

Order for interdicting / action for reduction (Scotland)

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[Order for Interdicting and Action for Reduction: Overview](#)

[1991/48](#) Section 32L of the Child Support Act 1991

What is an interdict

An interdict can be used to freeze assets (land or property) owned by a non-resident parent, to prevent them disposing of or moving asset.

Note: applications for an interdict can only be made against a solely owned asset.

The CMG can apply for an order of this type if the non-resident parent has:

- disposed of an asset since 06 April 2010 or within the last three years; with the intention of avoiding paying their child maintenance.

For example: if the non-resident parent has transferred property to a friend / relative to avoid it being available for enforcement action.

In principle, an interdict can be requested in relation to a range of assets, including: land, property, cars, jewellery, boats etc. However, in practice, they will normally be requested in relation to land or buildings, due to the difficulty in obtaining evidence regarding other assets and the costs involved in obtaining an interdict.

Inhibition on the dependence proceedings are normally preferable to this action, as they can be used on jointly owned properties are quicker and less expensive than obtaining an interdict. However, an interdict may be quicker than inhibition proceedings if the inhibition has not yet been registered, as execution and registration of the inhibition can take 3 weeks.

In addition: an inhibition on the dependence would only be appropriate where a liability order would be sought to recover the debt. Where a liability order would not be sought then the only means of preventing the transfer of the asset would be by means of an interdict.

What is an action for reduction?

If a non-resident disposes of an asset (property or land) for less than its market value in order to avoid payment of child maintenance, an action for reduction can be used to overturn the disposal and return ownership to the non-resident parent. Appropriate inhibition action can be taken to prevent further attempts to dispose of the asset.

Note: the policy steer is to only apply for an interdict against a solely owned asset.

In principle, an action for reduction can be requested in relation to a range of assets, including: land, property, cars, jewellery, boats etc. However, in practice, they will normally be requested in relation to a land or buildings, due to the difficulty in obtaining evidence regarding other assets and the costs involved in obtaining an action for reduction. Note: we should only consider action for reduction if an interdict is not appropriate.

Important note

We can only pursue an interdict or action for reduction if the non-resident parent is aware of the debt.

You must therefore ensure that:

- a confident address is held
- notification of liability has been issued, and
- at least one written arrears notice has been sent to the non-resident parent see [Arrears Notice requirements](#).

before pursuing these actions.

Interdict / action for reduction: suitable assets

An interdict/ action for reduction can be considered if we have information / evidence to indicate that the non-resident parent owns an asset:

Note: usually we will only consider land or buildings for an interdict / action for reduction, however these actions may be taken for any of the following assets:

- **property** - any property registered in the United Kingdom in the non-resident parent's name (as per the Registers of Scotland or Land Registry for England & Wales), which is owned solely by the non-resident parent and is not used for business purposes

Note a key factor for an interdict against heritable assets such as land or buildings would be whether an inhibition would be appropriate to freeze the asset for the next 5 years

- **capital assets** - any asset that produces an income, for example property or other assets, such as boats, that the non-resident parent rents out

- **vehicles** - any type of vehicle that is registered in the non-resident parent's name (as per DVLA) and is not used for business purposes
- **financial portfolio items** - stocks, shares, securities or commodities that are owned by the non-resident parent
- **collectable assets** -for example: valuable works of art or jewellery

This is not an exhaustive list. Contact the Advice and Guidance Team if you have information that the non-resident parent owns an asset that is not covered above.

NOTE: interdict / action for reduction is not suitable for cases where:

- a non-resident parent has had land / property repossessed by a mortgage lender
- the non-resident parent's outstanding arrears are below £3000, or
- the value of the asset is below £3000

It may be appropriate to consider this action where these thresholds are not met if exceptional circumstances apply. You should seek advice from your Team Leader or Advice and Guidance colleagues if you think this action may be appropriate where these thresholds are not met.

[Interdict / Action for Reduction: Process Overview](#)

If you receive information that a non-resident parent is intending to dispose or has disposed of an asset that may be suitable for interdicting / action for reduction, you will need to take the following steps:

- obtain as much information about the asset / sale as possible, refer to the Decision Making Guidance for further advice about the type of information you will need to obtain
- establish whether or not the non-resident parent still owes or has already disposed of the asset, so that you can decide which type of action is appropriate
- use the information obtained to determine whether an interdict or action for reduction is appropriate e.g. is there sufficient evidence of a suitable asset? Is the value of the asset and / or the arrears in excess of the £3000 de minimis for this type of action?
- establish whether or not the non-resident parent still owns or has already disposed of the asset, so that you can decide which type of action is appropriate

- complete the appropriate application form and submit it to the Judicial Review Team for checking
- if the Judicial Review Team decide it is appropriate for the application to proceed, they will submit it by secure e-mail to Agent Solicitors who will make the arrangements for a court hearing
- if the application is for an action for reduction order, the CMG will serve notice of the application to the non-resident parent and the third party purchaser, so that they can make any representations to the court. If the application is an interdict, the non-resident parent will not be informed of the court hearing, in case this prompts them to dispose of the asset beforehand

[Interdict / Action for Reduction: Decision Making Guidance](#)

Asset details

If you receive information / evidence indicating that the non-resident parent owns an asset that may be suitable for either of these actions, you should obtain as many details as possible before deciding whether to proceed. The information needed will depend on the type of asset concerned.

REMEMBER: you should normally only consider this type of action if:

- the estimated value of the asset exceeds £3000, and
- the non-resident parent's arrears exceed £3000

Property

If a parent with care, non-resident parent or third party reports that the non-resident parent is intending to dispose / has disposed of a property, you should check:

- is there a "For Sale" board outside the relevant property
- is the name of the estate agent dealing with the sale known
- is there any information available about how far the sale has progressed, for example is the property under offer or has the non-resident parent said when they are moving
- if the non-resident parent is transferring title to the property, rather than selling it, do they know who the non-resident parent is transferring the title to?
- is there any information available regarding the approximate value of the property
- is there an inhibition in place against the non-resident parent

Capital assets

If a parent with care, non-resident parent or third party reports that the non-resident parent is intending to dispose / has disposed of capital assets, you should check:

- if the information is being reported by a parent with care / third party, how do they know that this asset is being / has been sold and who the asset has been sold to
- how is the asset being advertised? E.g. is it being advertised on the internet or in the local papers? Obtain names of the paper(s) / website(s) if possible
- where is the asset likely to be sold? E.g. through auction, the internet or newspaper listings
- is there any information available about the approximate value of the asset

Vehicles

If a parent with care, non-resident parent or third party reports that the non-resident parent is intending to dispose / has disposed of a vehicle, you should check:

- is there any information about how the vehicle is being advertised? E.g. is it being advertised locally or on the internet? Obtain the names of the paper(s) / website(s) if possible
- is the non-resident parent the registered owner of the vehicle? Note: a referral will have to be made to the SPOC for this information
- is the vehicle used for business purposes
- is there any information about how far the sale process has progressed, for example has the non-resident parent received an offer
- is there any information about the approximate value of the vehicle
- if the non-resident parent purchased the vehicle using Hire Purchase, as this would be relevant to what action would be possible once the interdict / reduction is granted

Financial portfolio items

If a parent with care, non-resident parent or third party reports that a non-resident parent is intending to dispose / has disposed of financial portfolio items, you should check:

- is there any information about the type of items owned and how the non-resident parent intends to / has disposed of them (details of this type many be available from Companies House, CWOL or asset checker)

- is there any information about who is the non-resident parent's accountant
- is there any information about the approximate value of the asset

Collectable items

If a parent with care, non-resident parent or third party reports that the non-resident parent is intending to dispose / has disposed of collectable items, you should check:

- is there any information about the how the item is being sold? For example: is it being advertised locally or on the internet? Obtain names of paper(s) / website(s) if possible
- is there any information about how far the sale has progressed? For example: has the non-resident parent received an offer
- is there any information available about the approximate value of the item(s)

When you have obtained as much information as possible, you will need to decide whether it is appropriate to continue with the application. You must ensure that you consider the welfare of any child/ren that might be affected by your decision and record the reasons for your decision in full. Refer to the guidance on discretionary decision making for further advice about making and recording these types of decisions.

Interdict / action for reduction is appropriate

If you decide it is appropriate to proceed, you will need to complete the relevant application. Which application you need will depend on whether the non-resident parent still owns the asset or has already disposed of it.

Non-resident parent still owns the asset: interdict

If the non-resident parent still owns the asset, you should complete the application for an interdict.

Order for interdicting: application form

The application form must include all facts and evidence needed to support the application, including;

- hard copies of all evidence gathered to support the application, ensuring any photocopies are certified true copies
- what the next enforcement action will be if the order for interdicting is agreed
- recording the outcome of your welfare of child consideration
- the account breakdown and a copy of the latest arrears notice

- asking the Court of Session or sheriff court to freeze the asset to prevent the non-resident parent from disposing of it for a period of time that will allow the next enforcement action to be completed (see below)

You should also state the CMG wants to apply for any costs incurred in obtaining the order.

When you are completing interdict application, you will need to say how long you want the order to last. This should be enough time to ensure we can complete whatever will be the next enforcement action. The list below indicates which is likely to be the most appropriate enforcement action, and the time that you should request as required to complete it.

Type of Action	When Appropriate	Order Duration
Liability order	If no liability order has been obtained yet	20 weeks
Inhibition	If there are heritable assets (for example land / property)	7 weeks
Arrestment	Any assets which are held by a third party including boats or ships	6 weeks
Attachment	Moveable assets that are not kept in a dwelling for example	11 weeks
Exceptional attachment	Any asset which may be held in a domicile	12 weeks

Non-resident parent has disposed of asset: action for reduction

NOTE: action for reduction will not be appropriate if the non-resident parent disposed of the relevant asset:

- before 6 April 2010, or
- more than 3 years before the date when you are considering this action

Otherwise, if the non-resident parent has already disposed of the asset, you should complete the application for action of reduction.

Action for reduction: application form

The application form must include all facts and evidence needed to support the application, including:

- a list of all evidence gathered to support application
- where the application is in respect of a property, a request to the sheriff / judge to direct the third party to complete the relevant Registers of Scotland form to return ownership to the non-resident parent within four weeks of the order being served
- what the next enforcement action will be if the action for reduction is agreed
- recording the outcome of your welfare of child consideration
- the account breakdown and a copy of the latest arrears notice
- asking the sheriff court / Court of Session to freeze the asset to prevent the non-resident parent from disposing of it for a period of time that will allow the next enforcement action to be completed (see below)

You should also state the CMG wants to apply for any costs incurred in obtaining the order.

When you are completing an action for reduction application, you will need to say how long you want the order to last. This should be enough time to ensure we can complete whatever will be the next enforcement action. the list below indicates which is likely to be the most appropriate enforcement action, and the time that you should request as required to complete it.

Type of action	When appropriate	Order Duration
Liability order	If no liability order has been obtained yet	20 weeks
Inhibition	If there are heritable assets (e.g. land / property)	7 weeks
Arrestment	Any assets which are held by a third party including boats or ships	6 weeks
Attachment	Moveable assets that are not kept in a dwelling e.g. vehicles	11 weeks
Exceptional	Any assets which may be held	12 weeks

attachment	in a domicile	
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Application completed: next steps

The application will be sent to the CMGs' solicitors, who will make arrangements for the court hearing and legal representation.

- for an interdict: solicitors will request the earliest available hearing date
- for action for reduction: solicitors will seek to arrange the hearing for the first available date

Hearing outcomes

The judge or sheriff will grant an interim interdict when the defendant does not attend the hearing and when the defendant has the opportunity to attend the full hearing the order of interdict will be granted (if appropriate).

At the review hearing, the sheriff / judge will make the decision to either: grant the order; continue the hearing or reject the application.

NOTE: if an interdict is granted and the hearing was without notice to the non-resident parent, then a review hearing date will be set.

Where the court grants the order, they may make consequential provision or direction as they consider fit. This may include a provision to make payment e.g. a payment order.

If the interdict is granted, you will need to decide the next appropriate enforcement action UNLESS the court has made a direction about what this should be in its decision. In these circumstances, you should take the action that the court has directed. Otherwise, you should take the most appropriate action for the asset / circumstances of the case.

REMEMBER: in action for reduction cases, you will need to ensure that ownership of the asset has been transferred in accordance with the court order before you can complete further enforcement action.

Where the ownership of the asset has not been transferred back to the non-resident parent in accordance with the court order you will need to liaise with a senior manager and solicitors over the next steps for the case to be returned to court.

Order disputes: appeals / variations

The non-resident parent, third party purchaser and the CMG have the right to:

- appeal, or

- request a variation of the order

where an interdict or action for reduction has been granted.

An appeal or variation can be requested at either the initial or the review hearing. Generally an appeal would have to be made within 21 day, however dependant on the hearing this may vary e.g. 14 days.

Reasons why a variation might be requested include:

- a request from the non-resident parent for an alternative asset to be used
- a request for the duration of the order to be altered. For example: if the order allows the CMG six months to obtain a liability order / inhibition, the non-resident parent could request a shorter timescale

Any appeal / variation request must be sent to the CMG's solicitors who will decide whether we should respond to the request or withdraw the order.

PLDMG @ 09.03.2017