

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

EXPLANATORY NOTES

Part 1: Child Support

Commentary on Sections

Disqualification from driving

Section 16: Disqualification from driving

191. Currently section 40 of the Child Support Act 1991, which applies only in England and Wales, enables the Secretary of State to apply to a magistrates' court for the issue of a warrant committing a non-resident parent to prison where distress action, garnishee proceedings or a charging order have failed to recover some, or all, of the child support maintenance outstanding.
192. If the court is satisfied that there has been wilful refusal or culpable neglect, it may issue a warrant for committal to prison for a maximum period of six weeks, or suspend the sentence. It has previously been held that the term "wilful refusal or culpable neglect" means that the conduct of the non-resident parent must amount to deliberate defiance or reckless disregard. The non-resident parent may be released from prison on payment of the amount stated on the warrant or have the period reduced for part payment.
193. This section provides for a disqualification order to be made in relation to holding or obtaining a driving licence as an alternative to committal. *Subsections (2) and (3)* amend section 40 (the provision for committal) and insert a new section 40B (the further provision of disqualification from driving).
194. *Subsection (1)* inserts a new section 39A in the 1991 Act.

New section 39A: Commitment to prison and disqualification from driving

195. *New section 39A(1)* provides that this section applies where the Secretary of State has tried to obtain the amount outstanding by distress or enforcement through the county or sheriff courts.
196. *New section 39A(2)* provides for the courts to be able to consider either committal or disqualification from driving.
197. *New section 39A(3)* provides for the courts to consider:
 - whether a driving licence is needed by the liable person to earn a living;
 - the financial circumstances of the liable person; and
 - whether there has been wilful refusal or culpable neglect.

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198. *New section 39A(4)* provides for the Secretary of State and the liable person to make representations to court on which penalty should be imposed.
199. *New section 39A(5)* defines “driving licence”.
200. *New section 39A(6)* defines “court”.
201. *Subsection (2)* of section 16 amends section 40 of the 1991 Act which provides for committal by omitting subsections (1) and (2) which set out the present powers of the court and what must be considered. These matters are now covered by the new section 39A(1) and (3) above.
202. *Subsection (3)* provides for a new section 40B to be inserted before section 41.

New section 40B: Disqualification from driving: further provision

203. *New section 40B(1)* provides a power for the court to disqualify the liable person from driving if the courts agree that he has wilfully refused to pay or been guilty of culpable neglect in connection with paying maintenance.
(1)(a) provides for the disqualification order to apply for a period not exceeding two years.
(1)(b) provides that the disqualification order may be suspended.
204. *New section 40B(2)* provides that the courts cannot make both a disqualification order and warrant for committal at the same time.
205. *New section 40B(3)* provides that the order should include the amount of the arrears included in the liability order and the court costs.
206. *New section 40B(4)* provides for the courts to require the liable person to produce his driving licence (defined in section 108(1) of the Road Traffic Act 1988).
207. *New section 40B(5)* provides that the courts may lift the order, or substitute a shorter disqualification period, if part of the amount outstanding is paid, and must revoke the disqualification if payment is made in full before the end of the disqualification period.
208. *New section 40B(6)* provides for the Secretary of State to be able to give his views to the court on the amount that should be paid before the disqualification order is lifted. It also provides for the liable person to reply to the representations.
209. *New section 40B(7)* provides for a further application to be made to the courts if any amount remains outstanding at the end of the disqualification period.
210. *New section 40B(8)* provides for the court, on imposing the disqualification, to notify the Secretary of State of the fact that a disqualification order has been made, amended or lifted, and the *new section 40B(9)* provides that a licence produced to the court should be sent to the Secretary of State. In practice, the notice and the licence will be sent to the DVLA.
211. *New section 40B(10)* provides for section 80 of the Magistrates Court Act 1980 to apply to a disqualification order, to reflect provisions currently in section 40. This will enable a liable person to be searched in court and money found applied against the amount owing.
212. *New section 40B(11)* provides for regulations to be made, prescribing the way in which disqualification orders will operate, and *new section 40B(12)* modifies this section in its application to Scotland.
213. *Subsections (4) and (5)* of section 16 provide for references to the disqualification to be made in the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988. This will enable the police to require production of the licence if it is not given to the courts.

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Failure to produce the licence in these circumstances is a criminal offence punishable by a fine of up to £1,000.