



Child Support Act 1991

1991 CHAPTER 48

Collection and enforcement

40 Commitment to prison

- (1) Where the Secretary of State has sought—
 - (a) to levy an amount by distress under this Act; or
 - (b) to recover an amount by virtue of section 36,and that amount, or any portion of it, remains unpaid he may apply to a magistrates' court for the issue of a warrant committing the liable person to prison.
- (2) On any such application the court shall (in the presence of the liable person) inquire as to—
 - (a) the liable person's means; and
 - (b) whether there has been wilful refusal or culpable neglect on his part.
- (3) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the liable person it may—
 - (a) issue a warrant of commitment against him; or
 - (b) fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as it thinks just.
- (4) Any such warrant—
 - (a) shall be made in respect of an amount equal to the aggregate of—
 - (i) the amount mentioned in section 35(1) or so much of it as remains outstanding; and
 - (ii) an amount (determined in accordance with regulations made by the Secretary of State) in respect of the costs of commitment; and
 - (b) shall state that amount.
- (5) No warrant may be issued under this section against a person who is under the age of 18.
- (6) A warrant issued under this section shall order the liable person—

Status: This is the original version (as it was originally enacted).

- (a) to be imprisoned for a specified period; but
 - (b) to be released (unless he is in custody for some other reason) on payment of the amount stated in the warrant.
- (7) The maximum period of imprisonment which may be imposed by virtue of subsection (6) shall be calculated in accordance with Schedule 4 to the Magistrates' Courts Act 1980 (maximum periods of imprisonment in default of payment) but shall not exceed six weeks.
- (8) The Secretary of State may by regulations make provision for the period of imprisonment specified in any warrant issued under this section to be reduced where there is part payment of the amount in respect of which the warrant was issued.
- (9) A warrant issued under this section may be directed to such person or persons as the court issuing it thinks fit.
- (10) Section 80 of the Magistrates' Courts Act 1980 (application of money found on defaulter) shall apply in relation to a warrant issued under this section against a liable person as it applies in relation to the enforcement of a sum mentioned in subsection (1) of that section.
- (11) The Secretary of State may by regulations make provision—
- (a) as to the form of any warrant issued under this section;
 - (b) allowing an application under this section to be renewed where no warrant is issued or term of imprisonment is fixed;
 - (c) that a statement in writing to the effect that wages of any amount have been paid to the liable person during any period, purporting to be signed by or on behalf of his employer, shall be evidence of the facts stated;
 - (d) that, for the purposes of enabling an inquiry to be made as to the liable person's conduct and means, a justice of the peace may issue a summons to him to appear before a magistrates' court and (if he does not obey) may issue a warrant for his arrest;
 - (e) that for the purpose of enabling such an inquiry, a justice of the peace may issue a warrant for the liable person's arrest without issuing a summons;
 - (f) as to the execution of a warrant for arrest.
- (12) Subsections (1) to (11) do not apply to Scotland.
- (13) For the avoidance of doubt, it is declared that a sum payable under a liability order is a sum decerned for aliment for the purposes of the Debtors (Scotland) Act 1880 and the Civil Imprisonment (Scotland) Act 1882.
- (14) Where a liability order has been made, the Secretary of State (and he alone) shall be regarded as, and may exercise all the powers of, the creditor for the purposes of section 4 (imprisonment for failure to obey decree for alimentary debt) of the Civil Imprisonment (Scotland) Act 1882.