



Social Security Administration Act 1992

1992 CHAPTER 5

PART V

INCOME SUPPORT AND THE DUTY TO MAINTAIN

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 income support 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.
- (3) Subsections (6) to (9) of section 78 above shall have effect for the purposes of this Part of this Act as they have effect for the purposes of that section.

106 Recovery of expenditure on benefit from person liable for maintenance

- (1) Subject to the following provisions of this section, if income support 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 a complaint against the liable person to a magistrates' court for an order under this section.
- (2) On the hearing of a complaint 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

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which is not attributable to income support (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 for any period before the complaint 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 (whether paid before or after the making of the order);
 - (b) to the person claiming income support or (if different) the dependant; or
 - (c) to such other person as appears to the court expedient in the interests of the dependant.
- (5) An order under this section shall be enforceable as a magistrates' court maintenance order within the meaning of section 150(1) of the Magistrates' Courts Act 1980.
- (6) In the application of this section to Scotland, subsection (5) above shall be omitted and for the references to a complaint and to a magistrates' court there shall be substituted respectively references to an application and to the sheriff.
- (7) On an application under subsection (1) above a court in Scotland may make a finding as to the parentage of a child for the purpose of establishing whether a person is, for the purposes of section 105 above and this section, liable to maintain him.

107 Recovery of expenditure on income support: additional amounts and transfer of orders

- (1) In any case where—
 - (a) the claim for income support referred to in section 106(1) above is or was made by the parent of one or more children in respect of both himself and those children; and
 - (b) the other parent is liable to maintain those children but, by virtue of not being the claimant's husband or wife, is not liable to maintain the claimant,

the sum which the court may order that other parent to pay under subsection (2) of that section may include an amount, determined in accordance with regulations, in respect of any income support paid to or for the claimant by virtue of such provisions as may be prescribed.
- (2) Where the sum which a court orders a person to pay under section 106 above includes by virtue of subsection (1) above an amount (in this section referred to as a "personal allowance element") in respect of income support by virtue of paragraph 1(2) of Schedule 2 to the Income Support (General) Regulations 1987 (personal allowance for lone parent) the order shall separately identify the amount of the personal allowance element.
- (3) In any case where—
 - (a) there is in force an order under subsection (2) of section 106 above made against a person ("the liable parent") who is the parent of one or more children, in respect of the other parent or the children; and
 - (b) payments under the order fall to be made to the Secretary of State by virtue of subsection (4)(a) of that section; and

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- (c) that other parent (“the dependent parent”) ceases to claim income support, the Secretary of State may, by giving notice in writing to the court which made the order and to the liable parent and the dependent parent, transfer to the dependent parent the right to receive the payments under the order, exclusive of any personal allowance element, and to exercise the relevant rights in relation to the order, except so far as relating to that element.
- (4) Notice under subsection (3) above shall not be given (and if purportedly given, shall be of no effect) at a time when there is in force a maintenance order made against the liable parent—
- (a) in favour of the dependent parent or one or more of the children; or
 - (b) in favour of some other person for the benefit of the dependent parent or one or more of the children;
- and if such a maintenance order is made at any time after notice under that subsection has been given, the order under section 106(2) above shall cease to have effect.
- (5) In any case where—
- (a) notice is given to a magistrates' court under subsection (3) above,
 - (b) payments under the order are required to be made by any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), and
 - (c) the clerk to the justices for the petty sessions area for which the court is acting decides that payment by that method is no longer possible,
- the clerk shall amend the order to provide that payments under the order shall be made by the liable parent to the clerk.
- (6) Except as provided by subsections (8) and (12) below, where the Secretary of State gives notice under subsection (3) above, he shall cease to be entitled—
- (a) to receive any payment under the order in respect of any personal allowance element; or
 - (b) to exercise the relevant rights, so far as relating to any such element,
- notwithstanding that the dependent parent does not become entitled to receive any payment in respect of that element or to exercise the relevant rights so far as so relating.
- (7) If, in a case where the Secretary of State gives notice under subsection (3) above, a payment under the order is or has been made to him wholly or partly in respect of the whole or any part of the period beginning with the day on which the transfer takes effect and ending with the day on which the notice under subsection (3) above is given to the liable parent, the Secretary of State shall—
- (a) repay to or for the liable parent so much of the payment as is referable to any personal allowance element in respect of that period or, as the case may be, the part of it in question; and
 - (b) pay to or for the dependent parent so much of any remaining balance of the payment as is referable to that period or part;
- and a payment under paragraph (b) above shall be taken to discharge, to that extent, the liability of the liable parent to the dependent parent under the order in respect of that period or part.
- (8) If, in a case where the Secretary of State has given notice under subsection (3) above, the dependent parent makes a further claim for income support, then—

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- (a) the Secretary of State may, by giving a further notice in writing to the court which made the order and to the liable parent and the dependent parent, transfer back from the dependent parent to himself the right to receive the payments and to exercise the relevant rights; and
 - (b) that transfer shall revive the Secretary of State's right to receive payment under the order in respect of any personal allowance element and to exercise the relevant rights so far as relating to any such element.
- (9) Subject to subsections (10) and (11) below, in any case where—
- (a) notice is given to a magistrates' court under subsection (8) above, and
 - (b) the method of payment under the order which subsists immediately before the day on which the transfer under subsection (8) above takes effect differs from the method of payment which subsisted immediately before the day on which the transfer under subsection (3) above (or, if there has been more than one such transfer, the last such transfer) took effect,
- the clerk to the justices for the petty sessions area for which the court is acting shall amend the order by reinstating the method of payment under the order which subsisted immediately before the day on which the transfer under subsection (3) above (or, as the case may be, the last such transfer) took effect.
- (10) The clerk shall not amend the order under subsection (9) above if the Secretary of State gives notice in writing to the clerk, on or before the day on which the notice under subsection (8) above is given, that the method of payment under the order which subsists immediately before the day on which the transfer under subsection (8) above takes effect is to continue.
- (11) In any case where—
- (a) notice is given to a magistrates' court under subsection (8) above,
 - (b) the method of payment under the order which subsisted immediately before the day on which the transfer under subsection (3) above (or, if there has been more than one such transfer, the last such transfer) took effect was any method of payment falling within section 59(6) of the Magistrates' Courts Act 1980 (standing order, etc.), and
 - (c) the clerk decides that payment by that method is no longer possible,
- the clerk shall amend the order to provide that payments under the order shall be made by the liable parent to the clerk.
- (12) A transfer under subsection (3) or (8) above does not transfer or otherwise affect the right of any person—
- (a) to receive a payment which fell due to him at a time before the transfer took effect; or
 - (b) to exercise the relevant rights in relation to any such payment;
- and, where notice is given under subsection (3), subsection (6) above does not deprive the Secretary of State of his right to receive such a payment in respect of any personal allowance element or to exercise the relevant rights in relation to such a payment.
- (13) For the purposes of this section—
- (a) a transfer under subsection (3) above takes effect on the day on which the dependent parent ceases to be in receipt of income support in consequence of the cessation referred to in paragraph (c) of that subsection, and
 - (b) a transfer under subsection (8) above takes effect on—

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- (i) the first day in respect of which the dependent parent receives income support after the transfer under subsection (3) above took effect, or
- (ii) such later day as may be specified for the purpose in the notice under subsection (8),

irrespective of the day on which notice under the subsection in question is given.

- (14) Any notice required to be given to the liable parent under subsection (3) or (8) above shall be taken to have been given if it has been sent to his last known address.

- (15) In this section—

“child” means a person under the age of 16, notwithstanding section 78(6)

- (d) above;

“court” shall be construed in accordance with section 106 above;

“maintenance order”—

- (a) in England and Wales, means—

(i) any order for the making of periodical payments or for the payment of a lump sum 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 III of the Matrimonial and Family Proceedings Act 1984 (overseas divorce) for the making of periodical payments or for the payment of a lump sum;

- (b) in Scotland, has the meaning assigned by section 106 of the Debtors (Scotland) Act 1987, but disregarding paragraph (h) (alimentary bond or agreement);

“the relevant rights”, in relation to an order under section 106(2) above, means the right to bring any proceedings, take any steps or do any other thing under or in relation to the order which the Secretary of State could have brought, taken or done apart from any transfer under this section.

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 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.

- (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

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- (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 Maintenance Orders Act 1950;
 - (ii) section 2 of the Maintenance Orders Act 1958; or
 - (iii) the Civil Jurisdiction and Judgments Act 1982; and
 - (b) to make an application under section 2 of the 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 the Legal Aid Board of the amount of that lump sum if he knows—
 - (a) that the primary recipient either—
 - (i) received legal aid under the 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 Legal Aid Act 1988, in those proceedings; 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, as the case may be.

- (8) In this section “maintenance order” has the same meaning as it has in section 107 above but does not include any such order for the payment of a lump sum.

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 income support, 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 income support or in writing withdraws the authorisation, whichever occurs first.
- (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.