

Liability orders (Scotland):

Contents

- [Liability Orders \(Scotland\): Overview](#)
 - [Liability Orders \(Scotland\): Process Overview](#)
 - [Liability Orders \(Scotland\): Decision Making Guidance](#)
-

Liability Orders (Scotland): Overview

[1991/48](#) Section 33 of the Child Support Act 1991

[1992/1989](#) Regulation 26 and 29 of the Child Support (Collection and Enforcement) Regulations 1992

[1993/920](#) Rules 2 and 3 of the Act of Sederunt (Child Support Rules) 1993

What is a liability order?

A liability order is a decree for payment, which certifies that a debt is legally due. The order will:

- define the period over which the debt has accrued;
- confirm the amount of debt that has accrued within that period and that it is legally due to be paid, and
- confirm any expenses due to the CMG

A liability order is required before the CMG can take other legal enforcement action such as: arrestment, attachments, exceptional attachments, inhibition, commitment to prison and disqualification from driving.

Liability orders: proceedings and jurisdiction

In Scotland, liability order applications are heard in the non-resident parent's local sheriff court. The sheriff will consider:

- whether the debt in question has become payable, and
- whether or not it has been paid
- whether the non-resident parent has been domiciled (resident) or has operated a business in the sheriffdom for at least 3 months previously

The sheriff does not have jurisdiction to question the calculation on which the debt is based.

The appropriate court to apply to will normally be based on the non-resident parent's home address. However, it can be based on their business address if we have been unable to identify a confident residential address.

Cross jurisdiction cases

[1991/48](#) *Section 39 of the Child Support Act 1991*

[1992/1989](#) *Regulation 29 of the Child Support (Collection and Enforcement) Regulations 1992.*

- liability orders granted in England and Wales or Northern Ireland can be enforced in Scotland as if they had been made by a sheriff
- liability orders granted in Scotland or Northern Ireland can be enforced in England and Wales as if they had been made in a magistrate's court. However, in these circumstances, the order must be registered in the magistrates' court within the new jurisdiction

Multiple liability orders

If a non-resident parent has been consistently non-compliant, more than one liability order may need to be obtained for different periods of debt. Liability order periods cannot overlap, but one period can start the day after the previous period ends.

Top up liability orders

In exceptional cases, it may be possible to obtain a top up liability order after an initial liability order has already been granted. This will only be appropriate where:

- we have already obtained a liability order for a period, and
- the amount of debt due for that period subsequently increases, and
- we could not reasonably have known about the reasons for this increase at the time the original liability order application was made. For example, the non-resident parent provides information allowing conversion from a default maintenance decision to a full maintenance calculation which has increased his liability with the result that the liability debt increases

If we were aware that the debt for a period was likely to increase for example, because there was a retrospective change of circumstance outstanding, then we cannot apply for a top up liability order for the increased amount. It is therefore important that any outstanding changes of circumstances are actioned before you proceed with a liability order application.

[Return to Contents](#)

[Liability Orders \(Scotland\): Process Overview](#)

Before a case is referred for legal enforcement action the non-resident parent must have been sent an arrears warning letter advising them:

- of the total amount of arrears due, and
- requesting that the arrears are paid in full within 7 days, and
- where there are arrears due to the Secretary of State, informing them that these will be retained and offset against benefit payments made as a result of non-payment of child maintenance

NOTE: In England and Wales it is a legal requirement that this letter is followed with a notice of intention to apply for a liability order. In Scotland there is no legal requirement to issue a notice of intention to apply for a liability order, but it is a policy requirement to issue the notice in all cases in order to encourage compliance before proceeding with legal action if necessary.

A liability order application must be lodged in the sheriff court. The warranted application will be returned to the CMG by the sheriff court.

Our solicitors intimate the Form 2 with a copy of the liability order application on the non-resident parent by recorded delivery post. If that is unsuccessful sheriff officers are instructed to serve the papers on the on-resident parent and will notify you of the outcome.

Once the copy of the warranted liability order application and Form 2 has been served, the non-resident parent has 21 days to lodge any objection to the application. If this happens, you will be notified by the court and will need to prepare a response. In most instances the case manager will contact the court following the expiry of the 21 day period to check for objections being lodged.

Where the sheriff court confirms (after 21 days) that the non-resident parent has not lodged any objection to the application, a minute seeking order is issued to the sheriff court.

If objections are lodged by the non-resident parent the file is then passed to our solicitors who will deal with the assigned court hearings. If required, our solicitor will request any further information deemed necessary and a witness to attend court for any evidential hearings assigned.

Following the award of the liability order, the court will allow 14 days before issuing the extract liability order to the CMG, to allow the non-resident parent 14 days to appeal against the granting of the order.

If the sheriff court agrees to issue a liability order, the CMG can take any additional enforcement action that may be appropriate to enforce collection of the arrears.

In the event that expenses are awarded in favour of the CMG, our solicitors will arrange for their file to be taxed and for a taxation to be carried out if necessary. Thereafter they will arrange for an updated liability order (Form 4) to be issued including the final expenses figure.

[Return to Contents](#)

[Liability Orders \(Scotland\): Decision Making Guidance](#)

What type of cases are suitable for a liability order?

There are certain cases where a liability order is likely to be the most appropriate method of securing the outstanding child support arrears. Before the decision to apply for an order is made, you should be confident that the case meets these criteria. However, even if these criteria are met, there may be additional circumstances that mean you decide this action is not appropriate. The drop downs below provide further advice on these points.

Cases that may be suitable for a liability order

You should only consider applying for a liability order if we have a confident address for the non-resident parent and an arrears warnings letter (which is a legal requirement) has been issued. Providing these requirements are satisfied, a liability order application may be appropriate if:

- the debt is for a low amount sum – refer to [Minimum Levels of Debt](#)
- the parent with care has requested that no enforcement proceedings are taken but there are Secretary of State arrears outstanding then these arrears will still be pursued
- the non-resident parent is self employed or their employment status is unknown, meaning that a deduction from earnings order cannot be imposed; NOTE: for self employed cases, you should consider whether a regular deduction order is appropriate
- benefit is being received and the non-resident parent has substantial assets which to enforce against, arrears have previously accrued and the non-resident parent is unwilling to make an acceptable arrears payment, regardless of whether contributions to maintenance / minimum payments are being made

- a nil calculation is in place due to low income, arrears have previously accrued and the non-resident parent is unwilling to make an acceptable arrears payment
- a deduction from earnings order or request is not collecting an acceptable amount towards the non-resident parent's arrears, because e.g. their income levels need to be protected
- the non-resident parent's employer has refused to implement a deduction from earnings order
- the non-resident parent habitually leaves an employer before a deduction from earnings order can be imposed
- the non-resident parent is making regular payments, but these are for an amount lower than their actual liability
- a Deduction Order disclosure notice has not identified any suitable bank accounts from which deductions may be made
- the non-resident parent habitually leaves an employer before a deduction from earnings order can be imposed

NOTE: we would consider a deduction from earnings order to be ineffective if it is in place and collecting money, but at a rate that does not meet the debt steer. In these circumstances, we can consider applying for a liability order, while leaving the deduction from earnings order in place. This is known as parallel action.

REMEMBER: when you are deciding whether or not to apply for a liability order, you must consider the welfare of any child that might be affected by your decision and it is important that you record the reasons for your decision in full. Refer to the discretionary Decision Making Guidance for further advice about making and recording these types of decisions.

Cases that may not be suitable for a liability order

Where the minimum requirements are met, you may still decide that it is not appropriate to apply for a liability order in the following circumstances:

- the non-resident parent is in receipt of benefit, unless the non-resident parent has substantial assets which to enforce against
- the non-resident parent is terminally ill or has special needs
- the non-resident parent's partner or children from a second family are seriously ill

- the parent with care has requested that no enforcement proceedings are taken. However if there are Secretary of State arrears outstanding then these arrears will still be pursued
- the parent with care has asked for the case to be closed and does not want us to collect arrears on their behalf
- the non-resident parent, parent with care or qualifying child has died
- there is evidence that the non-resident parent may be violent to the parent with care and / or the qualifying child/ren
- the period of debt is subject to sequestration (see below)
- the non-resident parent's current employment circumstances for example they are a serving soldier on active duty in a war zone
- the cost effectiveness and use of public funds to pursue for a liability order and later enforcement actions where either the debt is for a low amount (see section below on [Minimum levels of debt](#)) or having established the non-resident parent's asset position there is no reasonable prospect of a successful outcome
- taking into consideration previous attempts to enforce child maintenance arrears through the courts the likely benefits and potential of success if pursuing further liability orders
- the non-resident parent's current financial circumstances for example do they have an exceptional immediate major or severe financial burden (such as purchasing an electric wheelchair for his child within his current household) that he will be tied into for the next six months? If that is the case then consideration may be given to suspending enforcement action until the immediate financial pressure is passed

Remember, this list is not exhaustive and does not mean that it will definitely be inappropriate to make a liability order application. You will need to take all the relevant circumstances into account and record the reasons for your decision in full. If you are still unsure of the appropriate action to take, you should ask your Team leader for advice.

[Minimum levels of debt](#)

The law does not restrict the amount of child maintenance arrears for which a liability order application can be made. Before deciding to make such an application however consideration must be given to the individual circumstances of the case as well as the appropriateness and cost effectiveness of doing so.

When making applications to the sheriff court for a liability order case managers must have regard to the level of debt being pursued. Although the views of the parent with care will be taken into account the decision whether to pursue arrears rests with the case manager acting on behalf of the Secretary of State as set out in section 4(3) of the Child Support Act 1991.

Even if the parent with care is pushing for action the decision whether to seek a liability order rests with the enforcement case manager.

In making such a decision the case manager must be seen to have considered all the facts of the case in question as well as the appropriateness of undertaking the action. One such factor is the amount of debt for which liability order proceedings are being considered.

The minimum amount for which a liability order will usually be sought is £500 however this sum is discretionary and lower amounts may be pursued if the specific circumstances of the case warrant it.

You should not pursue a liability order where the debt is less than £500 unless there are compelling reasons to do so. An example of seeking a sub de minimis level of debt might be where the case has closed with a debt of £385 and the parent with care is keen for all arrears due to be collected. If all other means of negotiating or securing payment have been considered and/or attempted then it may be necessary to consider the suitability of securing a liability order.

It is unlikely for instance to be cost effective to pursue or enforce a liability order for sums which are lower than £200 due to the cost of the liability order and available enforcement actions. Additionally it may well be the case that courts will not view it as reasonable for an application to be made in respect of debt which is less than the amount of the enforcement fee of £300.

Even if a liability order is appropriate for a sub de minimis amounts there are some enforcement actions where it may not be appropriate to proceed for low amounts of debt for instance Charging Orders or Commitment to prison/Disqualification from driving proceedings.

If the circumstances of the case mean that liability order action is not appropriate at that particular time the case should be "paused" for a suitable period of time to elapse before reinstating action to commence recovery of the arrears.

Any decision whether it is to proceed with the liability order application or not must be clearly recorded and include a decision regarding the welfare of any child affected.

If it is not appropriate to pursue a LO and no other action is possible cases with less than £500 debt should go into surveillance until the debt reaches the £500 de minimus or circumstances on the case change that may allow other action to start,

for example if a DEO becomes appropriate because the NRP has gained employment.

Sequestration

Section 55 of the Bankruptcy (Scotland) Act 1985 treats child maintenance differently to the Insolvency Act in England and Wales. Under sequestration, child maintenance arrears have the same status as any other debt. This means that the non-resident parent's child maintenance debt is normally included within the sequestration order and the CMG cannot pursue any arrears that are included in this order.

The Bankruptcy (Scotland) Act 1985 does not allow the CMG to take any enforcement action to collect debts incurred up to and including the day before the petition for sequestration is granted.

- We therefore cannot:
- apply for a liability order in respect of debt that accrued up to and including the day before sequestration was granted, or
- take other enforcement action based on a liability order that was granted before the date sequestration was granted.

However, liability orders can be applied and enforced for any arrears that accrue on and after the date of sequestration.

Liability order application is appropriate: next steps

If you decide to proceed with a liability order application, you will need to complete any outstanding action on the case, to ensure the arrears balance for the relevant period will not change. You will also need to issue a notice of intention to apply for a liability order, if this has not already been done and notify the parent with care of the proposed action. The following drop downs provide further advice on these points.

Complete any outstanding action on the case

REMEMBER: before making a liability order application, you must complete any outstanding changes of circumstance that could affect the debt balance.

If there is an ongoing appeal / outstanding assessment, you should not proceed with the application in relation to any period that might be affected by the outcome.

However, you can proceed with an application for any "safe" period of debt. E.g. any period prior to the effective date of the maintenance calculation under appeal or where you are confident that the arrears amount is correct and will not be altered.

There is Scottish case law which provides that where the non-resident parent is repeatedly using the appeal process to prevent or delay enforcement, a liability order

may still be sought. Any such cases should be discussed with your Team Leader and Policy before making the decision whether to continue with the liability order application.

Note: if there is information relating to the non-resident parent failing to provide information, you must check whether prosecution action for failure to provide information is being considered or has commenced. If so, you will need to consult with compliance colleagues before proceeding any further as enforcement action could jeopardise this.

Notice of intention to apply for a liability order

Although it is not a legal requirement to issue this notice it is a Policy requirement. Issuing this notice demonstrates that we have taken all reasonable steps possible to secure payment before progressing to action through the sheriff court. Therefore, before applying for a liability order, a notice of intention to apply for a liability order must be issued to the non-resident parent. This letter must give the non-resident parent the following notice of our intention to apply for a liability order:

- 7 days if the non-resident parent lives in the UK
- 28 days if the non-resident lives abroad

The arrears warning letter must set out the amount of maintenance arrears and any other amounts that will be included in the liability order application. This might include interest, fees and potential costs of service.

No further action should be taken until the relevant warning period has elapsed. But if the non-resident parent only pays part of the arrears within the notice period, there is no need to issue a further notice of intention to apply for a liability order before proceeding with a liability order application in relation to any outstanding balance.

Contact the parent with care

Before proceeding with a liability order application, you should always contact the parent with care to:

- obtain any additional information about the non-resident parent's lifestyle / assets that might help inform your decisions about any additional enforcement action
- confirm if they agree to enforcement action being taken
- obtain information about any 'Welfare of the child' considerations in relation to either the parent with care's children's circumstances or possible the non-resident parents if the parent with care is aware of the non-resident parent's circumstances

NOTE: if the debt is all due to the parent with care, you should not proceed with liability order action if the parent with care does not want you to collect arrears on their behalf. However, if arrears are also owed to the Secretary of State, it may be appropriate to proceed, but you should seek the parent with care's views, in case they have information / evidence indicating that this action may have an impact on the welfare of the child/ren.

Making the liability order application

When you are ready to apply for the liability order, you will need to complete the application and form E200 and issue these to the sheriff court for warranting. It then takes up to 14 days for the warrant of citation to be authorised by the court.

Note: the E200 is the form used to accompany the Form 1 and is to ensure the fees cost is recorded on the Scottish Court Service Quick Book system.

When the warrant of citation has been returned it should be forwarded to our solicitors, who will arrange for the citation to be served on the non-resident parent, with the Form 2 (Notice to Liable person in an application for a liability order). Once this has happened, the non-resident parent has 21 days in which to lodge objections in the sheriff court to the liability order application.

If the non-resident parent has not already lodged objections then once the 21 days have elapsed you will need to complete the following and submit them to the sheriff court:

- the liability order Form 3 and extract liability order in Form 4, which detail the arrears being sought and any allowable expenses that are also being claimed
- the minute seeking order paragraph on the reverse of Form 1

Non-resident parent objects to the liability order application

If the non-resident parent objects to the application, there will be an objection hearing. You will need to prepare an objection file for our solicitors, which must include:

- a letter of instruction to the solicitor to prepare the objection response
- confirmation from the court of the objection hearing date
- the written / typed objections
- our response to the objections
- copies of Form 1 and Form 2
- copies of the sheriff officer report and certificate of citation

- any other supporting documents / printouts

The objection file should be sent to the solicitors at least 5 days before the hearing date. However, if there is insufficient time to prepare and send the CMG's response to the non-resident parent's objection before the hearing will take place, you will need to contact the court to request a continuation (delay).

Hearing outcomes

Solicitors will inform you of the liability order hearing outcome. This will be either:

- granted
- dismissed
- continued / sisted

Liability order granted

If the liability order is granted, the extract liability order will be sent to you. You can then consider what, if any, further enforcement action is most appropriate. Refer to the Legal enforcement overview for further advice.

If an award of expenses has been made in favour of the CMG, our solicitor will arrange for their file to be taxed and a taxation completed if necessary. Thereafter a second liability order (Form 4) will be issued to you, confirming the total sum due including the expenses figure.

Liability order dismissed

A liability order application can be dismissed by the court for any of the following reasons:

- incorrect name / address on the application
- the non-resident parent has been proved not to be the biological parent of the qualifying child/ren

Liability order not granted

If the sheriff decides not to grant the liability order, the sheriff may grant a decree of absolvitor. This means that the case is decided in favour of the defendant and cannot be returned to the court for the same matter. The CMG therefore cannot make a further liability order application for the same period held under a previously unsuccessful (not granted) application.

Solicitors will inform you of the reasons the order was not granted and recommend the next appropriate action. At this stage a decision will have to be made whether it

is appropriate to appeal. REMEMBER: an appeal can only be made on the basis that the sheriff had erred in law.

To decide whether an appeal is appropriate, you should:

- review the file when it is returned
- consider the reasons why the application was dismissed
- consider the possible grounds for appeal (an appeal must be on a point of law i.e. the court made an incorrect decision)
- seek advice from your team leader and Policy colleagues if necessary

If we decide it is appropriate to appeal, this must be done within 14 days of the sheriff's decision and solicitors will need to be instructed to take this action on our behalf. Refer to the guidance on CMG appeals against enforcement action for further advice.

If we decide it is not appropriate to continue with the liability order application, a minute seeking dismissal should be completed and submitted to the court who will then issue an extract of dismissal.

A minute seeking Dismissal application may be made by the CMG if:

- the non-resident parent has paid the debt in full
- changes to the assessment mean the debt for the relevant period no longer applies
- incorrect name /addresses on the application
- the non-resident parent has been proved not to be the biological parent of the qualifying child/ren

Parallel Liability Order

The debt steer provides guidance on negotiating payment agreements and indicates what will be considered as suitable repayment amounts / periods. If a payment agreement cannot be reached that meets the debt steer guidelines, it may be appropriate to apply for a liability order in parallel with on going collections, to:

- ensure that the debt is secured in case the payment agreement breaks down, and / or
- to ensure we have an order ready if information is obtained indicating that other enforcement action would allow us to collect the full arrears more quickly

When you are considering applying for a parallel liability order, it is essential that you consider all the circumstances of the case, including the welfare of any child/ren that may be affected by your decision. The reasons for your decision must be recorded in full. Refer to the guidance on Discretionary Decision Making for further advice about making and recording these type of decisions.

Parallel action should be considered in case where:

- a Deduction from Earnings Order or other Method of Collection is in place at the maximum amount, but
- the full arrears will not be collected in two years, and
- the debt balance at the end of the two year period will still exceed £1000
- the non-resident parent is stated to have assets which can be enforced against

All the criteria shown above must be satisfied when considering if parallel action is appropriate.

NOTE: different criteria apply in cases where a Deduction from Earnings Request is in place because the non-resident parent is a member of Her Majesty's Forces. In these circumstances, the following criteria apply:

- non-resident parent is a member of HMF and is posted in the UK or overseas, but not in a war zone: parallel action can be considered immediately if the above criteria are met
- non-resident parent is a member of HMF and is posted overseas in a war zone: parallel action should be put on hold until the non-resident parent is posted outside a war zone

Top up

When we apply for a Liability Order, we must confirm:

- the period of debt
- the amount of debt that has accrued in relation to that period

These details will then be confirmed in the Order.

If the debt for the period specified subsequently increases, we can apply for the amount in the Liability Order to be increased. We refer to this as a 'Top Up Liability Order'. However, we can only do this if we could not reasonably have predicted that the increase would occur.

If the non-resident parent continues to be non-compliant, we can apply for further Liability Orders for subsequent periods of debt.

[Return to contents](#)

PLDMG @ 09.03.2017