

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Child Support etc.

Collection and enforcement

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

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

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.