

# CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 – Child Support etc.**

#### **Removal of compulsion for benefit claimants**

##### *Section 15: Repeal of sections 6 and 46*

109. *Section 15* repeals sections 6 and 46 of the Child Support Act 1991.
110. Section 6 of the Child Support Act 1991 provides that parents with care who make a claim for, or are in receipt of, prescribed benefits, may be treated as making an application for child support maintenance. *Paragraph (a) of section 15* removes this power.
111. Section 46 of the Child Support Act 1991 gives power to the Secretary of State to reduce the amount of benefit parents with care receive where they are treated as having applied for a maintenance calculation under section 6 of the Child Support Act 1991, and they choose to opt out of the scheme without good cause for doing so. *Paragraph (b) of section 15* removes this power, which will become redundant when section 6 is repealed.

#### **Maintenance calculations**

##### *Section 16: Changes to the calculation of maintenance*

112. This section introduces *Schedule 4* which amends legislation regarding how maintenance calculations are performed. Changes to how maintenance is calculated include:
  - A move from using net to using gross weekly income to determine maintenance liability. Information required to calculate maintenance will be taken directly from HMRC instead of the non-resident parent.
  - Changes to the percentages used to calculate basic rate maintenance.
  - Treating certain existing child support maintenance obligations which fall outside of the statutory scheme, as though they were within the scheme, for the purposes of calculating liability.
  - An increase in flat rate maintenance from £5 to £7 per week.

***Section 17: Power to regulate supersession***

113. This section replaces subsections 17(2) and 17(3) of the Child Support Act 1991. Section 17 allows a maintenance decision to be superseded by a new decision, where, for example, there has been a change of circumstances.
114. These changes provide a regulation-making power to Secretary of State in relation to the supersession of decisions.
115. *New subsection (3)* sets out that regulations may include:
- Provision about the cases and circumstances in which a decision may be superseded, which may include a restriction on superseding a decision as a result of certain changes of circumstance. This change enables the introduction of fixed term annual awards, where a change in circumstance will only be actioned during the year if there has been a large change in income, or where the change is fundamental to the maintenance calculation. This will also enable regulations to contain provisions which set out the circumstances in which earlier changes of circumstances (which had not led to a supersession) can be taken into account.
  - Procedural aspects of supersessions.

***Section 18: Determination of applications for a variation***

116. *Section 18* inserts two new *subsections (2A)* and *(2B)* into section 28D of the Child Support Act 1991, which concerns the varying of a maintenance calculation.
117. New *subsections (2A)* and *(2B)* require the Commission, on receipt of an application from a person with care (or, in Scotland, a child of 12 or over) to vary a maintenance calculation, to consider any information or evidence that is available to it or take steps to obtain further information or evidence, if it appears that further information would affect a decision to vary a maintenance calculation.

***Section 19: Transfer of cases to new rules***

118. This section introduces *Schedule 5* which makes provision for the movement of existing cases onto the new calculation rules. The Commission may require the parties in existing cases to choose whether to remain in the statutory scheme under the new calculation rules or to leave the scheme as far as future liability is concerned.

**Collection and enforcement**

***Section 20: Use of deduction from earnings orders as basic method of payment***

119. *Section 20* concerns section 29 of the Child Support Act 1991, which sets out provisions for the collection of child support maintenance. Subsection (3)(b) of section 29 provides the Secretary of State with the power to make regulations as to the method by which payments of child support maintenance should be made.
120. This section inserts new *subsections (4)* and *(5)* into section 29 of the Child Support Act 1991 to make it clear that such regulations can include deduction from earnings orders as an initial method of collection. The intention is to pilot the use of deduction from earnings orders as a primary method of collection for employed non-resident parents.
121. *Newsubsection (4)* requires that any regulations which allow deduction from earnings orders to be used as an initial method of collection also include provision that this method should not be used where there is good reason not to do so. The regulations must also include a right of appeal to a magistrates' court (or, in Scotland, to the sheriff) against a decision that there is no good reason not to use a deduction from earnings order to collect maintenance.

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122. *New subsection (5)* prevents the magistrates' court (or, in Scotland, the sheriff), on an appeal made under regulations under *subsection (4)*, from questioning the maintenance calculation by reference to which the deduction from earnings order was made.
123. *New subsection (6)* provides that regulations may include provision with respect to the period within which an appeal must be made and the powers of the magistrates' court (or, in Scotland, the sheriff) in relation to such an appeal.
124. *New subsection (7)* enables regulations to set out what matters should be considered (or not considered) in determining whether there is a good reason not to use a deduction from earnings order as an initial method to collect maintenance. For example, the regulations could provide that there would be a good reason not to use a deduction from earnings order if doing so could compromise the employment status of a non-resident parent, or raise privacy issues. It also enables regulations to prescribe circumstances in which a good reason not to use a deduction from earnings order does, or does not, exist.

***Section 21: Deduction from earnings orders: the liable person's earnings***

125. This section replaces subsection (8) of section 31 of the Child Support Act 1991, and inserts a new *subsection (9)*. The intent of the change is to define what will be considered as 'earnings' for the purpose of deduction from earnings orders.
126. Section 31 of the Child Support Act 1991 concerns deduction from earnings orders, and the existing subsection (8) provides that 'earnings' has such meaning as may be prescribed.
127. The definition in the new *subsection (8)* will include the following as earnings:
  - wages or salary;
  - payments by way of pensions including any annuity payable for the purpose of providing a pension;
  - periodical payments which are compensation for loss of employment or reduced remuneration; and
  - statutory sick pay.
128. The impact of this change is that all pension payments, whether as a result of a private or occupational pension scheme, will be included as earnings for the purposes of deduction from earnings orders.
129. The new *subsection (9)* sets out that for the purposes of sections 31 and 32 of the Child Support Act 1991, any person paying a sum covered by new *subsection (8)* to a liable person should be treated as their 'employer'.

***Section 22: Orders for regular deductions from accounts***

130. This section inserts new *sections 32A, 32B, 32C and 32D* into the Child Support Act 1991 which will enable the Commission to deduct child support maintenance from the non-resident parent's account.
131. *Section 32A* enables the Commission to make a regular deduction order against a non-resident parent who has failed to pay child support maintenance. The order allows the Commission to collect regular deductions of maintenance from an account held by a non-resident parent with a deposit taker.
132. *Subsection (2)* of *section 32A* sets out that both arrears and maintenance payments which will become due under the calculation in place can be collected through deduction orders.
133. *Subsection (3)* allows a regular deduction order to be made even where there is an ongoing appeal against the maintenance calculation. This can only happen however in

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cases where the Commission concludes that the outcome of the outstanding appeal will not affect the amount of the liability covered by the order or, if the outcome of the appeal would have such an effect, the Commission still considers making the order to be fair in all of the circumstances.

134. *Subsection (4)* sets out that regulations may prescribe when an order may not be made in respect of an account of a prescribed description, and can be made against a joint account which is not of a prescribed description.
135. *Subsections (5), (6) and (7)* set out that the order will specify which account it is made against and the date it has effect. The order will operate as an instruction to the deposit-taker to make deductions from the specified account and pay them to the Commission, and copies of the order shall be served on the deposit-taker, the non-resident parent against whom it is made, and if it is directed at a joint account, the other account-holders.
136. *Subsection (8)* provides that the deposit-taker is under a duty to comply with the regular deduction order. However, it also protects the deposit-taker from any liability if they do not comply with the order during the seven day period beginning with the day the order is served on them.
137. *Subsection (9)* provides, for the avoidance of doubt, that where regulations have been made under section 29(3)(a) of the Child Support Act 1991, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to, or through, the person specified in, or by virtue of, the regulations.
138. *Section 32B* requires the Commission, before a regular deduction order is applied to a joint account, to offer each of the account-holders an opportunity to make representations with regards to the making of the order and the amounts to be deducted.
139. *Subsections (2) and (3)* ensure that amounts to be deducted from a joint account do not exceed amounts that appear to the Commission to be fair in all circumstances, with particular regard to the representations made, the amount contributed to the account by each of the account-holders and such other matters as may be prescribed.
140. *Section 32C* provides regulation-making powers to the Secretary of State with regard to the practicalities and procedure relating to regular deduction orders. The following paragraphs give examples of provision that may be made by the regulations.
141. *Subsections (2)(a) to (2)(c) of section 32C* – the regulations may require that the order specifies the amount in respect of which it is made, the amounts to be deducted in order to meet liabilities, and the dates deductions are to be made.
142. *Subsection (2)(d)* – the regulations may limit the rate of deduction under a deduction order. It is envisaged that an order will be limited to an amount which is a percentage of the non-resident parent's income. If the circumstances of a non-resident parent change it will be their responsibility to inform the Commission so that the amount in the order might be changed and the deposit-taker notified. Only amounts in credit will be deducted from an account.
143. *Subsection (2)(e)* – the regulations may allow for certain circumstances when amounts of money held to the credit in an account should be disregarded in respect of the regular deduction order. This could be if the money is being held on behalf of another person, for instance.
144. *Subsection (2)(f)* – the regulations may include provision concerning the payment of money deducted by a deposit-taker to the Commission.
145. *Subsection (2)(g)* – the regulations may allow the deposit-taker to deduct an amount from the non-resident parent's account towards its administrative costs before making any deductions in line with the regular deduction order.

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146. *Subsection (2)(h)* – the regulations may provide for notifications to be given to a non-resident parent who is subject to a deduction order, and if the order is directed at a joint account, the other account-holders, regarding amounts deducted and paid under the order.
147. *Subsection (2)(i)* – the regulations may require the deposit-taker to notify the Commission, within a specified period of time, if the account specified in the order does not exist, or if the non-resident parent who is the subject of the order has any other accounts.
148. *Subsection (2)(j)* – the regulations may require the deposit-taker to notify the Commission, within a specified period of time, if a non-resident parent subject to a deduction order closes their account or opens a new account.
149. *Subsection (2)(k)* – the regulations may allow the deposit-taker at which an order is directed, the non-resident parent against whom an order is made, or if the order is directed at a joint account, the other account-holders, to apply to the Commission for a deduction order to be reviewed, in certain circumstances, and may provide for how the Commission is to carry out such a review.
150. *Subsection (2)(l)* – the regulations may allow the Commission to vary an order. Regulations will prescribe the circumstances when this might occur, for example, as a result of a review, or if some of the arrears have been settled.
151. *Subsection (2)(m)* – the regulations may provide powers similar to those in *section 32A(8)* in relation to the variation of an order, whereby although the deposit-taker has a duty to comply with the order as varied, they will not be liable for non-compliance during the first seven days from being given notice of the variation.
152. *Subsection (2)(n)* – the regulations may provide that an order will lapse in prescribed circumstances. This might include, for example, provisions that an order will lapse if the non-resident parent no longer holds a current account with the deposit-taker to whom the order was directed.
153. *Subsection (2)(o)* – the regulations may provide for an order to be revived in certain circumstances. This could be where it has lapsed because the non-resident parent has agreed to make payments but then defaults on those payments.
154. *Subsection (2)(p)* – the regulations may make provision allowing or requiring an order to be discharged.
155. *Subsection (2)(q)* – the regulations may require the Commission to give notice to the deposit-taker in the case of an order lapsing or ceasing to have effect.
156. *Subsection (3)* provides regulation-making powers to the Secretary of State, with regard to the priority of a regular deduction order and:
- any other regular deduction orders in place;
  - any other type of order which makes deductions from the same account; and
  - any diligence (done in Scotland) against the same account.
157. *Subsections (4), (5) and (6)* require the Secretary of State by regulations to make provision for any person affected to have a right of appeal to a court against a regular deduction order, or against any decision made by the Commission following an application for a review of the order. On such an appeal, the court is prevented from questioning the maintenance calculation by reference to which the deduction order was made. Regulations may include provision with respect to the period within which an appeal must be made and the powers of the court in relation to any such appeal.
158. *Section 32D* sets out that it will be an offence for a person not to comply with the requirements of a regular deduction order or any designated requirements set out in

regulations made under *section 32C*. A person found guilty of such an offence may be liable to a fine. However there is a defence if the person can show that all reasonable steps were taken to comply with the order or regulation.

***Section 23: Lump sum deduction orders***

159. This section inserts seven new *sections*, 32E, 32F, 32G, 32H, 32I, 32J and 32K into the Child Support Act 1991. These sections relate to lump sum deduction orders, which enable the Commission to collect payments from a non-resident parent's account held with a deposit-taker, or from money due or accruing to them from a third party. Lump sum deduction orders, however, may be used only to collect arrears and not ongoing maintenance.
160. *Section 32E* enables the Commission to make an interim lump sum deduction order if it appears to it that a non-resident parent has failed to pay an amount of child support maintenance and an amount of money stands to credit in an account held by the non-resident parent, or an amount is due or accruing to them from a third party.
161. *Subsection (2)* sets out that a lump sum deduction order may not be made in respect of an account of a prescribed description, and can be made against a joint account which is not of a prescribed description if regulations so provide.
162. *Subsection (3)* provides regulation making powers to the Secretary of State to allow him to set out the conditions to be disregarded in deciding whether an amount is due or accruing to the non-resident parent from a third party, for the purposes of lump sum deduction orders.
163. *Subsection (4)* sets out that an interim lump sum order will be directed at the deposit-taker or third party in question and will specify the amount of arrears in respect of which the Commission intends to make a final lump sum order. Where it is directed to a deposit-taker, it will also specify which account it applies to.
164. *Subsection (5)* allows an interim lump sum deduction order to be made even where there is an ongoing appeal against the maintenance calculation. This can only happen however in cases where the Commission concludes that the outcome of the outstanding appeal will not affect liability for the amount covered by the order, or if it will have such an effect, it still considers making the order to be fair in all the circumstances.
165. *Subsection (6)* requires the Commission to serve a copy of the order on the deposit-taker or third party at which is directed, the non-resident parent responsible for the arrears and, if directed at a joint account, the other account-holders.
166. *Subsection (7)* provides that the order will come into force at the time it is served on the third party at which it is directed.
167. *Subsection (8)* stipulates when an interim order will cease to be in force. It will be the earliest of the following:
  - when the prescribed period ends;
  - when the order lapses or is discharged, which may be where, for example, the non-resident parent has paid their arrears, or they have made representations to the Commission which then chooses to discharge the order; or
  - when a final lump sum deduction order is served.
168. *Subsection (9)* provides, for the avoidance of doubt, that where regulations have been made under section 29(3)(a) of the Child Support Act 1991, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to or through the person specified in, or by virtue of, the regulations.

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169. Following the making of an interim deduction order, the Commission can decide whether to impose a final deduction order. *Section 32F* provides powers to enable the Commission to do this.
170. *Subsection (1)* of *section 32F* stipulates that a final deduction order can only be made if an interim one is in force, the prescribed period for the making of representations has passed, and the Commission has considered any representations made to it, for example, by the non-resident parent.
171. *Subsection (2)* sets out that the order will be directed at the deposit-taker or third party at which the interim order was directed and will specify the amount of arrears and, if directed at a deposit-taker, will also specify which account it applies to.
172. *Subsection (3)* provides that the amount of arrears specified in the final deduction order must not exceed the amount specified in the interim order less any of those arrears which have subsequently been paid by the non-resident parent.
173. *Subsections (3)(b) and (4)* ensure that amounts to be deducted from a joint account do not exceed amounts that appear to the Commission to be fair in all circumstances, with particular regard to the amount contributed to the account by each of the account-holders and other matters as may be prescribed.
174. *Subsection (5)* allows a final order to be made where there is an ongoing appeal against the maintenance calculation. This can only happen however in cases where the Commission concludes that the outcome of the outstanding appeal will not affect liability for the amount covered by the order or, if it will have such an effect, the Commission still considers making the order to be fair in all the circumstances.
175. *Subsection (6)* requires the Commission to serve a copy of the order on the deposit-taker or third party at which it is directed, the non-resident parent responsible for the arrears and, if directed at a joint account, the other account-holders.
176. *Section 32G* enables accounts or amounts accruing to be frozen during the relevant period.
177. *Subsection (1)* of *section 32G* enables interim and final lump sum deduction orders to operate as an instruction to a deposit-taker not to do anything that would reduce the amount of money standing in credit in a non-resident parent's account to an amount below the amount specified in the order (or if the amount held is below the amount in the order, not to reduce it any further).
178. *Subsection (2)* enables interim and final lump sum deduction orders to operate as an instruction to a third party not to do anything that would reduce the amount of money due to a non-resident parent to an amount below the amount specified in the order (or if the amount held is below the amount in the order, not to reduce it any further).
179. *Subsection (3)* sets out that *subsections (1) and (2)* have effect subject to regulations made under *section 32I(1)*.
180. *Subsections (4) and (5)* define "the relevant period" as: for interim lump sum deduction orders, the period during which it is in place; and for final lump sum deduction orders, the period from the time it is served on the deposit-taker or third party at which it is directed, until the time when appeals can no longer be brought against it.
181. *Subsection (6)* sets out that if an appeal is brought against a lump sum deduction order, the relevant period ends when appeal proceedings have been concluded and any period during which further appeal may be brought has ended.
182. *Section 32H(1)* sets out that once the relevant period has ended, a final lump sum deduction order directed at an account held with a deposit-taker will operate as an instruction to the deposit-taker to deduct the amount of arrears specified in the order from the account and pay it to the Commission and, if the amount held in credit in

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the account is less than the due amount of arrears, to deduct the whole amount in the account and pay it to the Commission.

183. *Subsection (2) of section 32H* provides that if any of the due amount of arrears remains unpaid after the lump sum deduction has been paid to the Commission, the deduction order will remain in operation until the relevant time, as an instruction to the deposit-taker to pay to the Commission any amount (not exceeding the remaining amount) and not to do anything that would reduce that amount.
184. *Subsection (3)* sets out that following the end of the period during which the order is in force, a final lump sum deduction order directed at a third party will operate as an instruction to the third party to deduct the amount of arrears specified in the order from the amount due to the non-resident parent and pay it to the Commission. If the amount due to the non-resident parent is less than the arrears due, the whole amount due should be paid to the Commission.
185. *Subsection (4)* provides that if any of the due amount of arrears remains unpaid after the lump sum deduction has been paid to the Commission, the deduction order will remain in operation until the relevant time, as an instruction to the third party to pay to the Commission any amount held due to the non-resident parent and not to do anything that would reduce that amount.
186. *Subsection (5)* clarifies that this section has effect subject to regulations made under *sections 32I(1) and 32J(2)(c)*.
187. *Subsection (6)* defines “the relevant time” as the earliest of either: the time at which the amount of arrears is paid; the time at which the order lapses or is discharged; and the time at which a prescribed event occurs or prescribed circumstances arise.
188. *Section 32I* enables the Secretary of State to make regulations providing for circumstances when a deposit-taker or third party may do something to reduce the amount held in an account, or due to the non-resident parent. *Subsection (2) of section 32I* sets out that these regulations may require the Commission’s consent to be obtained in prescribed circumstances.
189. *Subsection (3)* sets out that the regulations may provide for the Commission’s consent to be applied for by a deposit-taker or third party at which an interim or final deduction order is directed, the non-resident parent responsible for the arrears and, if directed at a joint account, the other account-holders.
190. *Subsections (4) and (5)* state that if the regulations require the Commission’s consent to be obtained, the Secretary of State shall by regulations provide for a right of appeal to a court against the withholding of that consent. These regulations may include provision with respect to the period within which an appeal can be brought, and the powers of the court to which the appeal lies.
191. *Section 32J* provides regulation-making powers to the Secretary of State with regard to the practicalities and process relating to lump sum deduction interim and final orders. The following paragraphs give examples of provision that may be made by the regulations.
192. *Subsection (2)(a)* – the regulations may make provision for the circumstances in which the amounts held in an account are to be disregarded for the purposes of: the making of an interim lump sum deduction order; the instruction to a deposit-taker not to reduce the amount held in credit; and the instruction to a deposit-taker to deduct amounts to pay to the Commission.
193. *Subsection (2)(b)* – the regulations may make provision for the payment to the Commission of sums deducted under a final lump sum order.
194. *Subsection (2)(c)* – the regulations may allow the deposit-taker or third party who deducts and pays an amount under a lump sum deduction order to deduct an amount



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towards administration costs before making any deductions in line with the deduction order.

195. *Subsection (2)(d)* – the regulations may provide for notifications to be given to the non-resident parent who is subject to a lump sum deduction order and, if the order is directed at a joint account, the other account-holders, regarding the amounts deducted and paid under the order.
196. *Subsection (2)(e)* – the regulations may require the deposit-taker or third party at which the order is directed to supply prescribed information to the Commission or to notify them if a prescribed circumstance occurs.
197. *Subsection (2)(f)* – the regulations may allow the Commission to vary an order. They could include, for example, provision that the Commission may vary an order if some of the arrears have been settled.
198. *Subsection (2)(g)* – the regulations may provide that an order will lapse in prescribed circumstances.
199. *Subsection (2)(h)* – the regulations may allow an order which has lapsed to be revived in certain circumstances. The regulations may provide that an order may be revived if it has lapsed because the non-resident parent has agreed to make payments but then defaults on those payments.
200. *Subsection (2)(i)* – the regulations may allow or require an order to be discharged, for example, where the arrears have been paid in full.
201. *Subsection (3) of section 32J* prevents an order being varied to increase the amount of arrears specified in the order.
202. *Subsection (4)* provides regulation-making powers to the Secretary of State, with regard to the priority of a final lump sum deduction order and:
  - any other final lump sum deduction orders in place;
  - any other type of order which provides for payments to be made by the same deposit-taker or third party from amounts held in credit in an account, or due to the non-resident parent responsible for the arrears; and
  - any diligence (done in Scotland) against amounts to which a lump sum order relates.
203. *Subsection (5)* provides regulation-making powers to the Secretary of State to provide a right of appeal against the making of a final lump sum order, to a court.
204. *Subsection (6)* prevents the court hearing an appeal against the order being made, from questioning the maintenance calculation from which it is derived.
205. *Subsection (7)* provides that regulations regarding the appeals against the order being made, or the Commission withholding consent, may include provisions regarding:
  - the length of time a non-resident parent has to make an appeal; and
  - the powers of a court with respect to an appeal.
206. *Section 32K* provides that it will be an offence for a person not to comply with a lump sum deduction order or any regulation made under section 32J which has been designated for this purpose. A person found guilty of such an offence will be liable for a fine of up to level 2 on the standard scale (£500). However, there is a defence if the person can show that all reasonable steps were taken to comply with the order or regulation.

**Section 24: Orders preventing avoidance**

207. *Section 24* inserts new *section 32L* into the Child Support Act 1991. *Subsection (1)* of *section 32L* enables the Commission to apply to a court to prevent a non-resident parent who has failed to pay maintenance from disposing of or transferring property, if it is being done to avoid paying child support maintenance.
208. *Subsection (2)* allows the Commission to apply to a court where a non-resident parent has failed to pay maintenance, for an order to set aside a disposition, if that disposition was undertaken with the intention of avoiding child support maintenance payments.
209. *Subsection (3)* gives the court the ability to make either order if it is satisfied of the grounds.
210. *Subsection (4)* provides that the court which makes an order under these provisions may make such consequential provision by order or directions as it thinks fit for giving effect to the order, including provision to require the making of any payments or the disposal of any property.
211. *Subsection (5)* sets out that, for the purposes of an order to set aside a disposition, any disposition can be reviewed unless it was made for valuable (or, in Scotland, adequate) consideration (other than marriage) to a person who acted in good faith and was not aware of the non-resident parent's intention to avoid child support maintenance payments.
212. *Subsections (6)* and *(7)* clarify that, when an application is made for an order either to freeze assets, or to set aside a disposition, if the court is satisfied that either the disposition or other dealing would result in making the recovery of child support maintenance ineffective, it is to be assumed that the action was done or planned with the intention of avoiding child support maintenance payments.
213. *Subsection (8)* defines that for the purposes of this section, "disposition" does not include any provision contained in a will or codicil, but does include any conveyance, assurance or gift of property of any description.
214. *Subsection (9)* clarifies that this provision does not apply to a disposition made before the provision comes into force.
215. *Subsection (10)* defines that, for the purposes of this section, "the court" means the High Court in England and Wales, and the Court of Session or the sheriff in Scotland.
216. *Subsection (11)* sets out that an order made in a Scottish court to either freeze assets or set aside those already disposed of is effective for such period (including an indefinite period) as the order specifies, and may on application to the court be varied or recalled.

**Section 25: Administrative liability orders**

217. This section inserts *sections 32M* and *32N* into the Child Support Act 1991. This introduces a new liability order which will be made administratively by the Commission. The order will effectively certify the amount owed by the non-resident parent, and will be the first step to enforcement action (e.g. bailiff action). There will no longer be a need to apply to the courts for a liability order.
218. *Section 32M* enables the Commission to make an administrative liability order against a non-resident parent if they have failed to pay an amount of child support maintenance due.
219. *Subsection (2)* of *Section 32M* allows an administrative liability order to be made in respect of an amount of maintenance arrears where there is an ongoing appeal against the maintenance calculation. The administrative liability order can only be made in such circumstances if the Commission concludes that the outcome of the appeal will

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not affect the amount of arrears stated in the order, or if it will, it still considers that making the order is fair in all the circumstances.

220. *Subsection (3)* prevents the order from coming into force until the end of the period during which an appeal can be made, and if an appeal is made, until the appeal proceedings have been concluded and any period during which a further appeal may ordinarily be brought has ended.
221. *Subsection (4)* provides for the avoidance of doubt, that where regulations have been made under section 29(3)(a) of the Child Support Act 1991, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to, or through the person specified in, or by virtue of, the regulations for their case.
222. *Section 32N* provides regulation-making powers to the Secretary of State with respect to the practical process regarding administrative liability orders.
223. *Subsection (2)(a)* of *section 32N* – the regulations may make provision about the form and content of an administrative liability order.
224. *Subsection (2)(b)* – the regulations may prevent the liability order coming into force if, before it does, the non-resident parent pays in full the arrears covered by the order.
225. *Subsection (2)(c)* and *(d)* – the regulations may provide for the order to be discharged or revived. The regulations may provide, for example, that an order may be discharged if the non-resident parent pays off all of the arrears.

***Section 26: Enforcement in county courts***

226. This section amends section 36 of the Child Support Act 1991, removing the requirement that an order from the county court needs to be obtained before an application for a charging order or a third party debt order can be made. In the future, an application can be made where an administrative liability order has been made.

***Section 27: Disqualification for holding or obtaining a travel authorisation***

227. This section inserts six new *sections*, *39B*, *39C*, *39D*, *39E*, *39F*, and *39G* into the Child Support Act 1991 and provides the Commission with a power to apply to a court to disqualify a non-resident parent for holding or obtaining a travel authorisation.
228. *New section 39B* enables the Commission to apply to a court to disqualify a non-resident parent for holding or obtaining a travel authorisation if:
  - it has sought to recover the arrears through the use of bailiffs (in England and Wales), or diligence action (in Scotland) or by means of a third party debt order or charging order;
  - the whole or any part of the arrears remains unpaid; and
  - it is of the opinion that that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.
229. *Subsection (2)* of *section 39B* provides that the Commission is to be taken as having sought to recover arrears through a charging order if an interim charging order is in place, whether or not further action has been taken to recover the amount.
230. *Subsection (3)* determines that the non-resident parent against whom an order is made, will be subject to disqualification for holding or obtaining a travel authorisation for the period the order has effect.
231. *Subsection (4)* of *section 39B* requires the court to inquire in the presence of the non-resident parent whether that person requires a travel authorisation to earn a living,

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whether there has been wilful refusal or culpable neglect on the part of that person, and also as to that person's means.

232. *Subsection (5)* prevents the court from making an order unless it is of the opinion that there has been wilful refusal or culpable neglect on the part of the non-resident parent.
233. *Subsection (6)* prevents the court from making an order to disqualify a non-resident parent for holding or obtaining a travel authorisation at the same time as making an order to commit that person to prison.
234. *Subsection (7)* prevents a court, when considering an application for disqualification for holding or obtaining a travel authorisation, from questioning the liability order on which an application has been made, or the original maintenance calculation which is the basis of the liability order.
235. *Subsection (8)* sets out that the amount specified in the order will be an aggregate of the amount stated in the liability order as remains outstanding, and the costs of making the application (as determined in accordance with regulations made by the Secretary of State).
236. *Subsections (9) and (10)* stipulate that the court will require the non-resident parent to produce any travel authorisation that person may hold, and the court will send that travel authorisation to a person prescribed in regulations.
237. *Subsection (11)* requires the court, on making an order to disqualify a non-resident parent for holding or obtaining a travel authorisation, or allowing an appeal against such an order, to notify the Commission of that fact (providing such information and sent in such a manner and to such an address as the Commission determines).
238. *Subsection (12)* sets out definitions for the purposes of this section. In particular, travel authorisation means:
- a UK passport (within the meaning of the Immigration Act 1971);
  - an ID card issued under the Identity Cards Act 2006 that records that the person to whom it has been issued is a British citizen.
239. *Subsection (13)* defines "court" for the purposes of this section (except in relation to an appeal) as:
- a magistrates' court in relation to England and Wales;
  - the sheriff in relation to Scotland.
240. *Section 39C* concerns the duration of an order made under section 39B.
241. *Subsection (1)* of section 39C sets out that the disqualification period shall be specified by the court but shall not exceed two years.
242. *Subsections (2), (3) and (4)* enable the court on or after making an order to suspend it where a non-resident parent agrees to pay the child support maintenance or in exceptional circumstances on such conditions as it thinks just.
243. *Subsection (5)* provides that the Commission may make another application to the court to disqualify a person for holding or obtaining a travel authorisation if, when the effective period of the original order has ended, an amount specified in that order remains outstanding.
244. *Section 39D* provides a power for the court to search a non-resident parent against whom an order to disqualify for holding or obtaining a travel authorisation has been made.
245. *Subsection (2)* of *section 39D* sets out that during a search, any money found on a non-resident parent shall (unless the court otherwise directs) be taken by the court and put towards the amount due, and the balance, if any, returned to the person searched.

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246. *Subsection (3)* prevents the court from taking any money found during a search if it is satisfied that it did not belong to the person searched.
247. *Section 39E* provides that where the non-resident parent makes part payment of the amount stated in the order, the court may either revoke, or reduce the period of, that order .
248. *Subsection (2)* states that the court must, on application by the Commission or the non-resident parent, revoke the order where the amount specified in the order is paid in full to any person authorised to receive it.
249. *Subsection (3)* enables the Commission to make representations to the court regarding the amount which should be paid before an order is revoked. The non-resident parent may reply to those representations.
250. *Subsection (4)* provides that the court can revoke an order or reduce the period for which it has effect, without the need for an application, if money found during a search is paid towards the amount specified in the order.
251. *Subsection (5)* requires the court to send notice to the Commission if it revokes an order or reduces the period for which it has effect.
252. *Section 39F* provides regulation-making powers to the Secretary of State.
253. *Subsection (a)* of *section 39F* sets out that those provisions may:
- make provision in relation to orders to disqualify a non-resident parent for holding or obtaining a travel authorisation, corresponding to the provision that may be made under section 40(11) of the Child Support Act 1991 (provision in relation to warrants of commitment to prison); and
  - make provision for *sections 39C* to *39E* to have effect with prescribed modifications, in cases where a person who is subject to an order disqualifying them for holding or obtaining a travel authorisation is outside the United Kingdom.
254. *Section 39G* applies disqualification orders and regulations to Scotland.
255. *Subsection (a)* of *section 39F* as it applies in Scotland provides the Secretary of State with regulation-making powers to make provisions for orders to disqualify a non-resident parent for holding or obtaining a travel authorisation to have effect with prescribed modifications, in cases where a non-resident parent is outside of the United Kingdom. It also enables regulations to provide the ability to use an employer’s written confirmation that wages have been paid to a non-resident parent as evidence.
256. *Subsection (b)* sets out that the power of the Court of Session by Act of Sederunt to regulate the procedure and practice in civil proceedings in the sheriff court shall include the power to make provision corresponding to that which may be made by virtue of section 40A(8) of the Child Support Act 1991.

**Section 28: Curfew orders**

257. *Section 28* inserts ten new *sections, 39H, 39I, 39J, 39K, 39L, 39M, 39N, 39O, 39P* and *39Q*, into the Child Support Act 1991 and provides the Commission with a power to apply to a magistrates’ court (or, in Scotland, the sheriff) for a curfew order to be made against a non-resident parent who fails to pay maintenance.
258. The new *section 39H* enables the Commission to apply to the court for a curfew order against a non-resident parent if:
- it has sought to recover the arrears through the use of bailiffs (in England and Wales), or diligence action (in Scotland) or by means of a third party debt order or charging order;

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- the whole or any part of the arrears remains unpaid; and
  - it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.
259. *Subsection (2) of section 39H* provides that the Commission is to be taken as having sought to recover arrears through a charging order if an interim charging order is in place, whether or not further action has been taken to recover the amount.
260. *Subsection (3)* requires the court to inquire (in the presence of the non-resident parent against whom the liability order has been made) about that person's means, and whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.
261. *Subsection (4)* prevents a court, when considering an application for a curfew, from questioning the liability order on which an application for a curfew order has been made, or the original maintenance calculation which is the basis of the liability order.
262. *Subsection (5)* prevents the court from making a curfew order, unless it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.
263. *Subsection (6)* prevents the court from making an order against a person who is under the age of eighteen.
264. *Subsection (7)* provides that for the purposes of this section and *sections 39I to 39O* the 'court' means magistrates' court in England and Wales, and the sheriff in Scotland.
265. *Section 39I* concerns the duration of a curfew order.
266. *Subsection (1) of section 39I* stipulates that a curfew order must be limited to between two and twelve hours in any one day, but may include different periods and different places for different days.
267. *Subsections (2) and (3)* require the period of the curfew to be specified in the order, that it not last for more than six months and that it begin on the day the order is made unless otherwise specified.
268. *Subsection (4)* ensures that the curfew imposed does not conflict (so far as practicable) with the non-resident parent's religious beliefs or interfere with the times at which they normally work or attend any educational establishment.
269. *Subsection (5)* prevents a magistrates' court from specifying a curfew location outside England and Wales, and a sheriff from specifying a curfew location outside Scotland.
270. *Section 39J* provides that where a curfew order has been made, the court shall also make an order requiring the non-resident parent for whom the order has been made, to pay an amount in respect of the costs of the application and the monitoring of the curfew order.
271. *Subsection (2) of section 39J* provides that the powers available for the Commission to collect and enforce child support maintenance also apply to the recovery of costs incurred in making an order under this section.
272. *Section 39K* sets out provisions about the relationship between the amount of maintenance outstanding and the curfew order imposed.
273. *Subsection (1) of section 39K* stipulates that a curfew order will be made in respect of an amount of money which totals both the amount sought to be recovered which remains outstanding, and the costs ordered by the court under *section 32J* in relation to the application for a curfew order and monitoring compliance with that order.

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274. Where part of the amount in respect of which a curfew order has been made is paid to any person authorised to receive it, *subsection (2)* allows the court (on application by either the non-resident parent or the Commission) discretion to:
- reduce the period the curfew order is in place;
  - allow the curfew to start on a day later than the day the order would otherwise begin to run;
  - suspend the curfew or extend any existing suspension; or
  - revoke the curfew order.
275. *Subsection (3)* enables the start date for a curfew, or the ability to suspend it, to be subject to specified conditions.
276. Where a non-resident parent has paid some of the arrears, *subsection (4)* allows the Commission to make representations to the courts as to which of the powers conferred by *subsection (2)* should be exercised. The non-resident parent may reply to such representations.
277. *Subsection (5)* requires the court (on application by the non-resident parent or the Commission) to revoke a curfew order if the whole amount specified in the curfew order has been paid by the non-resident parent to any person authorised to receive it.
278. *Subsection (6)* enables the Commission to make a further application to the court if by the end of the curfew period the amount specified in the order has not been paid in full.
279. *Section 39L* provides a power for the court to order the search of a non-resident parent in respect of whom a curfew order has been made.
280. *Subsection (2)* of *section 39L* sets out that during a search, any money found on a non-resident parent shall (unless the court otherwise directs) be taken by the court and put towards the amount specified in the curfew order (the balance, if any, would be returned to the person searched).
281. *Subsection (3)* prevents the court from taking any money if it is satisfied that it does not belong to the person searched.
282. *Subsection (4)* gives some flexibility to the court enabling it to exercise its powers to postpone, suspend or revoke the order or reduce the period for which it is in place (under *section 39K(2)*) without the need for a separate application, where money is found and put towards the amount owed by the non-resident parent.
283. *Section 39M* sets out the provisions relating to how a curfew will be monitored.
284. *Subsection (1)* of *section 39M* requires the non-resident parent's compliance with a curfew order to be monitored by a person or body specified in the order.
285. *Subsection (2)* prevents the court from imposing a curfew order unless:
- it has been notified by the Commission that suitable monitoring arrangements are available in the place specified in the order;
  - it is satisfied with those arrangements; and
  - it has the consent of any third party whose co-operation is necessary for monitoring the curfew order, for example, a landlord who must give permission for a monitoring system to be installed in the home of a non-resident parent.
286. Where a third party's consent can not be obtained, *subsection (3)* enables the court to treat the application for a curfew order as an application for committal to prison.

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287. *Subsection (4)* provides the Secretary of State with regulation-making powers to enable the responsible officer to allow the non-resident parent to be absent from the place specified in the curfew order during the curfew period in certain cases or circumstances, and also the power to set out the requirements which may be imposed in relation to such an absence.
288. *Section 39N* concerns breaches of curfew orders.
289. *Subsection (1)* of *section 39N* allows the person responsible for monitoring compliance with the curfew order, or the Commission, to apply to the court should the non-resident parent not meet the requirements of the curfew order, or subsequent requirements imposed by virtue of *section 39M(4)*.
290. *Subsections (2)* and *(3)* require the court to establish (in the presence of the non-resident parent) whether the curfew order has been breached without reasonable excuse, and if it is found to have been, the court can issue a warrant to commit the non-resident parent to prison or extend the period of the curfew order.
291. *Subsection (4)* sets out that a warrant for committal to prison shall order that the non-resident parent be imprisoned for the period specified in the warrant but released (unless in custody for a different reason) should they pay the full amount due in respect of which the curfew order was made.
292. *Subsection (5)* provides that a warrant may be directed to such person or persons as the court sees fit.
293. *Subsection (6)* provides that where a curfew order is extended because it has been breached, that order can not be extended for more than six months from the date the extension of the order is made.
294. *Subsection (7)* enables the court to release a non-resident parent from prison or reduce their sentence if they pay part of the amount specified in the curfew order, following an application from the Commission or the non-resident parent.
295. Where part of the amount specified in the order is paid and the court is considering an application under subsection (7), *subsection (8)* enables the Commission to make representations to the court about which of its powers under subsection (7) (to reduce the period specified in the warrant or to release the person imprisoned) should be exercised. It also enables the non-resident parent to respond to those representations.
296. *Section 39O* prevents a court from making a curfew order against a non-resident parent who is in custody for any reason.
297. *Subsections (2)* and *(3)* of *section 39O* suspend a curfew order if the non-resident parent is committed to prison, and commence it once the suspension is lifted because the non-resident parent is released from prison.
298. *Section 39P* provides the Secretary of State with regulation-making powers regarding the practical procedures relating to curfew orders in England and Wales.
299. *Subsection (2)* of *section 39P* sets out that the regulations may in particular include provisions relating to the following:
- form and content of a curfew order;
  - allowing an application for a curfew order to be renewed if no order is made;
  - allowing an employer's written statement as evidence that wages have been paid to a non-resident parent;
  - enabling a justice of the peace to issue a summons for a person to appear in court and, where they do not, to issue a warrant for their arrest, or to issue a warrant for arrest without issuing a summons first, to secure a person's presence before a court;



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- the execution of a warrant for arrest;
  - enabling a curfew order to be amended or revoked on application to the magistrates' court by the Commission or the non-resident parent;
  - in relation to any amendment, provision similar to that in *section 39J* – determining the amount of costs the court can recover from a non-resident parent, *section 39L* – ordering a search of a non-resident parent, *39M(2)* and *(3)* – requirement for monitoring arrangements to be in place; and
  - how a magistrates' court exercises its power following part payment under *sections 39K(2)* and *(3)* and *section 39N(7)*.
300. *Subsections (3)* and *(4)* provide for the making of regulations enabling a magistrates' court to amend a curfew order to specify a location in Scotland. In these circumstances any functions of the court in relation to the curfew order shall be exercisable by the sheriff.
301. *Section 39Q* provides the Secretary of State with regulation-making powers regarding the practical processes relating to curfew orders in Scotland.
302. *Subsection (2)* of *section 39Q* sets out that the regulations may in particular make provision relating to the following:
- content of a curfew order;
  - allowing an employer's written statement as evidence that wages have been paid to a non-resident parent;
  - enabling a curfew order to be amended or revoked on application to the sheriff by the Commission or the non-resident parent
  - in relation to any amendment, provision similar to that in *section 39J* – determining the amount of costs the court can recover from a non-resident parent, *section 39L* – ordering a search of a non-resident parent, *39M(2)* and *(3)* – requirement for monitoring arrangements to be in place; and
  - how the sheriff exercises the powers conferred by *sections 39K(2)* and *(3)* and *section 39N(7)*.
303. *Subsections (3)* and *(4)* make provision for regulations enabling the sheriff to amend a curfew order to specify a location in England and Wales. In these circumstances any functions of the sheriff in relation to the curfew order shall be exercisable instead by the magistrates' court.
304. *Subsection (5)* sets out that the power of the Court of Session by Act of Sederunt to regulate the procedure and practice in civil proceedings in the sheriff court shall include power to make provision for:
- form of a curfew order;
  - allowing an application for a curfew order to be renewed if no order is made;
  - enabling the sheriff to issue a citation for a person to appear before the sheriff, and if that person does not appear, to issue a warrant for their arrest;
  - enabling the sheriff to issue a warrant for arrest without issuing a citation first, to secure a person's presence before it; and
  - the execution of a warrant for arrest.

**Section 29: Commitment to prison**

305. *Section 29* inserts four new *subsections* (2A), (2B), (2C) and (2D) into section 40 of the Child Support Act 1991. These provisions will enable the Commission to make a separate application to a magistrates' court to commit a non-resident parent to prison for failure to pay child support maintenance.
306. The new *subsection* (2A) enables the Commission to apply to a magistrates' court for the issue of a warrant committing a non-resident parent to prison if:
- it has sought to recover an amount through the use of bailiffs (in England and Wales), or diligence action (in Scotland) or by means of a third party debt order or charging order;
  - the whole or any part of the amount due remains unpaid; and
  - it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.
307. *New subsection* (2B) provides that the Commission is to be taken as having sought to recover an amount due through a charging order if an interim charging order is in place, whether or not further action has been taken to recover the amount.
308. *New subsection* (2C) requires the court to inquire (in the presence of the non-resident parent against whom the liability order has been made) about that person's means, and whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.
309. *New subsection* (2D) prevents a court, when considering an application for committal to prison, from questioning the liability order on which an application has been made, or the original maintenance calculation which is the basis of the liability order.
310. *Subsection* (2) of section 29 replaces subsection (10) of section 40, and provides that the court may order the search of a non-resident parent in respect of whom a commitment to prison order has been made. During a search, any money found on a non-resident parent shall (unless the court otherwise directs) be taken by the court and put towards the amount specified in the order (the balance, if any, would be returned to the person searched). The court is prevented from taking money if it is satisfied that it does not belong to the person searched.
311. *Subsection* (3) inserts four new *subsections* (A1), (A2), (A3) and (A4) into section 40A of the Child Support Act 1991. These provisions will enable the Commission to make a separate application to the sheriff to commit a non-resident parent to prison if they fail to pay child support maintenance.
312. The new *subsection* (A1) enables the Commission to apply to the sheriff for the issue of a warrant committing a non-resident parent, against whom a liability order has been made, to prison if:
- it has sought to recover the amount for which the liability order was made through the use of bailiffs (in England and Wales), or diligence action (in Scotland) or by means of a third party debt order or charging order;
  - the whole or any part of the amount due in respect of the order remains unpaid; and
  - it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.
313. *New subsection* (A2) provides that the Commission is to be taken as having sought to recover arrears through a charging order if an interim charging order is in place, whether or not further action has been taken to recover the amount.

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314. *New subsection (A3)* requires the sheriff to inquire (in the presence of the non-resident parent against whom the liability order has been made) about that person's means, and establish whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.
315. *New subsection (A4)* prevents the sheriff, when considering an application for committal to prison, from questioning the liability order on which an application has been made, or the original maintenance calculation which is the basis of the liability order.
316. *Subsection (4)* of section 29 inserts four new *subsections (7A), (7B), (7C) and (7D)* into section 40A to provide that the sheriff may order the search of a non-resident parent in respect of whom a commitment to prison order has been made. During a search, any money found on the non-resident parent shall (unless the sheriff otherwise directs) be taken by the sheriff and put towards the amount specified in the order (the balance, if any, would be returned to the non-resident parent). The sheriff is prevented from taking money if he is satisfied that it does not belong to the non-resident parent.

**Section 30: Disqualification for driving**

317. *Section 30* amends section 40B of the Child Support Act 1991, to enable the Commission to make a separate application to the magistrates' court (or, in Scotland, the sheriff) to disqualify a non-resident parent for holding or obtaining a driving licence if they fail to pay child support maintenance.
318. *Subsection (A1)* of the revised section 40B enables the Commission to apply to a magistrates' court (or, in Scotland, the sheriff) for an order disqualifying a non-resident parent for holding or obtaining a driving licence if:
- it has sought to recover an amount through the use of bailiffs (in England and Wales), or diligence action (in Scotland) or by means of a third party debt order or charging order;
  - the whole or any part of the amount due remains unpaid; and
  - it is of the opinion that that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.
319. *Subsection (A2)* provides that the court may specify the length of the disqualification order, but that it will not exceed two years.
320. *Subsection (A3)* determines that the Commission is to be taken as having sought to recover arrears through a charging order if an interim charging order is in place, whether or not further action has been taken to recover the amount.
321. *Subsection (A4)* requires the court to inquire (in the presence of the non-resident parent against whom the liability order has been made) about whether that person requires a driving licence to earn a living, that person's means, and whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.
322. *Subsection (A5)* prevents a court, when considering an application made under this section, from questioning the liability order on which an application has been made, or the original maintenance calculation which is the basis of the liability order.
323. *Subsection (1)* of the revised section 40B provides that only if the court finds that there has been wilful refusal or culpable neglect on the part of the non-resident parent, it may make a disqualification order against the non-resident parent, or make such an order but suspend it until such time and on such conditions as it thinks just.
324. *Subsection (2)* replaces subsection (10) of section 40B, to enable the court to order a search of a non-resident parent in respect of whom a disqualification order has been

made. During a search, any money found on a non-resident parent can be taken by the court and put towards the amount specified in the order (the balance, if any, would be returned to the person searched). The court is prevented from taking any money if it is satisfied that it does not belong to the person searched.

## **Debt management powers**

### ***Section 31: Power to treat liability as satisfied***

325. This section inserts a new *section 41C* into the Child Support Act 1991 which provides the Secretary of State with regulation-making powers enabling the Commission to offset liabilities to pay child support maintenance (including arrears) in prescribed circumstances.
326. *Subsection (1)(a)* of *section 41C* enables the Commission to offset liabilities to pay child support maintenance. It is envisaged that offsetting will occur mainly where a child moves from the care of one parent to the other, and therefore the non-resident parent becomes the parent with care and vice versa. If the non-resident parent who becomes the parent with care has built up arrears, some or all of the maintenance liability of the new non-resident parent may be offset against those arrears.
327. Offsetting may also apply where liability switches from one parent to the other for other reasons, for example, where each parent is caring for one or more children and there is a change in income. Where both parents have arrears these may also be offset against each other.
328. *Subsection (1)(b)* enables the Commission, in certain circumstances, to accept payments made by the non-resident parent to prescribed third parties as payments against ongoing liability or arrears.
329. *Subsection (2)* confirms that offsetting maintenance payments and third party payments as described in *subsection (1)* will result in the liability of a non-resident parent being met to the extent that it has been set off.
330. *Subsection (3)* applies the offsetting rules only to those cases where the Commission is authorised to make arrangements for the collection of the child support maintenance.

### ***Section 32: Power to accept part payment of arrears in full and final satisfaction***

331. This section inserts new *section 41D* into the Child Support Act 1991 which enables the Commission to accept partial payments of maintenance arrears from a non-resident parent in final settlement of the whole arrears.
332. *Subsection (2)* provides regulation-making power to the Secretary of State with regard to the Commission exercising its power to accept part payment in satisfaction of the liability. *Subsection (3)* provides that the regulations must provide that the Commission cannot accept partial payment in full and final settlement without the consent stipulated in subsections (5) to (7), unless one of the conditions in *subsection (4)* is met.
333. The conditions set out in *subsection (4)* relate to arrears which may be retained by the Commission because a person with care was in receipt of prescribed benefits at the time the arrears accrued. Where the person with care is in receipt of prescribed benefits they are paid their full benefit entitlement, but the Commission may retain child maintenance payments to offset the benefit expenditure.
334. *Subsection (4)(a)* sets out that the Commission would not require consent where all of the arrears may be retained by the Commission if recovered.
335. *Subsection (4)(b)* relates to arrears, some of which are owed to the person with care and some of which may be retained by the Commission because the person with care was in receipt of prescribed benefits for part of the time when the arrears were accruing. In

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this situation the Commission would not require consent if the amount of arrears which would be due to the person with care is equal to or less than the payment it has agreed to accept as full and final settlement.

336. *Subsection (5)* stipulates that written consent from the person with care is required unless the application for a maintenance calculation is made by a child of 12 or over in Scotland.
337. *Subsections (6) and (7)* set out that where an application for a maintenance calculation is made by a child in Scotland, their written consent is required. The person with care's consent is also required where:
- the maintenance calculation takes account of any other qualifying children of the non-resident parent who are in the care of the same person with care as the child who made the application; or,
  - a maintenance calculation is made following an application by a child in Scotland and the person with care subsequently applies to the Commission for the child support maintenance to be collected and/or enforced.

***Section 33: Power to write off arrears***

338. This section inserts new *section 41E* into the Child Support Act 1991, enabling the Commission to write off arrears in circumstances where it appears to the Commission that:
- the circumstances of a case are as specified in regulations made by the Secretary of State; and
  - it would be unfair or otherwise inappropriate to enforce liability for maintenance arrears (for example, if a parent with care does not wish the arrears to be pursued because of a reconciliation with the non-resident parent).
339. *Subsection (2) of section 41E* provides regulation-making power to the Secretary of State with respect to the Commission's power to write off arrears.

***Section 34: Transfer of arrears***

340. *Section 34* inserts new *section 49A* into the Child Support Act 1991, which provides regulation-making power to the Secretary of State, to enable the Commission to enter into arrangements with other persons or organisations under which liability in respect of arrears of child support maintenance becomes debt due to such a person or organisation.
341. *Subsection (2) of new section 49A* prevents the Commission from using its enforcing powers in relation to collecting any debt that has been transferred, and also ensures that only the transferee will have title to the debt.
342. *Subsection (3)* provides that the regulations must prevent the Commission from entering into arrangements to transfer child maintenance debt without the consent stipulated in subsections (6) to (8), unless one of the conditions in *subsection (4)* is met.
343. The conditions set out in *subsection (4)* relate to arrears which may be retained by the Commission because a person with care was in receipt of prescribed benefits at the time the arrears accrued. Where the person with care is in receipt of such benefits, they are paid their full benefit entitlement, but the Commission may retain child maintenance payments to offset the benefit expenditure. *Subsection (4)(a)* sets out that the Commission would not require consent to transfer arrears if all the arrears may be retained by the Commission if recovered.
344. *Subsection (4)(b)* relates to arrears some of which are owed to the person with care and some of which may be retained by the Commission because the person with care was in receipt of prescribed benefits for some of the time when the arrears were accruing.

*These notes refer to the Child Maintenance and Other Payments  
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

In this situation the Commission would not require consent to transfer arrears if the amount of arrears which would be due to the person with care is equal to or less than the transfer payment.

345. *Subsection (5)* defines, for the purposes of this section, that “transfer payment” means:
- the payment that the Commission would receive from transferee once the arrears have been transferred; and
  - such other payments under the transfer arrangements as may be prescribed.
346. *Subsection (6)* stipulates that written consent is required from the person with care unless an application for a maintenance calculation is made by a child of 12 or over in Scotland.
347. *Subsections (7) and (8)* set out that where an application for a maintenance calculation has been made by a child in Scotland their written consent is required and the consent of the person with care where:
- the maintenance calculation takes account of any other qualifying children of the non-resident parent who are in the care of the same person with care as the child who made the application; or,
  - a maintenance calculation has been made following the application by a child and the person with care subsequently applies to have the child support maintenance to be collected and/or enforced.
348. *Subsection (9)* provides that regulations made by the Secretary of State under this power may:
- Specify when arrears would be considered for transfer. The regulations could specify, for example, that arrears could be transferred only if the consent of the person with care has been obtained.
  - Specify the type of transferee to which arrears can be transferred. The regulations could, for example, include safeguards to ensure that the transferee is reputable and abides by a professional code of conduct.
  - Specify the terms and conditions which the transfer arrangements must include. The regulations may require, for example, that the transfer agreement must provide that the debt can not be sold on further.
  - Provide that a payment made to the Commission under transfer arrangements may be treated for prescribed purposes as if it were a payment of child support maintenance.
349. *Subsection (10)* sets out further that the regulations may include:
- provision as to the means of recovery the transferee is able to use;
  - provision that the Commission may, in certain circumstances, prevent a transferee from taking steps to recover it. The circumstances could be, for example, that the steps being taken are inappropriate; and
  - provision regarding the type of information which the Commission may supply to a transferee, for the purposes of recovering the debt.

## **Miscellaneous**

### ***Section 35: Registered Maintenance Agreements: Scotland***

350. This section amends sections 4, 7 and 9 of the Child Support Act 1991 to provide that, for the avoidance of doubt, a Minute of Agreement registered for execution in the Books

of Council and Session, or the sheriff court books, which has been in force for less than twelve months, will exclude a person (or a child in Scotland) from making an application for a maintenance calculation.

**Section 36: Offence of failing to notify change of address**

351. This section inserts a new *subsection (3A)* into section 14A of the Child Support Act 1991, which deals with offences relating to the provision of information.
352. *Subsection (3A)* includes, as someone who is committing an offence, a person who is liable to make payments of child support maintenance who does not notify their change of address to the Commission, where regulations require them to do so.

**Section 37: Additional special case**

353. This section inserts a new *paragraph (g)* into section 42(2) of the Child Support Act 1991.
354. **Section 42** enables the Secretary of State to prescribe cases as ‘special cases’ for the purposes of the Act, and subsequently to make regulations concerning those special cases.
355. New *subsection (g)* will include as a ‘special case’ the circumstances where two parents of the same children each have care for one or more of those children, and so each parent is both a parent with care and a non-resident parent.
356. Currently in these circumstances, each parent will be required to make a maintenance payment to the other. The new provision will allow for the offset of maintenance liabilities between the two parents, so that only the parent with the highest liability will actually make a payment.

**Section 38: Recovery of arrears from deceased’s estate**

357. **Section 38** inserts a new *section 43A* into the Child Support Act 1991, which gives the Secretary of State power to make regulations to enable arrears of child support maintenance to be recovered from the estate of a deceased non-resident parent.
358. *Subsection (2)* of new *section 43A* sets out that regulations made under *subsection (1)* may provide for:
- the arrears to be paid by the executor or administrator of a deceased non-resident parent out of the non-resident parent’s estate, to the Commission;
  - how the amount of the arrears to be paid out of the estate is determined; and
  - the procedure by which claims for arrears against the deceased non-resident parent’s estate are made.
359. *Subsection (3)* states that regulations may also provide for the executor or administrator to institute, continue or withdraw any proceedings. The regulations could, for example, enable the personal representative to exercise a right of appeal that the deceased might have had.
360. This change will enable the recovery of arrears of child support maintenance from the estate of a deceased non-resident parent where it is appropriate to do so. It is intended that arrears of child support maintenance will be treated in the same way as civil debt, and will be paid before the estate is distributed to the beneficiaries. Personal representatives will be required to deduct the arrears from the assets of the deceased. They will also have rights to appeal and dispute the arrears demand. Regulations will also make provision for the procedure to be followed in determining the amount of any arrears and for resolving any dispute that arises in relation to a claim against a deceased non-resident parent’s estate.

***Section 39: Disclosure of information relating to family proceedings***

361. *Section 39* inserts two new *sections 49B* and *49C* into the Child Support Act 1991 to enable a party to family proceedings to disclose information relating to those proceedings to the Commission or to a person providing services to the Commission without such a disclosure being a contempt of court, unless a court dealing with the proceedings directs that the section does not apply.
362. *Subsections (2) and (3)* of *section 49B* clarify that the section applies if the party is a person with care in relation to a child, or a child of 12 or over in Scotland, for whom child support maintenance is payable or an application for child support maintenance has been made, and the party reasonably considers that the information is relevant to the Commission carrying out its functions in relation to that application
363. *Subsection (4)* allows a representative, if instructed by the party, to make a disclosure on their behalf.
364. *Subsection (5)* defines “representative” for the purposes of this section.
365. *Section 49C(1)* lists the proceedings that are “family proceedings” for the purposes of *section 49B*. Only proceedings commenced on or after the day on which *section 49B* comes into force are covered.
366. *Subsection (2)* defines “ancillary relief” for the purposes of *subsection (1)(a)*
367. *Subsections (3) and (4)* enable the Secretary of State to make an amendment by order, with the consent of the Lord Chancellor, to provide that “family proceedings” include proceedings of a description specified in the order, as long as the proceedings were not begun before the order comes into force.

***Section 40: Disclosure of information to credit reference agencies***

368. *Section 40* inserts new *section 49D* into the Child Support Act 1991 which relates to the disclosure of information to credit reference agencies.
369. *Section 49D* allows the Commission to disclose certain information relating to non-resident parents to credit reference agencies. It will only allow the Commission to disclose information relating to a non-resident parent where that person has given their consent to the disclosure or is subject to a liability order. Credit reference agencies will be able to use the information only for the purpose of providing information relevant to the financial standing of individuals.
370. *Subsection (2)* of *section 49D* specifies that the information the Commission is able to disclose should meet all of the following criteria:
- the information is held by the Commission for any purpose under the Child Support Act 1991;
  - it relates to a non-resident parent who is liable to pay child support maintenance; and
  - it is of a description specified in regulations.
371. *Subsection (4)* provides that regulations made under *section 14(3)* of the Child Support Act 1991 may not make provision authorising the supply of information to credit reference agencies. *Section 14* concerns the requiring and disclosing of information by the Secretary of State. This provision means that if the Secretary of State wishes to disclose information to credit reference agencies, he must rely on the provisions in this new section. He can not circumvent the safeguards provided by using other regulation-making provisions.
372. *Subsection (5)* provides that for the purposes of this section, ‘credit reference agency’ has the same meaning as in the Consumer Credit Act 1974, which is ‘a person carrying



on a business comprising the furnishing of persons with information relevant to the financial standing of individuals, being information collected by the agency for that purpose’.

#### ***Section 41: Pilot schemes***

373. This section inserts a new *section 51A* into the Child Support Act 1991, enabling the power to pilot any regulation-making power made under that Act.
374. *Subsection (1)* prevents a pilot scheme from lasting more than twenty four months.
375. *Subsection (2)* provides that for the purposes of this section, regulations being piloted will be referred to as a ‘pilot scheme’.
376. *Subsection (3)* enables a pilot scheme to apply in relation to specific areas, classes of person or persons who meet prescribed criteria, or are selected by sampling.
377. *Subsection (4)* enables transitional arrangements to be made where necessary for cases involved in any pilot schemes, when the pilot period ends.
378. *Subsection (5)* enables a further pilot to operate under the same or similar circumstances once the initial, or any further, pilot ends.

#### ***Section 42: Meaning of ‘child’***

379. *Section 42* replaces section 55 of the Child Support Act 1991 to amend the definition of a child. Subsection (1) of section 55 increases the potential upper age limit of a child from up to the nineteenth birthday, to up to the twentieth birthday in prescribed circumstances. It is intended that this change will only apply to applications made under the new arrangements once they are introduced.
380. It is intended that the regulations will operate to re-align the definition of a child with that used in child benefit legislation following the Child Benefit Act 2005. Child Benefit can now be paid up to a person’s twentieth birthday (previously it stopped at the nineteenth birthday) and it is no longer confined to those in full-time non-advanced education, but is also payable for persons undertaking ‘approved training’.

#### ***Section 43: Extinction of liability in respect of interest and fees***

381. This section provides for the write off of outstanding liability in respect of interest and fees. Regulations under the Child Support Act 1991 made in 1992 introduced changes which meant that interest could be charged on arrears of maintenance, and that fees could be charged to parents using the CSA collection service. These regulations were revoked in 2001, and debt which built up as a result of parents not paying interest or fees will be extinguished.
382. *Paragraph (a)* provides that debt which accrued from interest charged under the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992, will be extinguished.
383. *Paragraph (b)* provides that debt which resulted from unpaid fees charged to parents under the Child Support Fees Regulations 1992 will be extinguished.

#### ***Section 44: Use of information***

384. This section introduces *Schedule 6* which sets out information sharing gateways. The gateways enable information to be supplied to the Commission by the Department for Work and Pensions, HMRC, and the Northern Ireland Department for use for the purpose of functions relating to child support. They also enable information held by the Commission, for the purposes of functions relating to child support, to be supplied to the Department for Work and Pensions, HMRC and Customs and the Northern Ireland Department for the purpose of specified functions for each of these Departments.

***Section 45: Liable relative provisions: exclusion of parental duty to maintain***

385. This section replaces subsection (3) and amends subsection (4) of section 105 of the Social Security Administration Act 1992 (“the Administration Act”).
386. **Section 105** provides that it is a criminal offence for a person to persistently refuse or neglect to maintain themselves or a person whom they are liable to maintain, if the result of that refusal or neglect is that income support is payable to or in respect of any of those persons. Section 78(6) of the Act provides that a person is liable to maintain their spouse or civil partner, their children and sponsored immigrants. Section 106 enables the Secretary of State to apply to a magistrates’ court to secure the recovery of benefit from a liable person who fails to maintain.
387. When income-based jobseekers allowance was introduced in 1996, the extent to which section 105 applied for that benefit was limited to failure to maintain spouses (and later, civil partners) only.
388. Under section 6 of the Child Support Act 1991 parents with care in receipt of income support or income-based jobseeker’s allowance were treated as having applied for child support maintenance. As a result, action to pursue maintenance for children under section 105, in order to offset income support expenditure, fell into disuse although it is still available to pursue spousal maintenance.
389. Since the Act provides for the repeal of section 6 of the Child Support Act 1991, parents with care claiming income support or income-based jobseeker’s allowance will no longer be treated as applying for child support maintenance and will have the freedom to make arrangements outside of the statutory scheme.
390. **Section 105**, as it currently stands, would allow the Department to pursue non-resident parents for child support maintenance where the person with care is in receipt of income support. The amendment to section 105 ensures that the legislation is consistent in its approach and allows parents to have a choice.
391. These amendments will result in a consistent approach to child support maintenance for both income support and income-based jobseeker’s allowance.