

## Liability Orders: Contents

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## Liability Orders: Overview

Sections 33 and 34 of the Child Support Act 1991

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

[1992/1989](#) *Schedule 1 of the Child Support (Collection and Enforcement) Regulations 1992*

[1992/1813](#) *The Child Support (Maintenance Assessment Procedure) Regulations 1992*

[2001/157](#) *The Child Support (Maintenance Calculation Procedure) Regulations 2000*

[1971/80](#) *The Banking and Financial Dealings Act 1971*

What is a liability order?

A liability order provides legal recognition that a debt exists. This must be obtained before we can consider any further enforcement proceedings.

Obtaining a liability order allows the CMG to take a range of legal enforcement actions, including: bailiff action and applications for charging orders; commitment to prison and disqualification from driving etc.

REMEMBER: you do not need to obtain a liability order before taking administrative action to collect arrears: For example: imposing a deduction from earnings order or deduction order, or applying for an order against avoidance.

Liability order applications are heard in a magistrate's court. The court will consider whether the debt in question has become payable and whether it has not been paid. They have no jurisdiction to question the calculation on which the debt is based.

### **Deciding whether to apply for a liability order**

You should consider applying for a liability order if:

- an arrears notice has been issued to the non-resident parent and seven days to allow for payment of the debt have elapsed

- the arrears became due after 12 July 2000 (Regulations 28 (2A) Child Support (Collection and Enforcement) Regulations 1992)
- the non-resident parent has failed to make one or more payments, or
- 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
- it has been decided a deduction from earnings order is inappropriate (for example because the non-resident parent does not have an employer) or is ineffective

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.

Refer to the Decision Making Guidance for further advice on the factors you should take into account when you are deciding whether to apply for a liability order.

### **Notice of intention**

Before submitting an application, we must issue a warning letter to the non-resident parent, informing them of our intention to apply for a liability order. The non-resident parent must be given the following minimum notice of our intention:

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

The warning letter must set out:

- the amount of child maintenance arrears that we are applying for, and
- any other amounts to be included in the order. This will rarely apply, but might include interest, fees or penalty payments

If the non-resident parent subsequently pays their arrears in full, you should not proceed with the liability order / application. However, if they only make a part payment towards the arrears, you do not need to issue a further warning letter before making a liability order application in respect of the balance.

If the non-resident parent makes a payment agreement after the arrears notice has been issued, they should be made aware that the liability order will still be sought and used to enforce the balance of the arrears due if they fail to continue with the agreed instalments.

## **Liability orders and debt periods / amounts**

When we apply for a liability order, we must confirm:

- the period that the debt has accrued over, and
- the amount of debt that has accrued within 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.

Refer to the Decision Making Guidance on multiple liability orders and top up liability orders for further advice.

## **Liability order: next steps / validity**

Any court enforcement action for arrears covered by a liability order must be taken within 6 years of the date that the order is granted.

## **Jurisdiction**

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

[1950/37](#) *Part II, section 16(2)(b) and (c) of the Maintenance Orders Act 1950*

- 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, the order must be registered in the new jurisdiction

Liability orders: 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 sections 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 warning letter has been issued. Providing these requirements are satisfied, a liability order application may be appropriate if:

- an arrears notice has been issued to the non-resident parent and seven days to allow for payment of the debt have elapsed
- the arrears became due after 12 July 2000 (Regulations 28 (2A) Child Support (Collection and Enforcement) Regs 1992)
- the non-resident parent has failed to make payments due however refer to [Minimum Levels of Debt below](#)
- 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 for example 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 been returned but no suitable bank accounts have been identified from which deductions may be made, and
- it has been decided a deduction from earnings order is inappropriate (for example, because the non-resident parent does not have an employer) or is ineffective

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 benefits, unless the non-resident parent has substantial assets which to enforce against
- the non-resident parent is terminally ill or has severe 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 where 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 non-resident parent's current employment circumstances e.g. is he 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 exceptional financial circumstances e.g. does he have an immediate major or severe financial burden (e.g. purchasing an electric wheelchair for his child within his current household) that he will be tied into for the next six months? The decision may be that a liability order application will continue. If that is not the case then consideration may be given to suspending enforcement action until the immediate financial pressure is passed and action recommenced

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 magistrates' courts 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 (£40 and available enforcement actions which can range from £100 to £245). 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

Top Up

Liability orders and debt periods / amounts

When we apply for a liability order, we must confirm:

- the period of debt and
- 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.

Refer to the Decision Making Guidance on multiple liability orders and top up liability orders for further advice.

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Registering a liability order in the County Court

[1991/48](#) Section 36, *Child Support Act 1991*

Rule 70.5, Part 70, [Civil Procedure Rules](#)

Why do we need to register a liability order in the County Court?

Liability orders must be registered before we can take action to enforce them in the County Court. This is because liability orders are granted in the magistrate's court, but charging and third party debt order actions are dealt with in the County Court.

When we register a liability order in the County Court, the court:

- recognises the liability order, and
- grants an order for recovery, which allows us to take enforcement action in the County Court

### **When should we register a liability order in the County Court**

A liability order should only be registered in the County Court if we have information / evidence to indicate that we might be able to apply for a charging / third party debt order.

This is because an order for recovery has no effect in itself, but solely allows other enforcement action to be taken. There is therefore no point obtaining an order for recovery unless we have information to indicate we may be able to use it.

### **Process for registering a liability order in the County Court**

- applications to register a Liability Order in the County Court must be made on the form N322a from the HMTCS website by post to the district where the non-resident parent: lives or carries on a business, unless the Court orders otherwise
- use the Court Finder within HMTCS website to determine which court is applicable to the district where the non-resident parent lives
- use the Form Finder within HMTCS website to obtain form N322a



- a copy of the original Liability Order must be enclosed with the application for registration
- we are not required to notify the non-resident parent that we are applying for an order for recovery, as this action is completed by the court

### **What happens when the liability order is registered?**

When the County Court receives the CMG's application, they will register the liability order and allocate a claim number to it (on the form N322), which we must use for all future applications to the County Court regarding that order.

The County Court will also notify the non-resident parent by sending them an order for recovery (a form N322) which will demand full payment of the outstanding liability order amount within 14 – 28 days.

The non-resident parent can apply to the County Court for a variation order if he is unable to pay the amount due in full and wants to pay by instalments.

Refer to the variation orders section for more information.

If they do not do this, and the debt has not been paid within the time specified in the order for recovery, then the CMG can continue with charging / third party debt order action.

### **Deciding whether to register a liability order in the County Court**

Deciding whether to register a liability order in the County Court is a discretionary decision.

You must take into account all relevant factors, including:

- the welfare of any child potentially affected by your decision, and
- whether the action is likely to be effective
- details of any contact with the non-resident parent or parent with care

The liability order should only be registered, if you have decided it is appropriate to subsequently apply for a:

- third party debt order, or
- charging order

You should ensure you record full details of any information / evidence used to support your decision: e.g. information obtained from the Land Registry about property or from banks and building societies.

**IMPORTANT NOTE: deciding not to register the liability order**

If you decide not to register a liability order in the County Court, you must record this decision and the reasons for it.

This is because if the CMG subsequently makes an application for commitment to prison or disqualification from driving, we must demonstrate that registration in the County Court or levying by distress was attempted, and why it was rejected: for example because the non-resident parent does not have any assets that a charging / third party debt order could be made against.

You should ensure you record full details of any information / evidence used to support your decision: e.g. information obtained from the Land Registry about property or from banks and building societies.

### **Order for recovery granted**

When the County Court receives the CMG's application for registration, they will register the liability order and notify the non-resident parent by sending an order for recovery. This informs the non-resident parent about the order and normally gives them between 14 and 28 days to pay the debt in full. If the debt is not paid within this time, the CMG can continue with charging / third party debt order action.

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Registering a liability order on the Register of Judgments, Orders and Fines (RJOF)

[1991/48](#) *Section 33(5) of the Child Support Act 1991*

[2003/39](#) *Section 98 of the Courts Act 2003*

[2005/3595](#) *The Judgments, Orders and Fines Regulations 2005*

When a liability order has been granted, we can register it on the Register of Judgments, Orders and Fines (RJOF). Note: magistrates and County Courts should not take this action independently and this is not the same thing as a county court judgment (CCJ).

We would consider this if the non-resident parent:

- fails to make a collection arrangement, or
- defaults on a collection arrangement such as missing a payment, after the Register with RTL warning letter has been issued

What is the RJOF?

The RJOF is a statutory public Register run on behalf of the Ministry of Justice by Registry Trust Ltd (RTL).

Anyone can check the information held on the register about any business, individual or themselves, by providing the necessary search details and paying the appropriate fee.

Additionally Registry Trust Ltd is legally obliged to make information available, in bulk, to commercial organisations.

Details which would appear on a search of this register include:

- the name and address of the debtor (the non-resident parent)
- the date and amount of the debt
- the CMG office responsible for the information
- the CMG case reference number (this would be the LO reference number)

Why would we register a liability order on the RJOF?

This action may affect a non-resident parent's ability to obtain credit and if they are a professional, such as an accountant or lawyer, an entry on the register can be detrimental to their career. The possibility of RJOF action can therefore be used to encourage the non-resident parent to pay.

What happens if we register a debt in error?

If we have registered the debt in error, we can ask RTL to remove the entry from the register.

How long does an entry remain on the register?

When a Liability Order is entered on the RJOF, a record of the debt will be held on the register maintained by RTL. The debt will remain on the register until payment has been made in full. Partial payment of the debt at any time does not affect the registration of the judgment.

- if the non-resident parent pays the debt in full within one calendar month of the registration, the entry will be cancelled and no record will remain on the register
- if the debt is paid after one calendar month from the date of registration, the entry will be marked satisfied, but will remain on the register for six years

The entry will automatically be removed from the register 6 years after the date of registration.

Is registering the liability order appropriate?

This action can be taken against anyone, and can be taken in parallel with any other action. However, registering a liability order will only be effective in certain types of cases and a range of factors should be taken into account before this action is taken.

What type of cases can we consider for registration?

You can consider registration if the non-resident parent is:

- a homeowner
- self employed
- a professional, for example a solicitor, accountant, dentist, etc.

NOTE: if the non-resident parent is unemployed, or has got previous CCJs or other registrations with RTL, the effect of this action is likely to be minimal and should only be considered if an existing registration is due to be removed in the near future (i.e. the six year date for automatic removal is approaching). Otherwise, the case should be reviewed regularly and registration considered again if the non-resident parent's circumstances change.

If the case is one where registration can be considered, you will need to take a range of factors into account before deciding if this action should be taken.

As with any decision made, consideration must be given to the welfare of the child and whether the method of enforcement is appropriate and how effective it can be. The following factors should be taken into account:

#### **Non-resident parent in receipt of a benefit**

If the non-resident parent is in receipt of benefit, there would be little to gain by registering the debt at this time. However, this should be kept under regular review until such time as the non-resident parent has either a change of circumstances or another source of income. If this happens registration should be considered.

#### **County Court Judgment already registered**

There may be evidence that a non-resident parent has a County Court Judgment registered against them. If so registering a liability order would not have any additional effect.

Note: If this information is not already known, do not take investigative action to confirm whether it applies.

#### **Care of / representative address**

If the non-resident parent is using a 'care of' address or a representatives' address this indicates they are not the registered owner of the property. In these

circumstances do not consider registration as this could affect the owner of the property's ability to obtain credit.

### **Non-resident parent obtaining credit to pay child maintenance debt**

If a non-resident parent has stated they intend to try and obtain credit to pay their child maintenance arrears, you should consider deferring any action to register the debt while they have the opportunity to attempt this. Otherwise, registering the debt may affect their ability to obtain a loan / other credit that might enable them to pay the debt.

What happens if the non-resident parent pays the debt?

If the non-resident parent pays the liability order debt in full following registering the Liability Order with the Registry Trust Limited, the caseworker must notify RTL that the registration can be either cancelled or marked as satisfied.

### **Within one calendar month**

If the non-resident parent pays the debt within one calendar month of the date of registration, the CMG must notify RTL so that the entry is cancelled. RTL will remove the entry from the register.

### **Outside one calendar month**

If the non-resident parent pays the full debt amount more than one calendar month after the date of registration, either as a lump sum or in instalments, the CMG must notify RTL so that the entry on the register is marked as satisfied. However, the entry will not be removed until six years from the date.

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