

iGuide: Enforcement of Financial Orders in England

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If one party fails to comply with a financial order there are various methods of enforcement available. The method will depend on many factors including the type of order being enforced and the debtor's financial situation. This iGuide summarises some of the methods of enforcement. We recommend that specialist and tailored legal advice is obtained before an application for enforcement is made. The English family court has the power to make the following orders in order to enforce an English family financial order.

Orders to obtain information

These orders require the debtor to attend court to produce the information that is needed to enforce the order. That information is then provided to the creditor so that they can consider the next steps. The relevant form is the N316 which also refers to another form which contains a series of questions which the debtor must attend court to answer with documents in support.

General enforcement application

This application requires the debtor to attend court to answer questions and produce documents, as above, but the court also has the power to make an order enforcing payment. The form is the D50k. The court has the power to make an attachment of earnings order, charging order, third party debt order, an order appointing a receiver or a writ or warrant of control.

Execution of documents by the court

The court has the power to direct that a nominated person (such as a District Judge) signs and executes a document that a party has failed to sign (for example a deed transferring the former matrimonial home from one spouse to the other). These orders are generally made if the debtor is refusing unreasonably and/or causing delay.

Third party debt orders

This order requires a third party who owes money to the debtor to pay it to the creditor instead of the debtor. It is often used against banks or building societies who hold any balance in their bank accounts on behalf of the debtor. The application must be made on Form N349 and supported by a statement.

Charging orders

A charging order does not lead to immediate payment; it provides security for the payment by charging an asset and enabling the debt to be recovered when that asset is sold. It is like a mortgage with the creditor as mortgagee. Having obtained the charging order, a creditor can expedite the sale of the asset by applying for an order for sale. The creditor applies to the Family Court on Form N379 if the application relates to land or Form N380 if the application relates to securities.

Attachment of earnings orders

This order is most useful for enforcing periodical payment orders (maintenance). If granted the Order requires the debtor's employer to deduct a fixed amount from the debtor's earnings and pay it into the court for distribution to the creditor. The definition of earnings extends to bonuses, overtime, commission, pension and statutory sick pay as well as wages and salary. The creditor applies on Form N337 to the Family Court where the original order was made. If the creditor wishes to

enforce arrears that have been outstanding for 12 months or more then it is also necessary to ask permission for this with the application.

Appointment of a receiver

This is a discretionary remedy available to the Court whereby an individual is appointed to collect rent, profits or other monies from an asset belonging to the debtor and pay this to the creditor to satisfy the debt. Once a receiver has been appointed the debtor will no longer be permitted to deal with the property or receive the income from it.

Judgment summons

Failure to comply with a court order is a contempt of court which can be punished by committal to prison. This is an exceptional remedy but it is used in cases of wilful persistent breaches of obligations to pay pursuant to an earlier Court Order.

For more information about enforcing English family financial orders, or other questions you may have concerning family law, please contact a member of our specialist family team.

You can do so via our website, by e-mail to enquiries@iflg.uk.com or telephone on +44 (0) 20 3178 5668.

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