



Social Security Administration Act 1992

1992 CHAPTER 5

PART V

INCOME SUPPORT AND THE DUTY TO MAINTAIN

Modifications etc. (not altering text)

C1 Pt. V restricted (22.8.1996) by [Employment Tribunals Act 1996 \(c. 17\)](#), ss. 17(1)(a), 46

105 Failure to maintain—general

(1) If—

- (a) any person persistently refuses or neglects to maintain himself or any person whom he is liable to maintain; and
- (b) in consequence of his refusal or neglect [^{F1}universal credit,] income support [^{F2}, an income-based jobseeker's allowance or an income-related employment and support allowance] is paid to or in respect of him or such a person,

he shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine of an amount not exceeding level 4 on the standard scale or to both.

(2) For the purposes of subsection (1) above a person shall not be taken to refuse or neglect to maintain himself or any other person by reason only of anything done or omitted in furtherance of a trade dispute.

[^{F3}(3) Subject to subsection (4), for the purposes of this Part, a person shall be liable to maintain another person if that other person is—

- (a) his or her spouse or civil partner, or
- (b) a person whom he or she would be liable to maintain if sections 78(6)(c) and (9) had effect for the purposes of this Part.]

Status: Point in time view as at 09/06/2016.

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[^{F4}(4) For the purposes of this section, in its application to an income-based jobseeker's allowance [^{F5}or an income-related employment and support allowance], [^{F6}subsection (3)(b) shall not apply].]

Textual Amendments

- F1** Words in s. 105(1)(b) inserted (29.4.2013) by Welfare Reform Act 2012 (c. 5), s. 150(3), **Sch. 2 para. 10**; S.I. 2013/983, art. 3(1)(b)(ii)
- F2** Words in s. 105(1)(b) substituted (27.10.2008) by Welfare Reform Act 2007 (c. 5), s. 70(2), **Sch. 3 para. 10(10)(a)**; S.I. 2008/787, art. 2(4)(f)
- F3** S. 105(3) substituted (14.7.2008) by Child Maintenance and Other Payments Act 2008 (c. 6), **ss. 45(1), 62(3)**; S.I. 2008/1476, art. 2(2)(b)
- F4** S.105(4) inserted (11.6.1996) by Jobseekers Act 1995 (c. 18), s. 41(2), **Sch. 2 para. 53(4)**; S.I. 1996/1509, art. 2, **Sch.**
- F5** Words in s. 105(4) inserted (27.10.2008) by Welfare Reform Act 2007 (c. 5), s. 70(2), **Sch. 3 para. 10(10)(b)**; S.I. 2008/787, art. 2(4)(f)
- F6** Words in s. 105(4) substituted (14.7.2008) by Child Maintenance and Other Payments Act 2008 (c. 6), **ss. 45(2), 62(3)**; S.I. 2008/1476, art. 2(2)(b)

106 Recovery of expenditure on benefit from person liable for maintenance

- (1) Subject to the following provisions of this section, if income support [^{F7}or universal credit] is claimed by or in respect of a person whom another person is liable to maintain or paid to or in respect of such a person, the Secretary of State may make [^{F8}an application] against the liable person to [^{F9}the family court] for an order under this section.
- (2) On the hearing of [^{F8}an application] under this section the court shall have regard to all the circumstances and, in particular, to the income of the liable person, and may order him to pay such sum, weekly or otherwise, as it may consider appropriate, except that in a case falling within section 78(6)(c) above that sum shall not include any amount which is not attributable to income support [^{F7}or universal credit] (whether paid before or after the making of the order).
- (3) In determining whether to order any payments to be made in respect of income support [^{F7}or universal credit] for any period before the [^{F10}application] was made, or the amount of any such payments, the court shall disregard any amount by which the liable person's income exceeds the income which was his during that period.
- (4) Any payments ordered to be made under this section shall be made—
 - (a) to the Secretary of State in so far as they are attributable to any income support [^{F11}or universal credit] (whether paid before or after the making of the order);
 - (b) to the person claiming income support [^{F11}or universal credit] or (if different) the dependant; or
 - (c) to such other person as appears to the court expedient in the interests of the dependant.

^{F12}(5)

(6) In the application of this section to Scotland, [^{F13}for the references to the family court there shall be substituted references to the sheriff.]

^{F14}(7)

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Textual Amendments

- F7** Words in s. 106(1)(2)(3) inserted (29.4.2013) by [Welfare Reform Act 2012 \(c. 5\)](#), s. 150(3), [Sch. 2 para. 11](#); [S.I. 2013/983](#), art. 3(1)(b)(ii)
- F8** Words in s. 106(1)(2) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 128\(1\)\(a\)](#) (with [Sch. 11 para. 128\(2\)](#)); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F9** Words in s. 106(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 128\(1\)\(b\)](#) (with [Sch. 11 para. 128\(2\)](#)); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F10** Word in s. 106(3) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 128\(1\)\(c\)](#) (with [Sch. 11 para. 128\(2\)](#)); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F11** Words in s. 106(4)(a)(b) inserted (29.4.2013) by [Welfare Reform Act 2012 \(c. 5\)](#), s. 150(3), [Sch. 2 para. 11](#); [S.I. 2013/983](#), art. 3(1)(b)(ii)
- F12** S. 106(5) omitted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 128\(1\)\(d\)](#) (with [Sch. 11 para. 128\(2\)](#)); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F13** Words in s. 106(6) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 11 para. 128\(1\)\(e\)](#) (with [Sch. 11 para. 128\(2\)](#)); [S.I. 2014/954](#), art. 2(e) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F14** S. 106(7) repealed (14.7.2008) by [Child Maintenance and Other Payments Act 2008 \(c. 6\)](#), s. 62(3), [Sch. 8](#); [S.I. 2008/1476](#), art. 2(2)(c)(ii)

^{F15}107 Recovery of expenditure on income support: additional amounts and transfer of orders

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Textual Amendments

- F15** S. 107 repealed (27.10.2008) by [Child Maintenance and Other Payments Act 2008 \(c. 6\)](#), s. 62(3), [Sch. 8](#); [S.I. 2008/2548](#), art. 3(d)(ii)

108 Reduction of expenditure on income support: certain maintenance orders to be enforceable by the Secretary of State

- (1) This section applies where—
- (a) a person (“the claimant”) who is the parent of one or more children is in receipt of income support [^{F16}or universal credit] either in respect of those children or in respect of both himself and those children; and
 - (b) there is in force a maintenance order made against the other parent (“the liable person”)—
 - (i) in favour of the claimant or one or more of the children, or
 - (ii) in favour of some other person for the benefit of the claimant or one or more of the children;

and in this section “the primary recipient” means the person in whose favour that maintenance order was made.

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- (2) If, in a case where this section applies, the liable person fails to comply with any of the terms of the maintenance order—
- (a) the Secretary of State may bring any proceedings or take any other steps to enforce the order that could have been brought or taken by or on behalf of the primary recipient; and
 - (b) any court before which proceedings are brought by the Secretary of State by virtue of paragraph (a) above shall have the same powers in connection with those proceedings as it would have had if they had been brought by the primary recipient.
- (3) The Secretary of State's powers under this section are exercisable at his discretion and whether or not the primary recipient or any other person consents to their exercise; but any sums recovered by virtue of this section shall be payable to or for the primary recipient, as if the proceedings or steps in question had been brought or taken by him or on his behalf.
- (4) The powers conferred on the Secretary of State by subsection (2)(a) above include power—
- (a) to apply for the registration of the maintenance order under—
 - (i) section 17 of the ^{M1}Maintenance Orders Act 1950;
 - (ii) section 2 of the ^{M2}Maintenance Orders Act 1958; ^{F17}... [^{F18}or]
 - (iii) the ^{M3}Civil Jurisdiction and Judgments Act 1982; ^{F19}...
 - ^{F19}(iv)
 - ^{F20}(aa) to apply for recognition and enforcement of the maintenance order under the Maintenance Regulation, to the extent permitted by Article 64 of that Regulation; ^{F21}...
 - ^{F22}(ab) to apply for recognition and enforcement of the maintenance order under the Convention on the International Recovery of Child Support and other forms of Family Maintenance done at The Hague on 23rd November 2007, to the extent permitted by Article 36 of that Convention; and]
 - (b) to make an application under section 2 of the ^{M4}Maintenance Orders (Reciprocal Enforcement) Act 1972 (application for enforcement in reciprocating country).
- (5) Where this section applies, the prescribed person shall in prescribed circumstances give the Secretary of State notice of any application—
- (a) to alter, vary, suspend, discharge, revoke, revive or enforce the maintenance order in question; or
 - (b) to remit arrears under that maintenance order; and the Secretary of State shall be entitled to appear and be heard on the application.
- (6) Where, by virtue of this section, the Secretary of State commences any proceedings to enforce a maintenance order, he shall, in relation to those proceedings, be treated for the purposes of any enactment or instrument relating to maintenance orders as if he were a person entitled to payment under the maintenance order in question (but shall not thereby become entitled to any such payment).
- (7) Where, in any proceedings under this section in England and Wales, the court makes an order for the whole or any part of the arrears due under the maintenance order in question to be paid as a lump sum, the Secretary of State shall inform [^{F23}the [^{F24}Lord Chancellor]] of the amount of that lump sum if he knows—
- (a) that the primary recipient either—

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- (i) received legal aid under the ^{M5}Legal Aid Act 1974 in connection with the proceedings in which the maintenance order was made, or
 - (ii) was an assisted party, within the meaning of the ^{M6}Legal Aid Act 1988, in those proceedings; [^{F25}or
 - (iii) received services funded by the Legal Services Commission as part of the Community Legal Service; [^{F26}or]]
 - [^{F27}(iv) was provided with civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) under arrangements made for the purposes of that Part of that Act; and]
- (b) that a sum remains unpaid on account of the contribution required of the primary recipient—
- (i) under section 9 of the Legal Aid Act 1974 in respect of those proceedings, or
 - (ii) under section 16 of the Legal Aid Act 1988 in respect of the costs of his being represented under Part IV of that Act in those proceedings, [^{F28}or
 - (iii) by virtue of section 10 of the Access to Justice Act 1999 in respect of services funded by the Legal Services Commission as part of the Community Legal Service,]]^{F29}or
 - (iv) under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in respect of civil legal services (within the meaning of Part 1 of that Act) provided under arrangements made for the purposes of that Part of that Act,]

as the case may be.

[^{F30}(8) In this section “maintenance order”—

- (a) in England and Wales, means—
 - (i) any order for the making of periodical payments which is, or has at any time been, a maintenance order within the meaning of the Attachment of Earnings Act 1971;
 - (ii) any order under Part 3 of the Matrimonial and Family Proceedings Act 1984 (overseas divorce) for the making of periodical payments;
 - (iii) any order under Schedule 7 to the Civil Partnership Act 2004 for the making of periodical payments;
- (b) in Scotland, means any order, except an order for the payment of a lump sum, falling within the definition of “maintenance order” in section 106 of the Debtors (Scotland) Act 1987, but disregarding paragraph (h) (alimentary bond or agreement).]

[^{F31}(9) In this section “the Maintenance Regulation” means Council Regulation (EC) No 4/2009 including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark.]

Textual Amendments

- F16** Words in s. 108(1)(a) inserted (29.4.2013) by Welfare Reform Act 2012 (c. 5), s. 150(3), **Sch. 2 para. 12**; S.I. 2013/983, art. 3(1)(b)(ii)
- F17** Word in s. 108(4)(a)(ii) omitted (1.3.2002) by virtue of The Civil Jurisdiction and Judgments Order 2001 (S.I. 2001/3929), art. 1(b), **Sch. 3 para. 24(a)**

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- F18** Word in s. 108(4)(a)(ii) inserted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 1(1), **Sch. 7 para. 14(a)(i)**
- F19** S. 108(4)(a)(iv) and preceding word repealed (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 1(1), **Sch. 7 para. 14(a)(ii)**
- F20** S. 108(4)(aa) inserted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 1(1), **Sch. 7 para. 14(b)**
- F21** Word in s. 108(4) repealed (1.8.2014) by [The International Recovery of Maintenance \(Hague Convention 2007 etc.\) Regulations 2012 \(S.I. 2012/2814\)](#), reg. 1(1), **Sch. 4 para. 6(a)**
- F22** S. 108(4)(ab) inserted (1.8.2014) by [The International Recovery of Maintenance \(Hague Convention 2007 etc.\) Regulations 2012 \(S.I. 2012/2814\)](#), reg. 1(1), **Sch. 4 para. 6(b)**
- F23** Words in s. 108(7) substituted (1.4.2000) by [Access to Justice Act 1999 \(c. 22\)](#), s. 24, **Sch. 4 para. 48(2)**; S.I. 2000/774, arts. 2(a)(ii), 5
- F24** Words in s. 108(7) substituted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 5 para. 41(2)**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)
- F25** S. 108(7)(a)(iii) and preceding word substituted (1.4.2000) by [Access to Justice Act 1999 \(c. 22\)](#), s. 108(1), **Sch. 4 para. 48(3)**; S.I. 2000/774, arts. 2(a)(ii), 5
- F26** Word in s. 108(7)(a)(iii) substituted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 5 para. 41(3)(a)**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)
- F27** S. 108(7)(a)(iv) inserted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 5 para. 41(3)(b)**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)
- F28** S. 108(7)(b)(iii) and preceding word inserted (1.4.2000) by [Access to Justice Act 1999 \(c. 22\)](#), s. 108(1), **Sch. 4 para. 48(4)**; S.I. 2000/774, arts. 2(a)(ii), 5
- F29** S. 108(7)(b)(iv) and preceding word inserted (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 5 para. 41(4)**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)
- F30** S. 108(8) substituted (27.10.2008) by [Child Maintenance and Other Payments Act 2008 \(c. 6\)](#), s. 62(3), **Sch. 7 para. 2(2)**; S.I. 2008/2548, art. 3(c)
- F31** S. 108(9) inserted (18.6.2011) by [The Civil Jurisdiction and Judgments \(Maintenance\) Regulations 2011 \(S.I. 2011/1484\)](#), reg. 1(1), **Sch. 7 para. 14(c)**

Marginal Citations

- M1** 1950 c. 37.
M2 1958 c. 39.
M3 1982 c. 27.
M4 1972 c. 18.
M5 1974 c. 4.
M6 1988 c. 34.

109 Diversion of arrested earnings to Secretary of State-Scotland

- (1) Where in Scotland a creditor who is enforcing a maintenance order or alimentary bond or agreement by a current maintenance arrestment or a conjoined arrestment order is in receipt of [^{F32}universal credit,] income support [^{F33}or an income-related employment and support allowance], the creditor may in writing authorise the Secretary of State to receive any sums payable under the arrestment or order until the creditor ceases to be in receipt of [^{F32}universal credit,] income support [^{F33}or an income-related employment and support allowance] or in writing withdraws the authorisation, whichever occurs first.

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- (2) On intimation by the Secretary of State—
- (a) to the employer operating the current maintenance arrestment; or
 - (b) to the sheriff clerk operating the conjoined arrestment order; of an authorisation under subsection (1) above, the employer or sheriff clerk shall, until notified by the Secretary of State that the authorisation has ceased to have effect, pay to the Secretary of State any sums which would otherwise be payable under the arrestment or order to the creditor.

Textual Amendments

- F32** Words in s. 109(1) inserted (29.4.2013) by [Welfare Reform Act 2012 \(c. 5\)](#), s. 150(3), [Sch. 2 para. 13](#); [S.I. 2013/983](#), art. 3(1)(b)(ii)
- F33** Words in s. 109(1) inserted (27.10.2008) by [Welfare Reform Act 2007 \(c. 5\)](#), s. 70(2), [Sch. 3 para. 10\(11\)](#); [S.I. 2008/787](#), art. 2(4)(f)

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