

# WELFARE REFORM ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Child maintenance**

##### ***Section 51: Disqualification for holding etc. driving licence or travel authorisation***

222. Sections 39B to 39G of the Child Support Act 1991 ('the 1991 Act') (inserted by section 27 of the Child Maintenance and Other Payments Act 2008) allow the Child Maintenance and Enforcement Commission ('the Commission') to apply to a court for an order disqualifying a person, who has arrears of child maintenance which the Commission is enforcing, from holding or obtaining a travel authorisation (a passport or ID card). This disqualification could be for a period of up to two years.
223. Section 40B of the 1991 Act allows the Commission to apply to a court for an order disqualifying a person from holding a driving licence. This disqualification could also be for a period of up to two years.
224. *Section 51 and Schedule 5* amend sections 39B to 39G to allow the Commission itself to make such orders, without having to apply to a court.
225. *Subsection (2)(a) of section 51* amends section 39B so that the Commission may make a disqualification order 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 person has wilfully refused or culpably neglected to pay maintenance.
226. *Subsection (2)(b)* substitutes subsections (3) to (13) of section 39B with *new subsections (3) to (8)*.
227. *New subsection (3)* provides that the person against whom an order is made will be subject to disqualification for holding or obtaining a driving licence and/or travel authorisation for the period the order has effect.
228. *New subsection (4)* requires the Commission, before making a disqualification order, to consider whether the non-resident parent requires a driving licence or travel authorisation in order to earn a living.
229. *New subsections (5) and (6)* set out that the disqualification order must specify the amount in respect of which it is made. This will be an aggregate of the amount stated in a liability order, or the amount that remains unpaid, and the costs incurred by the Commission in making the order.

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230. *New subsection (7) provides that the Commission must serve the person with a copy of the disqualification order, together with any order for costs made under new section 39DA(1).*
231. *New subsection (8) defines ‘driving licence’ and ‘travel authorisation’.*
232. *Section 51(3) amends section 39C of the 1991 Act, which concerns the duration of an order made under section 39B of that Act. This states that the duration of the order may not exceed 12 months, subject to any extension by the courts under new sections 39CA and 39CB.*
233. *Subsection (4) inserts new sections 39CA and 39CB. Section 39CA relates to the surrender of a driving licence or travel authorisation after the Commission has made a disqualification order.*
234. *Subsections (1) to (5) of new section 39CA provide that a person subject to such an order who holds a driving licence or travel authorisation document must surrender it in a prescribed manner to a prescribed person within a period of seven days starting on the date the order has effect, or has effect again following a period of suspension. If immediately before the end of the seven day period, the person who is subject to a disqualification order has presented good reason for not surrendering his or her driving licence or travel authorisation, that person will be allowed to surrender his or her documents as soon as is practicably possible after the end of the seven day period. Regulations will set out in what circumstances a person can, or cannot, be regarded as having good reasons. If the disqualification period ends or is suspended, the person will not be required to surrender the travel authorisation document.*
235. *Subsections (6) and (7) set out that a person who refuses to surrender his or her documents to the prescribed person will be committing an offence, and liable on summary conviction to a fine (currently not exceeding level 3 on the standard scale (£1000)).*
236. *Subsections (8) and (9) set out that where a person is sentenced for non-surrender of documentation under subsection (5), the court may extend the effective period of the original disqualification order. The effective period of the order, including any extension, may not exceed two years.*
237. *For the avoidance of doubt, subsection (10) sets out that ‘relevant document’ has the same meaning as in section 39 of the 1991 Act.*
238. *Subsection (11) makes clear that, prior to the coming into force of Schedule 3 to the Road Safety Act 2006, ‘relevant document’ includes a counterpart driving licence.*
239. *New section 39CB provides a right of appeal to the magistrates’ court (or, in Scotland, the sheriff) for a person against whom an order is made to disqualify him or her from holding or obtaining a travel authorisation.*
240. *Subsection (1) of section 39CB states that the period in which a person may appeal to a magistrates’ court (or, in Scotland, the sheriff) is to be prescribed by regulations, and that period begins with the first date the person has actual notice of the order.*
241. *Subsection (2) suspends the implementation of the order until the appeal has been determined, withdrawn or discontinued.*
242. *Subsections (3) and (4) allow the court to grant leave to appeal after the period specified in subsection (1) has expired and if other prescribed conditions are satisfied. If leave is granted, the court may suspend the order on such conditions as it thinks just.*
243. *Subsection (5) states that when an appeal is made to the court, the court will reconsider the original order, and may either affirm, vary or revoke the order.*

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244. *Subsection (6)* prevents a court, when hearing such an appeal, from questioning the liability order upon which an order for disqualification is made, or the maintenance calculation which is the basis of the liability order.
245. *Subsection (7)* prevents the court, when varying an order, from extending the order so that it has effect for more than two years in total.
246. Under *subsection (8)* if on appeal the court affirms or varies an order, the court can replace the amount specified in the order with an amount equal to the total of –
- the amount of arrears outstanding on the date the order is affirmed or varied;
  - the amount of costs specified in relation to the making of the order which are outstanding;
  - the amount of costs specified in relation to the appeal; and
  - if a liability order has been made since the disqualification order was made, any amount specified in the liability order which remains unpaid.
247. *Subsections (9) and (10)* lift the suspension of the order as soon as a court affirms or varies an order, unless the court considers that the suspension is justified for exceptional circumstances, or the non-resident parent has agreed to pay the amount specified in the order.
248. *Subsections (11) and (12)* provide that should the court revoke an order, it will also revoke the order for costs, unless, having regard to all the circumstances, it considers it reasonable to require the non-resident parent to pay the costs.
249. *Subsection (13)* defines ‘the court’ for the purposes of this section as –
- a magistrates’ court in relation to England and Wales;
  - the sheriff in relation to Scotland.
250. *Subsection (5) of section 51* inserts new *section 39DA* into the 1991 Act, which will allow the Commission, when making a disqualification order against a person, to make a further order requiring the person to pay an amount in respect of the Commission’s costs.
251. *Subsection (2) of new section 39DA* provides that where a person has appealed, and the court affirms or varies the disqualification order, the court shall also make an order for the amount of the costs incurred by the Commission in connection with the appeal.
252. *Subsection (3)* provides that where the court revokes a disqualification order, and it considers it reasonable in all the circumstances, it shall also make an order to require the person to pay an amount in respect of the Commission’s appeal costs.
253. *Subsection (4)* provides that any order for costs made under this section must specify the amount, which will be determined in accordance with regulations made by the Secretary of State.
254. Under *subsection (5)* the normal rules relating to the collection and enforcement of child maintenance will also apply to any amounts in respect of an order made under *section 39DA*.
255. *Subsection (6) of section 51* introduces *Schedule 5*, which contains consequential amendments to the 1991 Act and the Child Maintenance and Other Payments Act 2008.

***Section 52: Report on operation of driving licence amendments***

256. *Section 52* makes provision for the Commission to pilot, for a period of two years, the power to disqualify the non-resident parent from driving. *Section 52(1)* requires the Secretary of State to prepare and lay before Parliament a report on the operation of

the driving licence amendments during the ‘review period’. Under [section 52\(2\)](#) the ‘review period’ is the period of 24 months beginning with the day that the amendments relating to driving licences come into force. The report must be laid before parliament within six months of the end of the review period ([section 52\(3\)](#)).

257. At the end of the review period the Secretary of State must decide whether to continue to operate the amendments providing for the administrative removal of driving licences, or whether to restore the law to the existing position (namely, the court based removal of driving licences). Under [section 52\(4\)](#) and [\(5\)](#) the Secretary of State may make an order providing for the amendments to continue to have effect. This order shall be subject to affirmative resolution, and must be made within 30 days from the date on which the report is laid before parliament. Under [section 52\(6\)](#), if no order is made under [section 52\(4\)](#), the Secretary of State may make an order reinstating the law as it would have been but for the amendments. This order is to be made using the negative resolution procedure.

### ***Section 53: Report on operation of travel authorisation amendments***

258. [Section 53](#) makes the power to remove a travel authorisation subject to the same piloting regime as the power to order disqualification from driving in [section 52](#).

### ***Section 54: Payments of child support maintenance***

259. Section 29 of the 1991 Act provides a general power to make regulations as to the payment of child support maintenance. These regulations allow the Child Maintenance and Enforcement Commission (‘the Commission’) to specify the intervals at which payments are to be made, having regard to the circumstances and preferences indicated by the non-resident parent. Many non-resident parents prefer to pay calendar monthly, in line with when they receive earnings. Precisely matching payments to weekly liabilities may not be straightforward and may be unclear to parents.
260. [Section 54](#) amends section 29 of the 1991 Act, extending the provisions which may be made by regulations in relation to payments of child support maintenance. [Subsection \(2\)](#) allows for regulations making provision for determining the total amount of maintenance payments due in a reference period (a period of 52 weeks or, in some circumstances, a different period – see [subsection \(3\)](#)), and requiring payments to be made, by reference to that amount and that period, at prescribed intervals.
261. This will enable the notification of the maintenance calculation, issued to each parent to show an annual rather than weekly amount. Where the payment interval is to be monthly, the schedule of payments due will show 12 equal monthly amounts. It will therefore be much easier for the non-resident parent to see what payments are due to be made, on what date, and how they relate to the maintenance liability. This will also facilitate the making of payments by regular direct debit because the amounts will be the same each month. Annual amounts will be adjusted if a relevant change in circumstances occurs during the year, requiring a new weekly liability to be calculated.

### ***Section 55: Child support maintenance: offences relating to information***

262. [Section 55](#) amends section 14A of the Child Support Act 1991 (the 1991 Act), which deals with offences relating to the provision of information.
263. Section 14A(3A) of the 1991 Act currently provides that a person commits an offence if he or she fails to notify the Child Maintenance and Enforcement Commission of a change of address. [Section 55\(2\)](#) inserts a *new subsection (3A)*, which extends this offence to a failure to report other changes of circumstances. These other changes of circumstances will be specified in regulations made under the provisions of section 14(1) of the 1991 Act.

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264. Section 14A(2) of the 1991 Act provides that it is an offence for a person to knowingly make a false statement or representation or knowingly provide, or cause or allow to be provided, a document or other information which is false. *Section 55(3)* inserts *new subsections (6) to (8)* into section 14A of the 1991 Act, setting the time limit for bringing such a case to 12 months from the date the false information was provided. Currently section 127 of the Magistrates Courts Act 1980 and section 136 of the Criminal Procedure (Scotland) Act 1995 (in Scotland) limit the time in which a prosecution can be brought to 6 months. The amendment brings the time limits broadly in line with those for benefit fraud, and increases the likelihood of successful prosecutions under section 14A(2) of the 1991 Act due to the increased time in which the offence can be discovered and investigated by the prosecutor.