



# Child Maintenance and Other Payments Act 2008

## 2008 CHAPTER 6

### PART 3

#### CHILD SUPPORT ETC.

##### *Collection and enforcement*

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

In section 29 of the Child Support Act 1991 (c. 48) (under which payments of child support maintenance are to be made in accordance with regulations) at the end insert—

- “(4) If the regulations include provision for payment by means of deduction in accordance with an order under section 31, they must make provision—
- (a) for that method of payment not to be used in any case where there is good reason not to use it; and
  - (b) for the person against whom the order under section 31 would be made to have a right of appeal to a magistrates' court (or, in Scotland, to the sheriff) against a decision that the exclusion required by paragraph (a) does not apply.
- (5) On an appeal under regulations made under subsection (4)(b) the court or (as the case may be) the sheriff shall not question the maintenance calculation by reference to which the order under section 31 would be made.
- (6) Regulations under subsection (4)(b) may include—
- (a) provision with respect to the period within which a right of appeal under the regulations may be exercised;
  - (b) provision with respect to the powers of a magistrates' court (or, in Scotland, of the sheriff) in relation to an appeal under the regulations.

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*Changes to legislation: There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Cross Heading: Collection and enforcement. (See end of Document for details)*

- (7) If the regulations include provision for payment by means of deduction in accordance with an order under section 31, they may make provision—
- (a) prescribing matters which are, or are not, to be taken into account in determining whether there is good reason not to use that method of payment;
  - (b) prescribing circumstances in which good reason not to use that method of payment is, or is not, to be regarded as existing.”

#### Commencement Information

- II** [S. 20](#) wholly in force at 27.10.2008; [s. 20](#) not in force at Royal Assent see [s. 62](#); [s. 20](#) in force for certain purposes at 26.9.2008 and in force at 27.10.2008 for all other purposes by [S.I. 2008/25488](#), [art. 2\(a\)](#)

PROSPECTIVE

## 21 Deduction from earnings orders: the liable person's earnings

In section 31 of the Child Support Act 1991 (deduction from earnings orders), for subsection (8) substitute—

- “(8) In this section and section 32 “earnings” means (subject to such exceptions as may be prescribed) any sums payable to a person which fall within one or more of the following paragraphs—
- (a) sums payable by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service);
  - (b) periodical payments by way of pension (including an annuity payable for the purpose of providing a pension), whether or not in respect of past services;
  - (c) periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment;
  - (d) sums payable by way of statutory sick pay.
- (9) For the purposes of this section and section 32 any person who (as a principal and not as a servant or agent) pays to the liable person any earnings is to be treated as having the liable person in his employment; and the following are to be read accordingly—
- (a) in this section and section 32, references to the liable person's employer; and
  - (b) in section 32(3), “employment”, “employed” and “re-employed”.”

## 22 Orders for regular deductions from accounts

After section 32 of the Child Support Act 1991 (c. 48) insert—

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### **“32A Orders for regular deductions from accounts**

- (1) If in relation to any person it appears to the Commission—
  - (a) that the person has failed to pay an amount of child support maintenance; and
  - (b) that the person holds an account with a deposit-taker;it may make an order against that person to secure the payment of any amount due under the maintenance calculation in question by means of regular deductions from the account.
- (2) An order under this section may be made so as to secure the payment of—
  - (a) arrears of child support maintenance payable under the calculation;
  - (b) amounts of child support maintenance which will become payable under the calculation; or
  - (c) both such arrears and such future amounts.
- (3) An order under this section may be made in respect of amounts due under a maintenance calculation which is the subject of an appeal only if it appears to the Commission—
  - (a) that liability for the amounts would not be affected were the appeal to succeed; or
  - (b) where paragraph (a) does not apply, that the making of an order under this section in respect of the amounts would nonetheless be fair in all the circumstances.
- (4) An order under this section—
  - (a) may not be made in respect of an account of a prescribed description; and
  - (b) may be made in respect of a joint account which is held by the person against whom the order is made and one or more other persons, and which is not of a description prescribed under paragraph (a), if (but only if) regulations made by the Secretary of State so provide.
- (5) An order under this section—
  - (a) shall specify the account in respect of which it is made;
  - (b) shall be expressed to be directed at the deposit-taker with which the account is held; and
  - (c) shall have effect from such date as may be specified in the order.
- (6) An order under this section shall operate as an instruction to the deposit-taker at which it is directed to—
  - (a) make deductions from the amount (if any) standing to the credit of the account specified in the order; and
  - (b) pay the amount deducted to the Commission.
- (7) The Commission shall serve a copy of any order made under this section on—
  - (a) the deposit-taker at which it is directed;
  - (b) the person against whom it is made; and
  - (c) if the order is made in respect of a joint account, the other account-holders.

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- (8) Where—
- (a) an order under this section has been made; and
  - (b) a copy of the order has been served on the deposit-taker at which it is directed,
- it shall be the duty of that deposit-taker to comply with the order; but the deposit-taker shall not be under any liability for non-compliance before the end of the period of 7 days beginning with the day on which the copy was served on the deposit-taker.
- (9) Where regulations have been made under section 29(3)(a), a person liable to pay an amount of child support maintenance is to be taken for the purposes of this section to have failed to pay an amount of child support maintenance unless it is paid to or through the person specified in, or by virtue of, the regulations for the case in question.

### **32B Orders under section 32A: joint accounts**

- (1) Before making an order under section 32A in respect of a joint account the Commission shall offer each of the account-holders an opportunity to make representations about—
  - (a) the proposal to make the order; and
  - (b) the amounts to be deducted under the order, if it is made.
- (2) The amounts to be deducted from a joint account under such an order shall not exceed the amounts that appear to the Commission to be fair in all the circumstances.
- (3) In determining those amounts the Commission shall have particular regard to—
  - (a) any representations made in accordance with subsection (1)(b);
  - (b) the amount contributed to the account by each of the account-holders; and
  - (c) such other matters as may be prescribed.

### **32C Regulations about orders under section 32A**

- (1) The Secretary of State may by regulations make provision with respect to orders under section 32A.
- (2) Regulations under subsection (1) may, in particular, make provision—
  - (a) requiring an order to specify the amount or amounts in respect of which it is made;
  - (b) requiring an order to specify the amounts which are to be deducted under it in order to meet liabilities under the maintenance calculation in question;
  - (c) requiring an order to specify the dates on which deductions are to be made under it;
  - (d) for the rate of deduction under an order not to exceed such rate as may be specified in, or determined in accordance with, the regulations;
  - (e) as to circumstances in which amounts standing to the credit of an account are to be disregarded for the purposes of section 32A;
  - (f) as to the payment of sums deducted under an order to the Commission;

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- (g) allowing the deposit-taker at which an order is directed to deduct from the amount standing to the credit of the account specified in the order a prescribed amount towards its administrative costs before making any deduction required by section 32A(6)(a);
  - (h) with respect to notifications to be given to the person against whom an order is made (and, in the case of an order made in respect of a joint account, to the other account-holders) of amounts deducted, and amounts paid, under the order;
  - (i) requiring the deposit-taker at which an order is directed to notify the Commission in the prescribed manner and within a prescribed period—
    - (i) if the account specified in the order does not exist at the time at which the order is served on the deposit-taker;
    - (ii) of any other accounts held with the deposit-taker at that time by the person against whom the order is made;
  - (j) requiring the deposit-taker at which an order is directed to notify the Commission in the prescribed manner and within a prescribed period if, after the time at which the order is served on the deposit-taker—
    - (i) the account specified in the order is closed;
    - (ii) a new account of any description is opened with the deposit-taker by the person against whom the order is made;
  - (k) as to circumstances in which the deposit-taker at which an order is directed, the person against whom the order is made and (in the case of an order made in respect of a joint account) the other account-holders may apply to the Commission for it to review the order and as to such a review;
    - (l) for the variation of orders;
  - (m) similar to that made by section 32A(8), in relation to any variation of an order;
  - (n) for an order to lapse in such circumstances as may be prescribed;
  - (o) as to the revival of an order in such circumstances as may be prescribed;
  - (p) allowing or requiring an order to be discharged;
  - (q) as to the giving of notice by the Commission to the deposit-taker that an order has lapsed or ceased to have effect.
- (3) The Secretary of State may by regulations make provision with respect to priority as between an order under section 32A and—
- (a) any other order under that section;
  - (b) any order under any other enactment relating to England and Wales which provides for deductions from the same account;
  - (c) any diligence done in Scotland against the same account.
- (4) The Secretary of State shall by regulations make provision for any person affected to have a right to appeal to a court—
- (a) against the making of an order under section 32A;
  - (b) against any decision made by the Commission on an application under regulations made under subsection (2)(k).
- (5) On an appeal under regulations made under subsection (4)(a), the court shall not question the maintenance calculation by reference to which the order was made.

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- (6) Regulations under subsection (4) may include—
- (a) provision with respect to the period within which a right of appeal under the regulations may be exercised;
  - (b) provision with respect to the powers of the court to which the appeal under the regulations lies.

### **32D Orders under section 32A: offences**

- (1) A person who fails to comply with the requirements of—
- (a) an order under section 32A, or
  - (b) any regulation under section 32C which is designated by the regulations for the purposes of this paragraph,
- commits an offence.
- (2) It shall be a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable steps to comply with the requirements in question.
- (3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level two on the standard scale.”

#### **Commencement Information**

- I2** S. 22 wholly in force at 3.8.2009; s. 22 not in force at Royal Assent see s. 62; s. 22 in force at 1.6.2009 for specified purposes and in force at 3.8.2009 for all other purposes by S.I. 2009/1314, art. 2(1)(a)

## **23 Lump sum deduction orders**

After section 32D of the Child Support Act 1991 (c. 48) (inserted by section 22 of this Act) insert—

### **“32E Lump sum deductions: interim orders**

- (1) The Commission may make an order under this section if it appears to the Commission that a person (referred to in this section and sections 32F to 32J as “the liable person”) has failed to pay an amount of child support maintenance and—
- (a) an amount stands to the credit of an account held by the liable person with a deposit-taker; or
  - (b) an amount not within paragraph (a) that is of a prescribed description is due or accruing to the liable person from another person (referred to in this section and sections 32F to 32J as the “third party”).
- (2) An order under this section—
- (a) may not be made by virtue of subsection (1)(a) in respect of an account of a prescribed description; and
  - (b) may be made by virtue of subsection (1)(a) in respect of a joint account which is held by the liable person and one or more other persons, and which is not of a description prescribed under paragraph (a) of this

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subsection, if (but only if) regulations made by the Secretary of State so provide.

- (3) The Secretary of State may by regulations make provision as to conditions that are to be disregarded in determining whether an amount is due or accruing to the liable person for the purposes of subsection (1)(b).
- (4) An order under this section—
  - (a) shall be expressed to be directed at the deposit-taker or third party in question;
  - (b) if made by virtue of subsection (1)(a), shall specify the account in respect of which it is made; and
  - (c) shall specify the amount of arrears of child support maintenance in respect of which the Commission proposes to make an order under section 32F.
- (5) An order under this section may specify an amount of arrears due under a maintenance calculation which is the subject of an appeal only if it appears to the Commission—
  - (a) that liability for the amount would not be affected were the appeal to succeed; or
  - (b) where paragraph (a) does not apply, that the making of an order under section 32F in respect of the amount would nonetheless be fair in all the circumstances.
- (6) The Commission shall serve a copy of any order made under this section on—
  - (a) the deposit-taker or third party at which it is directed;
  - (b) the liable person; and
  - (c) if the order is made in respect of a joint account, the other account-holders.
- (7) An order under this section shall come into force at the time at which it is served on the deposit-taker or third party at which it is directed.
- (8) An order under this section shall cease to be in force at the earliest of the following—
  - (a) the time at which the prescribed period ends;
  - (b) the time at which the order under this section lapses or is discharged; and
  - (c) the time at which an order under section 32F made in pursuance of the proposal specified in the order under this section is served on the deposit-taker or third party at which that order is directed.
- (9) Where regulations have been made under section 29(3)(a), a person liable to pay an amount of child support maintenance is to be taken for the purposes of this section to have failed to pay the amount unless it is paid to or through the person specified in, or by virtue of, the regulations for the case in question.

### **32F Lump sum deductions: final orders**

- (1) The Commission may make an order under this section in pursuance of a proposal specified in an order under section 32E if—

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- (a) the order in which the proposal was specified (“the interim order”) is in force;
  - (b) the period prescribed for the making of representations to the Commission in respect of the proposal specified in the interim order has expired; and
  - (c) the Commission has considered any representations made to it during that period.
- (2) An order under this section—
- (a) shall be expressed to be directed at the deposit-taker or third party at which the interim order was directed;
  - (b) if the interim order was made by virtue of section 32E(1)(a), shall specify the account specified in the interim order; and
  - (c) shall specify the amount of arrears of child support maintenance in respect of which it is made.
- (3) The amount so specified—
- (a) shall not exceed the amount of arrears specified in the interim order which remain unpaid at the time at which the order under this section is made; and
  - (b) if the order is made in respect of a joint account, shall not exceed the amount that appears to the Commission to be fair in all the circumstances.
- (4) In determining the amount to be specified in an order made in respect of a joint account the Commission shall have particular regard—
- (a) to the amount contributed to the account by each of the account-holders; and
  - (b) to such other matters as may be prescribed.
- (5) An order under this section may specify an amount of arrears due under a maintenance calculation which is the subject of an appeal only if it appears to the Commission—
- (a) that liability for the amount would not be affected were the appeal to succeed; or
  - (b) where paragraph (a) does not apply, that the making of an order under this section in respect of the amount would nonetheless be fair in all the circumstances.
- (6) The Commission shall serve a copy of any order made under this section on—
- (a) the deposit-taker or third party at which it is directed;
  - (b) the liable person; and
  - (c) if the order is made in respect of a joint account, the other account-holders.

### **32G Orders under sections 32E and 32F: freezing of accounts etc.**

- (1) During the relevant period, an order under section 32E or 32F which specifies an account held with a deposit-taker shall operate as an instruction to the deposit-taker not to do anything that would reduce the amount standing to the credit of the account below the amount specified in the order (or, if already below that amount, that would further reduce it).



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- (2) During the relevant period, any other order under section 32E or 32F shall operate as an instruction to the third party at which it is directed not to do anything that would reduce the amount due to the liable person below the amount specified in the order (or, if already below that amount, that would further reduce it).
- (3) Subsections (1) and (2) have effect subject to regulations made under section 32I(1).
- (4) In this section “the relevant period”, in relation to an order under section 32E, means the period during which the order is in force.
- (5) In this section and section 32H “the relevant period”, in relation to an order under section 32F, means the period which—
  - (a) begins with the service of the order on the deposit-taker or third party at which it is directed; and
  - (b) (subject to subsection (6)) ends with the end of the period during which an appeal can be brought against the order by virtue of regulations under section 32J(5).
- (6) If an appeal is brought by virtue of the regulations, the relevant period ends at the time at which—
  - (a) proceedings on the appeal (including any proceedings on a further appeal) have been concluded; and
  - (b) any period during which a further appeal may ordinarily be brought has ended.
- (7) References in this section and sections 32H and 32J to the amount due to the liable person are to be read as references to the total of any amounts within section 32E(1)(b) that are due or accruing to the liable person from the third party in question.

### **32H Orders under section 32F: deductions and payments**

- (1) Once the relevant period has ended, an order under section 32F which specifies an account held with a deposit-taker shall operate as an instruction to the deposit-taker—
  - (a) if the amount standing to the credit of the account is less than the remaining amount, to pay to the Commission the amount standing to the credit of the account; and
  - (b) otherwise, to deduct from the account and pay to the Commission the remaining amount.
- (2) If an amount of arrears specified in the order remains unpaid after any payment required by subsection (1) has been made, the order shall operate until the relevant time as an instruction to the deposit-taker—
  - (a) to pay to the Commission any amount (not exceeding the remaining amount) standing to the credit of the account specified in the order; and
  - (b) not to do anything else that would reduce the amount standing to the credit of the account.
- (3) Once the relevant period has ended, any other order under section 32F shall operate as an instruction to the third party at which it is directed—

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- (a) if the amount due to the liable person is less than the remaining amount, to pay to the Commission the amount due to the liable person; and
  - (b) otherwise, to deduct from the amount due to the liable person and pay to the Commission the remaining amount.
- (4) If an amount of arrears specified in the order remains unpaid after any payment required by subsection (3) has been made, the order shall operate until the relevant time as an instruction to the third party—
- (a) to pay to the Commission any amount (not exceeding the remaining amount) due to the liable person; and
  - (b) not to do anything else that would reduce any amount due to the liable person.
- (5) This section has effect subject to regulations made under sections 32I(1) and 32J(2)(c).
- (6) In this section—
- “the relevant time” means the earliest of the following—
- (a) the time at which the remaining amount is paid;
  - (b) the time at which the order lapses or is discharged; and
  - (c) the time at which a prescribed event occurs or prescribed circumstances arise;
- “the remaining amount”, in relation to any time, means the amount of arrears specified in the order under section 32F which remains unpaid at that time.

### **32I Power to disapply sections 32G(1) and (2) and 32H(2)(b) and (4)(b)**

- (1) The Secretary of State may by regulations make provision as to circumstances in which things that would otherwise be in breach of sections 32G(1) and (2) and 32H(2)(b) and (4)(b) may be done.
- (2) Regulations under subsection (1) may require the Commission's consent to be obtained in prescribed circumstances.
- (3) Regulations under subsection (1) which require the Commission's consent to be obtained may provide for an application for that consent to be made—
  - (a) by the deposit-taker or third party at which the order under section 32E or 32F is directed;
  - (b) by the liable person; and
  - (c) if the order is made in respect of a joint account, by any of the other account-holders.
- (4) If regulations under subsection (1) require the Commission's consent to be obtained, the Secretary of State shall by regulations provide for a person of a prescribed description to have a right of appeal to a court against the withholding of that consent.
- (5) Regulations under subsection (4) may include—
  - (a) provision with respect to the period within which a right of appeal under the regulations may be exercised;
  - (b) provision with respect to the powers of the court to which the appeal under the regulations lies.

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### **32J Regulations about orders under section 32E or 32F**

- (1) The Secretary of State may by regulations make provision with respect to orders under section 32E or 32F.
- (2) The regulations may, in particular, make provision—
  - (a) as to circumstances in which amounts standing to the credit of an account are to be disregarded for the purposes of sections 32E, 32G and 32H;
  - (b) as to the payment to the Commission of sums deducted under an order under section 32F;
  - (c) allowing a deposit-taker or third party at which an order under section 32F is directed to deduct from the amount standing to the credit of the account specified in the order, or due to the liable person, a prescribed amount towards its administrative costs before making any payment to the Commission required by section 32H;
  - (d) with respect to notifications to be given to the liable person (and, in the case of an order made in respect of a joint account, to the other account-holders) as to amounts deducted, and amounts paid, under an order under section 32F;
  - (e) requiring a deposit-taker or third party at which an order under section 32E or 32F is directed to supply information of a prescribed description to the Commission, or to notify the Commission if a prescribed event occurs or prescribed circumstances arise;
  - (f) for the variation of an order under section 32E or 32F;
  - (g) for an order under section 32E or 32F to lapse in such circumstances as may be prescribed;
  - (h) as to the revival of an order under section 32E or 32F in such circumstances as may be prescribed;
  - (i) allowing or requiring an order under section 32E or 32F to be discharged.
- (3) Where regulations under subsection (1) make provision for the variation of an order under section 32E or 32F, the power to vary the order shall not be exercised so as to increase the amount of arrears of child support maintenance specified in the order.
- (4) The Secretary of State may by regulations make provision with respect to priority as between an order under section 32F and—
  - (a) any other order under that section;
  - (b) any order under any other enactment relating to England and Wales which provides for payments to be made from amounts to which the order under section 32F relates;
  - (c) any diligence done in Scotland against amounts to which the order under section 32F relates.
- (5) The Secretary of State shall by regulations make provision for any person affected by an order under section 32F to have a right to appeal to a court against the making of the order.

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- (6) On an appeal under regulations under subsection (5), the court shall not question the maintenance calculation by reference to which the order under section 32F was made.
- (7) Regulations under subsection (5) may include—
- (a) provision with respect to the period within which a right of appeal under the regulations may be exercised;
  - (b) provision with respect to the powers of the court to which the appeal under the regulations lies.

### **32K Lump sum deduction orders: offences**

- (1) A person who fails to comply with the requirements of—
- (a) an order under section 32E or 32F; or
  - (b) any regulation under section 32J which is designated by the regulations for the purposes of this paragraph,
- commits an offence.
- (2) It shall be a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable steps to comply with the requirements in question.
- (3) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level two on the standard scale.”

#### **Commencement Information**

**I3** S. 23 wholly in force at 3.8.2009; s. 23 not in force at Royal Assent see s. 62; s. 23 in force at 1.6.2009 for specified purposes and in force at 3.8.2009 for all other purposes by S.I. 2009/1314, art. 2(1)(a)

## **24 Orders preventing avoidance**

After section 32K of the Child Support Act 1991 (inserted by section 23 of this Act) insert—

### **“32L Orders preventing avoidance**

- (1) The Commission may apply to the court, on the grounds that a person—
- (a) has failed to pay an amount of child support maintenance, and
  - (b) with the intention of avoiding payment of child support maintenance, is about to make a disposition or to transfer out of the jurisdiction or otherwise deal with any property,
- for an order restraining or, in Scotland, interdicting the person from doing so.
- (2) The Commission may apply to the court, on the grounds that a person—
- (a) has failed to pay an amount of child support maintenance, and
  - (b) with the intention of avoiding payment of child support maintenance, has at any time made a reviewable disposition,
- for an order setting aside or, in Scotland, reducing the disposition.

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- (3) If the court is satisfied of the grounds mentioned in subsection (1) or (2) it may make an order under that subsection.
- (4) Where the court makes an order under subsection (1) or (2) it may make such consequential provision by order or directions as it thinks fit for giving effect to the order (including provision requiring the making of any payments or the disposal of any property).
- (5) Any disposition is a reviewable disposition for the purposes of subsection (2), unless it was made for valuable or, in Scotland, adequate consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of an intention to avoid payment of child support maintenance.
- (6) Subsection (7) applies where an application is made under this section with respect to—
  - (a) a disposition or other dealing with property which is about to take place, or
  - (b) a disposition which took place after the making of the application on which the maintenance calculation concerned was made.
- (7) If the court is satisfied—
  - (a) in a case falling within subsection (1), that the disposition or other dealing would (apart from this section) have the consequence of making ineffective a step that has been or may be taken to recover the amount outstanding, or
  - (b) in a case falling within subsection (2), that the disposition has had that consequence,it is to be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of avoiding payment of child support maintenance.
- (8) In this section “disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.
- (9) This section does not apply to a disposition made before the coming into force of section 24 of the Child Maintenance and Other Payments Act 2008.
- (10) In this section “the court” means—
  - (a) in relation to England and Wales, the High Court;
  - (b) in relation to Scotland, the Court of Session or the sheriff.
- (11) An order under this section interdicting a person—
  - (a) is effective for such period (including an indefinite period) as the order may specify;
  - (b) may, on application to the court, be varied or recalled.”

*Status: This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Cross Heading: Collection and enforcement. (See end of Document for details)*

PROSPECTIVE

## 25 Administrative liability orders

After section 32L of the Child Support Act 1991 (c. 48) (inserted by section 24 of this Act) insert—

### “32M Liability orders

- (1) If it appears to the [<sup>F1</sup>Secretary of State] that a person has failed to pay an amount of child support maintenance, [<sup>F2</sup>the Secretary of State] may make an order against the person in respect of that amount.
- (2) An order under subsection (1) (a “liability order”) may be made in respect of an amount due under a maintenance calculation which is the subject of an appeal only if it appears to the [<sup>F3</sup>Secretary of State]—
  - (a) that liability for the amount would not be affected were the appeal to succeed, or
  - (b) where paragraph (a) does not apply, that the making of a liability order in respect of the amount would nonetheless be fair in all the circumstances.
- (3) A liability order shall not come into force before—
  - (a) the end of the period during which an appeal can be brought under section 20 against the making of the order, and
  - (b) if an appeal is brought under section 20, the time at which proceedings on the appeal (including any proceedings on a further appeal) have been concluded and any period during which a further appeal may ordinarily be brought has ended.
- (4) Where regulations have been made under section 29(3)(a), a person liable to pay an amount of child support maintenance is to be taken for the purposes of this section to have failed to pay the amount, unless it is paid to or through the person specified in, or by virtue of, the regulations for the case in question.

### 32N Regulations about liability orders

- (1) The Secretary of State may by regulations make provision with respect to liability orders.
- (2) Regulations under subsection (1) may, in particular—
  - (a) make provision about the form and content of a liability order;
  - (b) make provision for a liability order not to come into force if, before it does so, the whole of the amount in respect of which it is made is paid;
  - (c) make provision for the discharge of a liability order;
  - (d) make provision for the revival of a liability order in prescribed circumstances.”

*Status:* This version of this cross heading contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Cross Heading: Collection and enforcement. (See end of Document for details)

### Textual Amendments

- F1** Words in s. 25 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 79(2)**
- F2** Words in s. 25 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 79(2)**
- F3** Words in s. 25 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 79(3)**

## PROSPECTIVE

### 26 Enforcement in county courts

In section 36 of the Child Support Act 1991 (enforcement in county courts), in subsection (1) (under which the amount in respect of which a liability order is made is recoverable by a third party debt order or charging order as if it were payable under a county court order, but only if a county court so orders), the words “, if a county court so orders,” are omitted.

### 27 Disqualification for holding or obtaining travel authorisation

Before section 40 of the Child Support Act 1991 (c. 48) insert—

#### “39B Disqualification for holding or obtaining travel authorisation

- (1) The [<sup>F4</sup>Secretary of State] may apply to the court for an order under this section against a person where—
- [<sup>F5</sup>the Secretary of State] has sought to recover an amount from the person by means of taking enforcement action by virtue of section 35 or 38, or by means of a third party debt order or a charging order by virtue of section 36;
  - the whole or any part of the amount remains unpaid; and
  - the [<sup>F4</sup>Secretary of State] is of the opinion that there has been wilful refusal or culpable neglect on the part of the person.
- (2) For the purposes of subsection (1)(a), the [<sup>F6</sup>Secretary of State] is to be taken to have sought to recover an amount by means of a charging order if an interim charging order has been made, whether or not any further steps have been taken to recover the amount.
- (3) A person against whom an order under this section is made is disqualified for holding or obtaining a travel authorisation while the order has effect.
- (4) On an application under subsection (1) for an order against a person the court shall (in the presence of that person) inquire as to—
- whether the person needs a travel authorisation to earn a living;
  - the person's means;

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- (c) whether there has been wilful refusal or culpable neglect on the part of the person.
- (5) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the person, it may make an order under this section.
- (6) The court may not take action under both this section and section 40.
- (7) On an application under subsection (1) the court shall not question—
  - (a) the liability order by reference to which the [F6Secretary of State] acted as mentioned in paragraph (a) of that subsection; or
  - (b) the maintenance calculation by reference to which that liability order was made.
- (8) An order under this section shall specify the amount in respect of which it is made, which shall be the aggregate of—
  - (a) the amount sought to be recovered as mentioned in subsection (1)(a), or so much of it as remains unpaid; and
  - (b) an amount (determined in accordance with regulations made by the Secretary of State) in respect of the costs of the application under this section.
- (9) A court which makes an order under this section shall require the person to whom it relates to produce any travel authorisation that the person holds.
- (10) The court shall send to the prescribed person any travel authorisation produced to the court under subsection (9).
- (11) Where a court—
  - (a) makes an order under this section, or
  - (b) allows an appeal against such an order,
 it shall send notice of that fact to the [F6Secretary of State]; and the notice shall contain such particulars and be sent in such manner and to such address as the [F6Secretary of State] may determine.
- (12) In this section “travel authorisation” means—
  - (a) a United Kingdom passport (within the meaning of the Immigration Act 1971);
  - (b) 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.
- (13) In this section (except for the purposes of subsection (11)(b)) and in sections 39C to 39E, “court” means—
  - (a) in relation to England and Wales, a magistrates' court;
  - (b) in relation to Scotland, the sheriff.

### **39C Period for which orders under section 39B are to have effect**

- (1) Disqualification by an order under section 39B shall be for such period not exceeding two years as the court may specify in the order.



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- (2) On making an order under section 39B, the court may include in the order provision suspending the running of the period for which the order is to have effect until such day and on such conditions (if any) as the court thinks just.
- (3) After making such an order the court may by order suspend the running of the period for which it has effect until such day and on such conditions (if any) as the court thinks just.
- (4) The powers conferred by subsections (2) and (3) may be exercised by the court only—
  - (a) if the person against whom the order under section 39B is made agrees to pay the amount specified in the order; or
  - (b) if the court is satisfied that the suspension in question is justified by exceptional circumstances.
- (5) The [<sup>F7</sup>Secretary of State] may make a further application under section 39B if the amount specified in an order under that section has not been paid in full by the end of the period for which the order has effect.

#### **39D Power to order search**

- (1) On making an order under section 39B the court may order the person against whom the order is made to be searched.
- (2) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the amount specified under section 39B(8); and the balance (if any) shall be returned to the person searched.
- (3) The court shall not allow the application under subsection (2) of money found on a search under subsection (1) if it is satisfied that the money does not belong to the person searched.

#### **39E Variation and revocation of orders following payment**

- (1) If part of the amount specified in an order under section 39B is paid to any person authorised to receive it, the court may, on an application made by the [<sup>F8</sup>Secretary of State] or the person against whom the order is made, by order—
  - (a) reduce the period for which the order under section 39B is to have effect; or
  - (b) revoke the order under section 39B.
- (2) If the whole of the amount specified in an order under section 39B is paid to any person authorised to receive it, the court shall, on an application made by the [<sup>F8</sup>Secretary of State] or the person against whom the order is made, by order revoke the order under section 39B.
- (3) The [<sup>F8</sup>Secretary of State] may make representations to the court as to the amount which should be paid before it would be appropriate to make an order under subsection (1) revoking an order under section 39B, and the person against whom the order was made may reply to those representations.
- (4) The court may exercise the powers conferred on it by subsection (1) or (2) without the need for an application where money found on a search under

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section 39D(1) is applied towards payment of the amount specified in the order under section 39B.

- (5) Where a court makes an order under this section, it shall send notice of that fact to the [<sup>F8</sup>Secretary of State]; and the notice shall contain such particulars and be sent in such manner and to such address as the [<sup>F8</sup>Secretary of State] may determine.

### 39F Power to make supplementary provision

The Secretary of State may by regulations—

- (a) make provision in relation to orders under section 39B corresponding to the provision that may be made under section 40(11);
- (b) make provision for sections 39C to 39E to have effect with prescribed modifications in cases where a person against whom an order under section 39B has effect is outside the United Kingdom.

### 39G Application of sections 39B and 39F to Scotland

- (1) In their application to Scotland, sections 39B and 39F have effect with the following modifications.
- (2) In section 39B(6) for “section 40” substitute “ section 40A ”.
- (3) For section 39F substitute—

#### “39F Power to make supplementary provision

In relation to orders under section 39B—

- (a) the Secretary of State may by regulations make provision—
  - (i) for sections 39C to 39E to have effect with prescribed modifications in cases where a person against whom such an order has effect is outside the United Kingdom;
  - (ii) that a statement in writing to the effect that wages of any amount have been paid to a person during any period, purporting to be signed by or on behalf of the person's employer, shall be sufficient evidence of the facts stated; and
- (b) 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 corresponding to that which may be made by virtue of section 40A(8).”

#### Textual Amendments

- F4** Words in s. 27 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 80(2)(a)**

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- F5** Word in s. 27 substituted (1.8.2012) by The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), art. 3(2), **Sch. para. 80(2)(a)**
- F6** Words in s. 27 substituted (1.8.2012) by The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), art. 3(2), **Sch. para. 80(2)(b)**
- F7** Words in s. 27 substituted (1.8.2012) by The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), art. 3(2), **Sch. para. 80(3)**
- F8** Words in s. 27 substituted (1.8.2012) by The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), art. 3(2), **Sch. para. 80(4)**

#### Commencement Information

- I4** S. 27 in force at 29.11.2018 for specified purposes by S.I. 2018/1261, **art. 2(a)**
- I5** S. 27 in force at 14.12.2018 in so far as not already in force by S.I. 2018/1261, **art. 2(b)**

PROSPECTIVE

## 28 Curfew orders

After section 39G of the Child Support Act 1991 (c. 48) (inserted by section 27 of this Act) insert—

### “39H Applications for curfew orders

- (1) The [<sup>F9</sup>Secretary of State] may apply to the court for an order requiring a person to remain, for periods specified in the order, at a place so specified (a “curfew order”) where—
- (a) [<sup>F10</sup>the Secretary of State] has sought to recover an amount from the person by means of taking enforcement action by virtue of section 35 or 38, or by means of a third party debt order or a charging order by virtue of section 36;
- (b) the whole or any part of the amount remains unpaid; and
- (c) the [<sup>F9</sup>Secretary of State] is of the opinion that there has been wilful refusal or culpable neglect on the part of the person.
- (2) For the purposes of subsection (1)(a), the [<sup>F11</sup>Secretary of State] is to be taken to have sought to recover an amount by means of a charging order if an interim charging order has been made, whether or not any further steps have been taken to recover the amount.
- (3) On an application for a curfew order the court shall (in the presence of the person from whom the [<sup>F11</sup>Secretary of State] has sought to recover the amount) inquire as to—
- (a) the person's means; and
- (b) whether there has been wilful refusal or culpable neglect on the part of the person.
- (4) On an application for a curfew order the court shall not question—

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- (a) the liability order by reference to which the [F11Secretary of State] acted as mentioned in subsection (1)(a); or
  - (b) the maintenance calculation by reference to which that liability order was made.
- (5) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom the [F11Secretary of State] has sought to recover the amount, it may make a curfew order against the person.
- (6) The court may not make a curfew order against a person who is under the age of 18.
- (7) In this section and sections 39I to 39O “the court” means—
- (a) in England and Wales, a magistrates' court;
  - (b) in Scotland, the sheriff.

### **39I Curfew orders: duration etc.**

- (1) The periods and places specified as mentioned in section 39H(1) may include different periods and different places for different days, but shall not include periods which amount to less than 2 hours or more than 12 hours in any one day.
- (2) A curfew order shall specify the period for which the requirements imposed by the order shall have effect.
- (3) The period so specified—
  - (a) shall not exceed 6 months; and
  - (b) shall begin to run with the day on which the order is made unless the order provides (subject to such conditions, if any, as may be specified in the order) for it to begin to run with a later day.
- (4) The court shall (so far as practicable) ensure that any requirement imposed by a curfew order is such as to avoid—
  - (a) any conflict with the religious beliefs of the person against whom the order is made; and
  - (b) any interference with the times (if any) at which that person normally works or attends any educational establishment.
- (5) On making a curfew order—
  - (a) a magistrates' court may not specify in the order any place outside England and Wales; and
  - (b) the sheriff may not specify in the order any place outside Scotland.

### **39J Recovery of costs relating to curfew orders**

- (1) On making a curfew order the court shall also make an order requiring the person against whom the curfew order is made to pay an amount (determined in accordance with regulations made by the Secretary of State) specified in the order in respect of—
  - (a) the costs of the application for the curfew order; and

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(b) the costs of monitoring compliance with the requirements imposed by the curfew order.

(2) The provisions of this Act with respect to—

(a) the collection of child support maintenance; and

(b) the enforcement of an obligation to pay child support maintenance, apply equally (with any necessary modifications) to amounts which a person is required to pay by an order under this section.

### **39K Curfew orders: the amount due**

(1) A curfew order shall specify the amount in respect of which it is made, which shall be the aggregate of—

(a) the amount sought to be recovered as mentioned in section 39H(1) (a), or so much of it as remains unpaid; and

(b) the amount which the person against whom the curfew order is made is required to pay by the order under section 39J.

(2) If part of the amount in respect of which a curfew order was made is paid to any person authorised to receive it, the court may, on an application by the [F12Secretary of State] or the person against whom the curfew order was made, by order—

(a) reduce the period for which the requirements imposed by the curfew order have effect;

(b) provide for that period to begin to run with a day later than that with which it would otherwise have begun to run;

(c) suspend the running of that period, or provide for any existing such suspension to be extended, until a day specified in the order; or

(d) revoke the curfew order.

(3) An order under subsection (2)(b) or (c) may include provision for its effect to be subject to specified conditions.

(4) On the hearing of an application made under subsection (2) the [F12Secretary of State] may make representations to the court as to which of the powers conferred by that subsection it would be appropriate for the court to exercise, and the person against whom the curfew order was made may reply to those representations.

(5) If the whole of the amount in respect of which a curfew order was made is paid to any person authorised to receive it, the court shall, on an application by the [F12Secretary of State] or the person against whom the order was made, by order revoke the curfew order.

(6) The [F12Secretary of State] may make a further application under section 39H if the amount in respect of which a curfew order was made has not been paid in full when the requirements imposed by the order cease to have effect.

### **39L Power to order search**

(1) On making a curfew order, the court may order the person against whom the order is made to be searched.

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- (2) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the amount in respect of which the curfew order is made; and the balance (if any) shall be returned to the person searched.
- (3) The court shall not allow the application under subsection (2) of money found on a search under this section if it is satisfied that the money does not belong to the person searched.
- (4) The court may exercise the powers conferred on it by section 39K(2) and (5) without the need for an application where money found on a search under this section is applied towards payment of the amount in respect of which a curfew order is made.

### **39M Monitoring of curfew orders**

- (1) A curfew order shall—
  - (a) provide for a person's compliance with the requirements imposed by the order to be monitored; and
  - (b) make a person specified in the order responsible for that monitoring.
- (2) The court may not make a curfew order unless—
  - (a) it has been notified by the [<sup>F13</sup>Secretary of State] that arrangements for monitoring compliance with the requirements imposed by such orders are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn;
  - (b) it is satisfied that the necessary provision can be made under those arrangements; and
  - (c) it has the consent of any person (other than the person against whom the order is to be made) whose co-operation is necessary to secure the monitoring of compliance with the requirements imposed by the order.
- (3) If a curfew order cannot be made because of the absence of any consent required by subsection (2)(c), the court may treat the application for the order as an application under section 40 (or, in the case of an application made to the sheriff, as an application under section 40A).
- (4) The Secretary of State may by regulations make provision as to—
  - (a) the cases or circumstances in which the person responsible for monitoring a person's compliance with the requirements imposed by a curfew order may allow that person to be absent from the place specified in the curfew order during a period so specified; and
  - (b) the requirements which may be imposed in connection with such an absence.

### **39N Breaches of curfew orders**

- (1) The person responsible for monitoring a person's compliance with the requirements imposed by a curfew order, or the [<sup>F14</sup>Secretary of State], may apply to the court where it appears that the person subject to the requirements in question has failed to comply with—
  - (a) any of those requirements; or

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- (b) any requirements imposed by virtue of section 39M(4).
- (2) On any such application the court shall (in the presence of the person subject to the requirements in question) inquire as to whether the person has failed without reasonable excuse to comply with any of those requirements.
- (3) If the court is of the opinion that the person has failed without reasonable excuse to comply with any of those requirements, it may—
- (a) issue a warrant of commitment against that person; or
  - (b) by order provide for the requirements imposed by the curfew order to have effect for a specified further period.
- (4) A warrant issued under subsection (3)(a) shall order the person against whom it is issued—
- (a) to be imprisoned for a period specified in the warrant; but
  - (b) to be released (unless in custody for some other reason) on payment of the amount in respect of which the curfew order in question was made.
- (5) A warrant issued under subsection (3)(a) may be directed to such person or persons as the court issuing it thinks fit.
- (6) The power conferred by subsection (3)(b) may not be exercised so as to provide for the requirements imposed by the curfew order to have effect for a period exceeding 6 months after the making of the order under that subsection.
- (7) Where, following the issue of a warrant under subsection (3)(a), part of the amount specified in the curfew order is paid to any person authorised to receive it, the court may, on an application by the [F14Secretary of State] or the person against whom the warrant was issued—
- (a) reduce the period specified in the warrant; or
  - (b) order the release of the person against whom the warrant was issued.
- (8) On the hearing of an application made under subsection (7) the [F14Secretary of State] may make representations to the court as to which of the powers conferred by that subsection it would be appropriate for the court to exercise, and the person against whom the warrant was issued may reply to those representations.

### **39O Effect of custody on curfew orders and power to make curfew orders**

- (1) The court may not make a curfew order against a person at any time when the person is in custody for any reason.
- (2) The running of the period during which the requirements imposed by a curfew order have effect shall be suspended for the whole of any day during any part of which the person against whom the order is made is in custody for any reason.
- (3) If the period during which the requirements imposed by a curfew order have effect would have begun to run but for its being suspended by virtue of this section, that period shall instead begin to run with the first day when its running is no longer suspended.



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### **39P Power to make supplementary provision about curfew orders: England and Wales**

- (1) The Secretary of State may by regulations make provision for England and Wales with respect to curfew orders.
- (2) The regulations may, in particular, make provision—
  - (a) as to the form and content of a curfew order;
  - (b) allowing an application for a curfew order to be renewed where no curfew order is made;
  - (c) that a statement in writing to the effect that wages of any amount have been paid during any period to a person, purporting to be signed by or on behalf of that person's employer, shall be evidence of the facts stated;
  - (d) that a justice of the peace may issue a summons to a person to appear before a magistrates' court and (if that person does not appear) may issue a warrant for that person's arrest;
  - (e) that, for the purpose of securing a person's presence before a magistrates' court, a justice of the peace may issue a warrant for that person's arrest without issuing a summons;
  - (f) as to the execution of a warrant for arrest;
  - (g) for the amendment or revocation of requirements imposed by a curfew order, on an application made to a magistrates' court by the [<sup>F15</sup>Secretary of State] or the person against whom the order was made;
  - (h) similar to that made by sections 39J, 39L and 39M(2) and (3), in relation to any amendment of a curfew order;
  - (i) as to the exercise by a magistrates' court of the powers conferred by sections 39K(2) and (3) and 39N(7).
- (3) Regulations under subsection (2)(g) may confer power on a magistrates' court to substitute for the place or places specified in the order a place or places in Scotland.
- (4) Where a magistrates' court exercises such a power, the functions of the magistrates' court in relation to the order as so amended shall be exercisable instead by the sheriff.

### **39Q Power to make supplementary provision about curfew orders: Scotland**

- (1) The Secretary of State may by regulations make provision for Scotland with respect to curfew orders.
- (2) The regulations may, in particular, make provision—
  - (a) as to the content of a curfew order;
  - (b) that a statement in writing to the effect that wages of any amount have been paid during any period to a person, purporting to be signed by or on behalf of that person's employer, shall be sufficient evidence of the facts stated;



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- (c) for the amendment or revocation of requirements imposed by a curfew order, on an application made to the sheriff by the [F16Secretary of State] or the person against whom the order was made;
  - (d) similar to that made by sections 39J, 39L and 39M(2) and (3), in relation to any amendment of a curfew order;
  - (e) as to the exercise by the sheriff of the powers conferred by sections 39K(2) and (3) and 39N(7).
- (3) Regulations under subsection (2)(c) may confer power on the sheriff to substitute for the place or places specified in the order a place or places in England and Wales.
- (4) Where the sheriff exercises such a power, the functions of the sheriff in relation to the order as so amended shall be exercisable instead by a magistrates' court.
- (5) 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—
- (a) as to the form of a curfew order;
  - (b) allowing an application for a curfew order to be renewed where no curfew order is made;
  - (c) that the sheriff may issue a citation to a person to appear before the sheriff and (if the person does not appear) may issue a warrant for the person's arrest;
  - (d) that, for the purpose of securing a person's presence before the sheriff, the sheriff may issue a warrant for the person's arrest without issuing a citation;
  - (e) as to the execution of a warrant of arrest.”

#### Textual Amendments

- F9** Words in s. 28 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 81(2)(a)**
- F10** Words in s. 28 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 81(2)(a)**
- F11** Words in s. 28 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 81(2)(b)**
- F12** Words in s. 28 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 81(3)**
- F13** Words in s. 28 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 81(4)**
- F14** Words in s. 28 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 81(5)**

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- F15** Words in s. 28 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 81(6)**
- F16** Words in s. 28 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 81(7)**

## PROSPECTIVE

### 29 Commitment to prison

- (1) In section 40 of the Child Support Act 1991 (c. 48) (commitment to prison), before subsection (3) insert—

“(2A) The [<sup>F17</sup>Secretary of State] may apply to a magistrates' court for the issue of a warrant committing a person to prison where—

- (a) [<sup>F18</sup>the Secretary of State] has sought to recover an amount from the person by means of taking enforcement action by virtue of section 35 or 38, or by means of a third party debt order or a charging order by virtue of section 36;
- (b) the whole or any part of the amount remains unpaid; and
- (c) the [<sup>F17</sup>Secretary of State] is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom [<sup>F18</sup>the Secretary of State] has sought to recover the amount (“the liable person”).

(2B) For the purposes of subsection (2A)(a), the [<sup>F19</sup>Secretary of State] is to be taken to have sought to recover an amount by means of a charging order if an interim charging order has been made, whether or not any further steps have been taken to recover the amount.

(2C) On an application under subsection (2A) the court shall (in the presence of the liable person) inquire as to—

- (a) the liable person's means; and
- (b) whether there has been wilful refusal or culpable neglect on the part of the liable person.

(2D) On an application under subsection (2A) the court shall not question—

- (a) the liability order by reference to which the [<sup>F19</sup>Secretary of State] acted as mentioned in paragraph (a) of that subsection; or
- (b) the maintenance calculation by reference to which that liability order was made.”

- (2) For subsection (10) of that section, substitute—

“(10) On acting as mentioned in subsection (3), the court may order the liable person to be searched.

(10A) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the relevant amount; and the balance (if any) shall be returned to the person searched.

(10B) The reference in subsection (10A) to the relevant amount is—

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- (a) where the order under subsection (10) is made by virtue of the court acting under subsection (3)(a), to the amount mentioned in subsection (4)(a);
  - (b) where the order under subsection (10) is made by virtue of the court acting under subsection (3)(b), to the amount mentioned in subsection (4)(a)(i).
- (10C) The court shall not allow the application under subsection (10A) of money found on a search under subsection (10) if it is satisfied that the money does not belong to the person searched.”
- (3) In section 40A of that Act (commitment to prison: Scotland), before subsection (1) insert—
- “(A1) The [<sup>F20</sup>Secretary of State] may apply to the sheriff for the issue of a warrant committing a person to prison where—
- (a) [<sup>F21</sup>the Secretary of State] has sought to recover an amount from the person by means of taking enforcement action by virtue of section 35 or 38, or by means of a third party debt order or a charging order by virtue of section 36;
  - (b) the whole or any part of the amount remains unpaid; and
  - (c) the [<sup>F20</sup>Secretary of State] is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom [<sup>F21</sup>the Secretary of State] has sought to recover the amount (“the liable person”).
- (A2) For the purposes of subsection (A1)(a), the [<sup>F22</sup>Secretary of State] is to be taken to have sought to recover an amount by means of a charging order if an interim charging order has been made, whether or not any further steps have been taken to recover the amount.
- (A3) On an application under subsection (A1), the sheriff shall (in the presence of the liable person) inquire into—
- (a) the liable person's means; and
  - (b) whether there has been wilful refusal or culpable neglect on the part of the liable person.
- (A4) On an application under subsection (A1), the sheriff shall not question—
- (a) the liability order by reference to which the [<sup>F22</sup>Secretary of State] acted as mentioned in paragraph (a) of that subsection; or
  - (b) the maintenance calculation by reference to which that liability order was made.”
- (4) After subsection (7) of that section, insert—
- “(7A) On acting as mentioned in subsection (1), the sheriff may order the liable person to be searched.
- (7B) Any money found on such a search shall, unless the sheriff otherwise directs, be applied towards payment of the relevant amount; and the balance (if any) shall be returned to the person searched.
- (7C) The reference in subsection (7B) to the relevant amount is—

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- (a) where the order under subsection (7A) is made by virtue of the court acting under subsection (1)(a), to the amount mentioned in subsection (2)(a);
- (b) where the order under subsection (7A) is made by virtue of the court acting under subsection (1)(b), to the amount mentioned in subsection (2)(a)(i).

(7D) The sheriff shall not allow the application under subsection (7B) of money found on a search under subsection (7A) if the sheriff is satisfied that the money does not belong to the person searched.”

#### Textual Amendments

- F17** Words in s. 29(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(2)(a)**
- F18** Words in s. 29(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(2)(a)**
- F19** Words in s. 29(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(2)(b)**
- F20** Words in s. 29(3) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(3)(a)**
- F21** Words in s. 29(3) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(3)(a)**
- F22** Words in s. 29(3) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 3(2), **Sch. para. 82(3)(b)**

PROSPECTIVE

### 30 Disqualification for driving

[<sup>F23</sup>(1) In section 40B of the Child Support Act 1991 (c. 48) (disqualification from driving), for the heading and subsection (1) substitute—

#### “Disqualification for holding or obtaining driving licence

- (A1) The [<sup>F24</sup>Secretary of State] may apply to the court for an order disqualifying a person for holding or obtaining a driving licence where—
  - (a) [<sup>F25</sup>the Secretary of State] has sought to recover an amount from the person by means of taking enforcement action by virtue of section 35 or 38, or by means of a third party debt order or a charging order by virtue of section 36;
  - (b) the whole or any part of the amount remains unpaid; and

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- (c) the [<sup>F24</sup>Secretary of State] is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom [<sup>F25</sup>the Secretary of State] has sought to recover the amount (“the liable person”).
- (A2) Disqualification by an order under subsection (A1) (a “disqualification order”) shall be for such period not exceeding two years as the court may specify in the order.
- (A3) For the purposes of subsection (A1)(a), the [<sup>F26</sup>Secretary of State] is to be taken to have sought to recover an amount by means of a charging order if an interim charging order has been made, whether or not any further steps have been taken to recover the amount.
- (A4) On an application under subsection (A1) the court shall (in the presence of the liable person) inquire as to—
- whether the liable person needs a driving licence to earn a living;
  - the liable person's means; and
  - whether there has been wilful refusal or culpable neglect on the part of the liable person.
- (A5) On an application under subsection (A1) the court shall not question—
- the liability order by reference to which the [<sup>F26</sup>Secretary of State] acted as mentioned in paragraph (a) of that subsection; or
  - the maintenance calculation by reference to which that liability order was made.
- (1) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the liable person, it may—
- make a disqualification order against the liable person; or
  - make such an order but suspend its operation until such time and on such conditions (if any) as it thinks just.”
- (2) For subsection (10) of that section, substitute—
- “(10) On making a disqualification order, the court may order the liable person to be searched.
- (10A) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the amount due; and the balance (if any) shall be returned to the person searched.
- (10B) The court shall not allow the application under subsection (10A) of money found on a search under subsection (10) if it is satisfied that the money does not belong to the person searched.
- (10C) The court may exercise the powers conferred on it by subsection (5) without the need for an application where money found on a search under subsection (10) is applied towards payment of the amount due.”]

#### Textual Amendments

**F23** S. 30 repealed (prosp.) by Welfare Reform Act 2009 (c. 24), ss. 58, 61, Sch. 7 Pt. 4

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- F24** Words in s. 30(1) substituted (1.8.2012) by The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), art. 3(2), **Sch. para. 83(2)**
- F25** Words in s. 30(1) substituted (1.8.2012) by The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), art. 3(2), **Sch. para. 83(2)**
- F26** Words in s. 30(1) substituted (1.8.2012) by The Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/2007), art. 3(2), **Sch. para. 83(3)**

**Status:**

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**Changes to legislation:**

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