

Legal Enforcement (England and Wales): Overview

This guidance provides an Overview of the different civil enforcement action that can be taken against:

- non-resident parents living in England and Wales; or
- non-resident parents living abroad who have assets in England / Wales.

This guidance also provides links to decision making guidance, giving detailed advice on each option.

When should Civil Enforcement be considered?

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

- a payment is not received from the non-resident parent or payments are received, but not for the full amount due, so that arrears accrue and deduction from earnings order / request, or
- a deduction order is not applicable or has proved unsuccessful;
- a deduction from earnings order / request is in place, but at a rate that will not allow arrears to be collected within an acceptable period and the non-resident parent has assets that may be realised. We refer to this as Parallel Action.

A liability order is required prior to most civil enforcement actions being taken.

England and Wales: Civil Enforcement Actions

The sections below provide a summary of the different civil enforcement actions that are available in England and Wales.

REMEMBER:

- Most of these actions require a liability order to be obtained before they can be taken,
- The exceptions are deduction orders, freezing orders and setting aside disposition orders, which can all be obtained without a liability order

Liability Orders

A liability order is required to obtain legal recognition that the debt exists and must be registered at a county court before further debt enforcement proceedings can be taken against the non-resident parent. The magistrates' court are responsible for granting liability orders.

Bailiff Action

Generally, most cases where a liability order has been obtained will be referred for bailiff action and the bailiff will attempt to collect money on behalf of the CMG. Where the bailiffs are unable to obtain a suitable payment agreement, they will levy distress. Levying of distress is the legal term given to the seizure of a debtor's goods which may then be taken to auction. The proceeds of the sale would go towards settling the outstanding debt and the bailiff's costs.

Occasionally a case may be considered as not appropriate for bailiff action, i.e. non-resident parent has no income and no assets. Refer to the guidance on [bailiff action](#) for further advice.

Register Liability order on the Register of Judgments, Orders and Fines

The effect of this action is similar to registering a County Court Judgment, but instead the debt is entered on the Register of Judgments, orders and Fines (RJOF), which is managed by Registry Trust Ltd. It has the effect of damaging the non-resident parent's credit rating, which means they will find it more difficult to get a loan or mortgage.

Order for Recovery

Where considering a third party debt order and / or charging order action, the liability order has to be registered in a county court. Once the liability order is registered and a period of time allowed for potential payment the county court will issue an 'order for recovery' to the CMG.

Third Party Debt Order

An application for a third party debt order (TPDO) can be made if money owned by the non-resident parent is held by a third party. While money held in a bank or building society is a common example, action can be taken if the money is held by other third parties. For example: if a solicitor was holding money owed to the non-resident parent, then a TPDO could be used to recover this.

The effect of the TPDO is to freeze the funds in question at the interim order stage. If funds are successfully frozen the court can release these to the CMG at the final order hearing stage.

Charging Order

A charging order can be applied for if we have information that the non-resident parent is the sole or joint owner of a property (e.g. a house or land). A charge can also be applied for against stocks and shares, but the vast majority of these applications will concern property.

The charging order application has two stages, interim and final.

The effect of a charging order is to register the debt against the property. This does not prevent the non-resident parent from selling the property, but a prospective purchaser would not want to take on the charge (or restriction where the non-resident parent is a joint owner), so the non-resident parent would find it difficult to sell or re-mortgage the property while the charge is in place.

Order for Sale

Once a final charging order has been granted and registered with HM Land registry, the CMG may request through the courts that the property (be it a dwelling or asset) be sold to provide monies to satisfy the outstanding debt and any costs and / or interest awarded by the court. Contracted solicitors take order for sale action on behalf of the CMG.

Commitment to Prison / Order of Disqualification

Where a non-resident parent has demonstrated wilful refusal or culpable neglect towards payment of Child Support arrears and all possible enforcement actions have been attempted within England and Wales Civil Enforcement, the CMG can apply to the magistrates' court 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 be prevented from obtaining / have their driving licence removed for a period of up to two years.

REMEMBER: the following actions can be taken without a liability order being granted.

Freezing Order

A freezing order prevents the non-resident parent disposing, dealing or removing assets (generally property) from jurisdiction.

Whilst a liability order is not required to take freezing order action, the aim of this action is to provide time to obtain a liability order and secure the debt against the asset (generally property) which is frozen e.g. secure a charging order.

Setting Aside Disposition Orders

A setting aside disposition order will overturn the disposal of an asset (generally property) returning ownership to the non-resident parent.

Whilst a liability order is not required to take setting aside disposition order action, the aim of the action is to return assets to the non-resident parent to allow a liability order to be obtained and secure the debt against the asset e.g. a charging order.