed to make payment or a suitable agreement to pay. Usually the creditor must have a decree (court order) enforceable in Scotland.

NOTE: Where more than one diligence is appropriate, other than commitment / disqualification from holding or obtaining a driving license these actions can be taken concurrently.

A liability order must be obtained before most diligences can be taken. Diligences where this is not necessary are indicated below.

Liability order

A liability order (LO) is a decree for payment and is the legal recognition that the debt is due. A liability order is required before most diligences can be taken. Diligences where this is / is not necessary are indicated below.

The following actions can be taken before a Liability Order has been granted:

Interim attachment

An interim attachment is a diligence which is sought before a liability order is granted to prevent the non-resident parent from:

- moving the interim attached articles from the place at which they were attached
- selling, making a gift of or otherwise relinquishing ownership of any of the interim attached articles, and
- wilfully damaging or destroying the interim attached articles

Once the liability order is granted, the interim attached articles have to be attached in the execution before the attached articles can be taken to auction and sold. The interim attachment lasts for 6 months from the date the liability order is granted.

An interim attachment can be extended on application to the sheriff if necessary.

Inhibition on the dependence

Prior to a liability order being granted, if it is identified that the non-resident parent has heritable assets an inhibition on the dependence action must be considered.

An inhibition is a personal prohibition, which prevents the non-resident parent from selling, transferring or disposing of heritable assets including land and property (heritable means property / land owned by the non-resident parent, not rented). It is the non-resident parent and not a particular property or piece of land that is inhibited.

Arrestment on the dependence

Prior to a liability order being granted, if the non-resident parent owns assets which are held by a third party (such as money held in a bank account or owed to a sub contractor by a main contractor and it is identified that the non-resident parent may dispose of these assets, arrestment on the dependence action must be considered.

The sheriff may agree to freeze assets, or a proportion of them, pending the outcome of a court action (e.g. liability order). If granted, arrestment on the dependence of an action prevents the debtor disposing of their assets pending the outcome of the liability order application.

Order for interdicting

An interdict may be used to freeze assets (current land and property) owned by a non-resident parent and will prevent the non-resident parent from disposing, dealing or removing of assets from jurisdiction.

Action for reduction

An action for reduction overturns the disposal of an asset returning ownership to the non-resident parent.

Note: currently action for reduction proceedings are only being undertaken in respect of land/property.

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The following actions can only be taken once a liability order has been granted:

Charge for payment

A charge for payment is a formal written demand for payment of the sums due under the liability Order within a specified time (the days of charge). A charge for payment must be executed before attachment or exceptional attachment actions be taken.

Arrestment

An arrestment is a means of attaching funds/assets that are either solely owned or owned jointly with other parties or that are owed to the non-resident parent which are held by a third party.

The attached funds then become unavailable to the non-resident parent and are retained for future payment to the CMG.

Action of furthcoming

A decree of furthcoming can be obtained following an arrestment, if the non-resident parent fails to return the probative mandate in order for the arrested funds to be released. A decree of furthcoming is granted by the sheriff court and orders the arrestee (party holding the funds i.e. a bank) to release the arrested funds to the CMG without the non-resident parent's consent. Furthcoming is undertaken in circumstances where the funds need to be released earlier than the automatic 14 week period. Funds may be released in 6-7 weeks however this can be dependant on how busy the court is) if action of furthcoming is taken.

If it is physical property that has been attached as opposed to funds e.g. a ship then an action of furthcoming would be necessary if the debtor failed to sign a probative mandate. There is no automatic release process for this type of arrestment.

Attachment

An attachment allows a creditor to seize a debtor's moveable property out of the debtor's dwelling and sell it at auction in order to recover money owed.

The attachment attaches the moveable property of a value equivalent to the debt and costs. Where necessary this property will be removed for sale by auction to release funds. The property may be solely owned or owned in common with other parties.

Exceptional attachment

Following the granting of an exceptional attachment order, the sheriff officers decide what non-essential assets in the debtor's dwelling house, up to the value of the debt, are suitable to be attached and removed for sale at auction unless the debt and costs are paid beforehand. Assets may be solely owned or owned in common with other parties.

Inhibition

An inhibition is a personal prohibition which should prevent the non-resident parent from:

- selling, transferring or disposing of 'heritable assets' including land and property (heritable means property owned by the non-resident parent, not rented), and
- can also affect a debtor's ability to borrow funds

Commitment to prison / disqualification from driving

Where a non-resident parent has demonstrated wilful refusal or culpable neglect towards payment of Child Support arrears and all diligence actions have been considered and undertaken where appropriate, within Scottish Civil Enforcement, the CMG can apply to the sheriff for:

- the non-resident parent to be sentenced to a period of commitment to prison of up to 42 days, or
- for the non-resident parent to have their driving licence removed, or be prevented from obtaining a new licence, for a period up to two years

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