

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

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Child Maintenance and Other Payments Act 2008 which received Royal Assent on 5 June 2008. They have been prepared by the Department for Work and Pensions in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND TO THE ACT

Child Maintenance

3. The current system of child support maintenance is administered by the Child Support Agency (“CSA”) and dates back to 1993. It was established by the Child Support Act 1991, and developed further by the Child Support Act 1995 and the Child Support, Pensions and Social Security Act 2000.

4. The CSA was set up to help ensure that parents take financial responsibility for their children. However performance has fallen short of expectations.

5. In February 2006, Sir David Henshaw was asked to consider proposals for the fundamental redesign of the child support maintenance system. His report ‘*Recovering child support: routes to responsibility*’ was published in July 2006 and set out recommendations to improve both child support maintenance policy and its delivery.

6. The Government’s response to Sir David Henshaw, ‘*A fresh start: child support redesign – the Government’s response to Sir David Henshaw*’ accepted many of his recommendations and agreed to investigate others further. This was followed by a period of consultation and more detailed policy proposals were then published in the White Paper ‘*A new system of child maintenance*’, in December 2006 (hereafter referred to as ‘the White Paper’) which was followed by a further consultation period.

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7. The House of Commons Work and Pensions Committee reviewed the proposals contained in the White Paper. The Government's response to the Committee's report, together with its summary of the White Paper consultation, were published on 15 May 2007.

Mesothelioma

8. In July 2006 the Secretary of State announced a number of interim measures to ensure faster compensation payments to sufferers of mesothelioma, and his intention to put in place a long term solution to pay compensation in life wherever possible.

9. A consultation followed this announcement, a summary of which was published by the Government in March 2007.

10. In March 2007, the Secretary of State announced proposals to provide faster compensation to all those diagnosed with mesothelioma, providing up-front financial support within six weeks to those who were exposed to asbestos outside the workplace.

11. The Secretary of State also announced that the cost of this proposal would be met through compensation recovery whereby payments under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 and the newly proposed scheme are recovered if a civil claim for compensation is subsequently successful. Payments under the new scheme would initially correspond to what can be afforded out of the projected compensation recovery amounts, and would increase as those funds allow.

SUMMARY OF MEASURES IN THE ACT

Child Maintenance

Child Maintenance and Enforcement Commission

Current position

12. The CSA was established in 1993 to assess, collect and enforce child maintenance payments from non-resident parents. The CSA was to replace court arrangements, which were seen as cumbersome and failing children and their parents. The original scheme was introduced by the Child Support Act 1991. This was amended by the Child Support Act 1995 and the Child Support, Pensions and Social Security Act 2000. The 2000 Act introduced significant changes including the introduction of a new scheme for calculating child support maintenance (the 'new scheme'), and changes to section 6 of the Child Support Act 1991, under which the CSA could treat parents with care in receipt of prescribed benefits as having applied for child support maintenance.

13. The CSA was established as one of the Executive Agencies of the Department of Social Security. Executive Agencies were first established following Sir Robin Ibbs's 'Next Steps' Report in 1988. The intention was that they would take responsibility for, and bring a new more customer-focused approach to, individual executive (service delivery) functions

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within Government. This would leave their parent Departments to concentrate on policy development.

14. Executive Agencies operate as part of their parent Department under powers that are delegated from Ministers, as they do not hold statutory status as bodies corporate in their own right. Executive Agencies have a Chief Executive who reports to the Department and Minister against specific targets, and they are staffed by Civil Servants. The Chief Executive of the CSA is supported by an advisory board of executive and non-executive members.

Proposed changes

15. In the White Paper, the Government proposed that a non-departmental public body (NDPB) should be established to deliver child maintenance and replace the CSA. This Act establishes a body corporate to be called the Child Maintenance and Enforcement Commission which is referred to, in the Act and in these Notes, as 'the Commission'. The Commission will be a Crown NDPB. It will have a role in the processes of national Government but will not be a Government Department or part of one. It will operate at arm's length from Ministers in its day to day decision making. Although Ministers will set high level principles, the Commission will have full autonomy to run the child support maintenance system.

16. The main objective of the Commission will be to maximise the number of children living apart from one or both of their parents for whom effective maintenance arrangements are in place. This objective will be supported by the following subsidiary objectives:

- to encourage and support the making and keeping by parents of appropriate voluntary maintenance arrangements for their children; and
- to support the making of applications for child support maintenance under the Child Support Act 1991 and to secure compliance when appropriate with parental obligations under the Act.

17. Most of the functions that fall to the Secretary of State under the Child Support Act 1991 will be transferred to the Commission. In addition to these functions the Commission will have further responsibilities for raising awareness among parents of the importance of taking responsibility for the maintenance of their children and making appropriate arrangements for the maintenance of children of theirs who live apart from them. To support this process, the Commission will also be required to provide a service that provides information and guidance to both parents for the purpose of helping to secure the existence of effective maintenance arrangements.

18. The CSA currently commissions external service providers to help enforce maintenance payments. The Commission will have more flexibility to commission external providers to carry out its functions in order to deliver services in the most efficient and effective way.

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19. The structure of the Commission will consist of a Board with the following members:
- a person to chair the Commission (the ‘Chair’), who will be responsible for setting the overarching strategic direction of the Commission, owning strategy and policy, and undertaking external stakeholder relations;
 - a chief executive, who will be known as the Commissioner for Child Maintenance, who will be responsible for the executive oversight of the organisation, for delivering the operational outcomes set by the Board through direct delivery, managing the commissioning role of the Commission and acting as the Accounting Officer;
 - executive directors; and
 - non-executive directors.
20. The Board will be able to employ staff to carry out the day to day functions of the Commission.

Removal of compulsion for benefit claimants

Current position

21. Under section 6 of the Child Support Act 1991, if a parent with care is paid or has claimed income support, or income based jobseeker’s allowance, (or one of those benefits has been claimed or is paid in respect of that parent), they are treated as though they have applied for child support maintenance.

22. Parents with care who do not wish to be treated as applying for child support maintenance need to demonstrate good cause: for example, that applying for maintenance could put them, or any child living with them, at risk of harm or undue distress. If they do not demonstrate good cause, section 46 of the Child Support Act 1991 enables the Secretary of State to make a decision to reduce their benefit.

Changes

23. The Act repeals sections 6 and 46 of the Child Support Act 1991. This will mean that parents with care in receipt of (or applying for) the prescribed benefits will not be treated as applying for maintenance, and therefore they can not be subject to a reduced benefit decision.

24. Once this change occurs existing parents with care whose application for child maintenance was made under section 6 (and was therefore compulsory) will have a choice of withdrawing from the statutory scheme should they wish to do so.

Maintenance Calculations

Current position

25. Under the current ‘new scheme’ legislation, the information used to calculate maintenance includes: the non-resident parent’s net weekly income, the number of qualifying children, and the number of ‘relevant other children’ (those living with the non-resident parent whether or not they are children of that parent). The maintenance calculation can be adjusted if a change in circumstances is reported to the CSA, although a change of less than 5% in net weekly income would not result in an adjustment.

26. For the purposes of child maintenance, net weekly income is a non-resident parent’s income from employment or self employment, tax credits, or from an occupational or personal pension after deductions for income tax, national insurance, and contributions to an occupational or personal pension have been applied.

27. Once enough information is provided by the non-resident parent, a calculation is performed to establish how much maintenance is payable to the person with care. The basic rate of maintenance takes account of how many children the non-resident parent is required to pay maintenance for, and is based on a percentage of their net income, up to a maximum of £2,000 per week, which is:

- 15% for one qualifying child;
- 20% for two qualifying children; and
- 25% for three or more qualifying children.

28. A flat rate is payable by non-resident parents who are in receipt of benefit or earn less than £100 a week, and is an amount up to £5 per week.

Changes

29. The Act makes several amendments to how a maintenance calculation is arrived at and maintained. Gross weekly income details from the latest available tax year will be used to calculate maintenance instead of net, and this will usually be based on information already held and made available by Her Majesty’s Revenue and Customs (“HMRC”).

30. Alongside this, the percentages applied for the basic rate in relation to earnings of a non-resident parent between £200 and £800 per week, will change to:

- 12% for one qualifying child;
- 16% for two qualifying children; and
- 19% for three or more qualifying children.

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31. New percentages will be introduced for non-resident parents whose earnings are over £800 per week. The percentages will apply in relation to earnings between £800 and £3,000 per week. They will be:

- 9% for one qualifying child;
- 12% for two qualifying children; and
- 15% for three or more qualifying children.

32. Percentages for relevant other children will also change to the same level as those for basic rate.

33. The level of flat rate maintenance for non-resident parents in receipt of a prescribed benefit, or earning less than £100 per week, will also be increased from £5 to £7 per week.

34. The Act will enable restrictions to be imposed on how often a maintenance calculation is changed. Annual reviews will take place to ensure the calculation reflects any changes in income or the relevant circumstance, specifically the income figure for the latest available tax year will be updated. Between annual reviews, the calculation will be revisited only where there has been a large change in income, or a fundamental change such as a child or children moving to live with the other parent.

35. The Act also requires the Commission to investigate what information and evidence is available, and obtain more if appropriate, before considering and deciding on a variation application received from a parent with care.

36. Another change relates to cases where both parents each have at least one child of the relationship living with them. In such cases, both parents are a person with care in relation to one child, and a non-resident parent in relation to another. Currently they would both be liable to make a maintenance payment. The changes will enable one liability to be offset against the other, so that only the parent with the highest liability actually makes a payment.

37. Child maintenance obligations of a non-resident parent under certain types of private arrangement will also be taken into account when calculating the amount of child support maintenance payable under the Act.

Collection and Enforcement

Current position

38. In the majority of cases an application for payment of child support maintenance is made by the person with care. The applicant supplies to the CSA details of the children for whom maintenance is sought, and sufficient details of the non-resident parent to enable the CSA to contact them in order to calculate a maintenance liability.

39. The CSA will then attempt to contact the non-resident parent and obtain details of income and any other relevant information. Once a calculation is made, arrangements can be set up with the non-resident parent for payment of maintenance.

40. In some cases the non-resident parent will refuse to provide enough information to the CSA, or if it has been made available and a maintenance calculation made, they attempt to avoid payment. In these instances the CSA will use enforcement powers available to it in order to collect maintenance.

41. The enforcement powers available to the CSA are as follows:

- A deduction from earnings order to recover money directly from a non-resident parent's salary at source is usually the first action to be taken. This requires the employer to deduct amounts from a non-resident parent's income and pay them to the CSA.
- Where this is inappropriate or proves ineffective, the CSA can apply to a magistrates' court (in England and Wales) or a sheriff (in Scotland) for a liability order. In England and Wales, this is the gateway to the use of bailiffs to recover the debt and/or an application to the county court to take further enforcement action. In Scotland, a liability order can be enforced by 'attaching' the debtor's assets and selling them, 'arresting' funds such as bank accounts and having them transferred to the CSA, and 'inhibiting' the debtor from dealing in heritable property until the debt is satisfied.
- In England, the next stage of enforcement available is an application made to the county court for a third party debt order or charging order. A third party debt order requires a third party, for example a bank or building society, to pay an amount held on behalf of the non-resident parent, for example funds in a bank account, to the CSA. A charging order secures payment of arrears from funds or property belonging to the non-resident parent.
- In Scotland, an application can be made to the sheriff for an arrestment order, which freezes a debtor's moveable assets held by a third party who are then instructed to pay the money to the creditor, or a Bill of inhibition which means that the outstanding debt can be claimed from the proceeds of the sale of land or property.
- Where the arrears remain outstanding after enforcement action, the CSA can begin proceedings against the non-resident parent in the magistrates' court in England and Wales (or in Scotland, the Sheriff), the result of which could be committal to prison for up to six weeks or disqualification from holding or obtaining a driving licence for up to two years.

Changes

42. The Act introduces several changes to enforcement powers, with both changes to existing powers and new powers introduced. Changes to existing powers include:

- regulations may provide for a deduction from earnings order to be specified as an initial method of collection unless there is a good reason not to in a particular case; and
- liability orders will be administrative and will no longer require an application to a magistrates' court or the sheriff.

43. New powers to be introduced include:

- a regular deduction order applied to an account (including a joint account) held by the non-resident parent with a deposit-taker such as a bank, which can be used to take regular deductions to collect on going child maintenance and/or arrears;
- a lump sum deduction order which can be used to collect arrears through a single deduction directly from an account of the non-resident parent (including a joint account), held with a deposit taker or third party such as conveyancer;
- the ability to apply to the High Court in England and Wales (or, in Scotland, the Court of Session or the sheriff) to freeze property held by a non-resident parent, or to set aside a disposition;
- the ability to apply to the magistrates' court in England and Wales (or, in Scotland, the sheriff) for the imposition of a curfew on a non-resident parent, which will be monitored; and
- the ability to apply to the magistrates' court in England and Wales (or, in Scotland, the sheriff) to disqualify a non-resident parent from holding or obtaining a travel authorisation, which may be a UK passport and/or an ID card issued under the Identity Cards Act 2006 that records that the person to whom it is issued is a British Citizen.

Debt Management Powers

Current position

44. Since its inception in 1993, the CSA has collected over £5 billion in child support maintenance. At the same time, however, around £3.5 billion of debt has accumulated. The CSA has no statutory powers to write off debt.

45. Since August 2006 the CSA has held contracts with private sector debt collection agencies to pursue debt on its behalf.

Proposed changes

46. The Act introduces new powers to enable the Commission to collect and manage debt:

- The ability to negotiate settlements where a lesser amount of money offered by a non-resident parent can be accepted as full and final settlement of the debt.
- The ability to write off debt of a description specified in regulations, where it appears to the Commission that it would be unfair or otherwise inappropriate to enforce it. It is intended that the type of debt specified in regulations for these purposes will include:
 - debt which is owed to a person with care who is deceased, or by a non-resident parent who is deceased, where the debt can not be recovered from the estate; and
 - debt which is owed by a non-resident parent who is for example reconciled with a parent with care who has asked for the recovery action to be stopped.
- The ability to write off debt which has arisen from fees and interest charged under regulations that were abolished in 2001.
- The ability to apply for arrears of child support maintenance to be recovered from the estate of a deceased non-resident parent.
- The ability to sell debt to a third party in specified circumstances.
- The ability, in prescribed circumstances, to offset a maintenance liability and in some cases arrears where, for example, a child moves from the care of one parent to the other. Also, the ability, in prescribed circumstances, to offset money paid by a non-resident parent to a third party against the maintenance they are liable to pay. The ability to use existing and new enforcement measures to collect child support maintenance arrears that accrued or became due before 12 July 2000.

Transfer of cases to new rules

Current Position

47. There are two child support maintenance schemes in operation:

- ‘Old scheme’ cases are applications made between 5th April 1993 (when the CSA began) and 2nd March 2003. These cases are subject to the formula for assessing maintenance as set out in the Child Support Act 1991 before it was amended by the Child Support, Pensions and Social Security Act 2000; and
- ‘New scheme’ cases are applications made since 3rd March 2003 (when the scheme was introduced) or any old scheme cases which were converted to the new scheme

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because they linked to a new scheme case. These cases are subject to the method of calculating maintenance as set out in the Child Support Act 1991, as amended by the Child Support, Pensions and Social Security Act 2000.

Changes

48. The Act provides a general power enabling the Secretary of State to set out a framework for existing cases to move to the new maintenance calculation rules so far as future accrual of liability is concerned. Once the Commission comes into existence it will advise Ministers on the regulations which govern that process.

Other Provisions

49. The Act introduces powers to enable the disclosure of certain qualifying information about some non-resident parents to credit reference agencies, to be used by such agencies for the purpose of furnishing information relevant to the financial standing of individuals (determining their credit rating).

50. The Act will enable relevant information relating to certain family proceedings to be disclosed to the Commission without such a disclosure being a contempt of court.

51. A new power will be inserted into the 1991 Act, to make it an offence for a non-resident parent not to notify the Commission of a change in their address.

52. A piloting power will be introduced to enable new policies to be tested, and changes to the definition of “child” to align it with the Child Benefit Act 2005.

53. The Act introduces information gateways between the Commission and the Secretary of State, the Northern Ireland Department and HMRC.

54. The Act will prevent any further use of the social security provisions (which are now generally redundant) which provide that a person is liable to maintain their children, and that the Secretary of State may seek an order to recover amounts paid in income support where this has been paid as a result of failure to do so.

55. The Act amends the 1991 Act to clarify that Registered Maintenance Agreements in Scotland, made on or after 3 March 2003 will be treated for the purposes of child support in the same way as consent orders made on or after that date.

Mesothelioma

Current position

56. The intention of the Pneumoconiosis etc. (Workers’ Compensation) Act 1979 (“the 1979 Act”) was to provide a reasonable level of compensation to sufferers of certain dust related diseases, or their dependants, who are unable to pursue a civil claim because their

former employers have ceased to carry on business. Mesothelioma is one of the diseases covered by the 1979 Act, and only people who receive Industrial Injuries Disablement Benefit are eligible to receive a payment under the 1979 Act.

57. The Social Security (Recovery of Benefits) Act 1997 (“the 1997 Act”) provides for the recovery of social security benefits (as listed in the 1997 Act) which have been paid in respect of any accident, injury or disease to claimants who go on to receive compensation in respect of the accident, injury or disease, following a civil claim. The intention of the 1997 Act was to ensure that a person does not receive double compensation, and that the Government could recover the listed social security benefit payments it had made, from the person deemed liable for the accident, injury or disease following a civil claim.

Proposed changes

58. The Act will enable a lump sum payment to be provided for those not eligible under the 1979 Act who:

- Have been exposed to asbestos from a relative (for example, from their overalls);
- Have been exposed to asbestos environmentally (for example, have lived near a factory using asbestos);
- Are self-employed; or
- Can not trace their specific exposure to asbestos but there is nothing to suggest that they were exposed elsewhere other than in the UK.

59. In effect, the proposed new scheme will mean that all sufferers of mesothelioma, as a result of exposure to asbestos, will be eligible for a payment regardless of their employment status, provided they have not already received a compensation payment through a civil claim or a payment under the 1979 Act or new scheme.

60. In addition, the Act introduces the ability to recover payments made under the 1979 Act or the new scheme, where a person then goes on to receive compensation in a civil claim.

ACT OVERVIEW

61. The Act consists of 5 Parts:

Part 1 – The Child Maintenance and Enforcement Commission.

Part 2 – Transfer of child support functions etc to the Commission.

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Part 3 – Child support etc.

Removal of compulsion for benefit claimants

Maintenance calculations

Collection and enforcement

Debt management powers

Miscellaneous

Part 4 – Lump sum payments: mesothelioma etc.

Part 5 - General

TERRITORIAL EXTENT

62. Most measures in this Act extend to England and Wales and Scotland, but not to Northern Ireland. Although child support legislation is a transferred matter under the Northern Ireland Act 1998 and Northern Ireland has its own body of social security, there is a long standing policy of parity in this area.

63. The following measures extend to the United Kingdom:

- *paragraphs 4 to 6 of Schedule 6, and section 44* so far as relating to those paragraphs. These measures provide information gateways to:
 - enable the Northern Ireland Department to disclose information held for the purposes relating to social security, child support or employment or training, to the Commission or a person providing services to the Commission; and
 - enable the Commission or a person providing services to the Commission, to disclose information held for the purposes of functions relating to child support, to the Secretary of State, HMRC or the Northern Ireland Department.

64. Any amendment or repeal made by this Act has the same extent as the enactment to which it relates.

TERRITORIAL APPLICATION: WALES

65. The Act does not contain any measures which affect the powers of the National Assembly for Wales.

COMMENTARY ON SECTIONS

Part 1: The Child Maintenance and Enforcement Commission

Section 1: The Child Maintenance and Enforcement Commission

66. *Section 1* provides that there will be a new body corporate called the Child Maintenance and Enforcement Commission but referred to as ‘the Commission’. The section also introduces *Schedule 1* which sets out in more detail how the Commission will be structured.

67. The Commission will comprise a board consisting of a Chair, a chief executive to be known as the Commissioner for Child Maintenance, executive directors and non-executive directors.

Section 2: Objectives of the Commission

68. This section sets out the main objective of the Commission which is to maximise the number of effective child maintenance arrangements in place. This main objective is supported by two subsidiary objectives:

- to encourage and support parents to make and keep their own maintenance arrangements; and
- to support the making of applications for child support maintenance under the Child Support Act 1991 and to enforce maintenance arrangements made under that Act where appropriate.

69. *Subsection (3)* requires the Commission to aim to pursue and to have regard to its objectives, when exercising a function that is relevant to them.

Section 3: Functions of the Commission: general

70. This section sets out that the Commission has functions relating to child support transferred to it from the Secretary of State, and any other functions conferred under this Act or other legislation.

71. *Subsection (2)* provides the Secretary of State with a regulation-making power to add further functions, should they be required in assisting the Commission to meet its objectives.

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72. *Subsection (3)* requires the Commission to exercise its functions effectively and efficiently.

Section 4: Promotion of child maintenance

73. This section places a duty on the Commission to take such steps as it considers appropriate to raise awareness among parents of the importance of taking responsibility for the maintenance of their children and if they live apart, making appropriate maintenance arrangements.

Section 5: Provision of information and guidance

74. *Section 5* places a duty on the Commission to provide relevant information and guidance to help establish effective and appropriate maintenance arrangements for children who live apart from one or both of their parents. The section also enables the Commission to provide information for other purposes in the course of providing such information and guidance which might include, for example, information on other matters relating to parental separation such as housing or employment.

Section 6: Fees

75. *Section 6* gives regulation-making powers to the Secretary of State to enable the Commission to charge fees in connection with the exercise of its functions.

76. *Subsection (2)* gives a non-exhaustive list of provisions that may be included in regulations. This includes:

- when a fee may be charged;
- the amount of fee to be charged;
- the information required to determine the amount to be charged;
- who is liable to pay any fee charged;
- when a fee is payable;
- recovery of fees charged; and
- when a fee may be waived, reduced or repaid.

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77. *Subsection (3)* provides that the regulations may permit the Commission to charge fees which are not related to the cost of it of carrying out its functions.

78. *Subsection (4)* allows the Secretary of State to provide by regulations that the collection and enforcement measures in the Child Support Act 1991 also apply to fees payable.

79. *Subsection (5)* provides that the Secretary of State may by regulations make provision for a person affected by a decision of the Commission under regulations made under *subsection (1)* to have a right of appeal against the decision to an appeal tribunal.

80. *Subsection (6)* provides that subsections (3) to (5), (7) and (8) of Section 20 of the Child Support Act 1991 (appeals to appeal tribunals) will also apply to appeals against a decision of the Commission concerning fees.

81. *Subsection (7)* requires the Commission to pay into the Consolidated Fund any amount which it receives in fees.

Section 7: Agency arrangements and provision of services

82. This section enables the Commission to make arrangements with a Government department or prescribed public body (defined as a “relevant authority” in *subsection (4)*), for the functions of one of them to be exercised on their behalf by the other, or for one to provide administrative, professional or technical services to the other.

83. *Subsection (2)* makes clear that this does not include functions in relation to making, confirming or approving secondary legislation.

84. *Subsection (3)* enables the Commission to agree the terms and conditions that it considers appropriate for any arrangements under this section.

Section 8: Contracting out

85. This section enables the Commission to contract out any of its functions to another person or organisation. In doing so, the Commission can authorise the extent to which the function is carried out, and the period of time the contract should last. Contracting out a function does not prevent the Commission from exercising it.

86. Where a contractor is carrying out a function on behalf of the Commission, *subsection (4)* ensures that its acts or omissions will be treated as acts or omissions of the Commission and the Commission will be responsible.

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87. *Subsection (5)* sets out two exceptions to this:

- A contractor's act or omission will not be treated as being an act of the Commission for the purposes of relevant provisions of the contract between the Commission and the contractor itself. This ensures that, for example, if a contractor breaches the contract by failing to do something, or doing something they should not, the contractor remains responsible and the Commission will be able to sue for breach of contract.
- The contractor will remain liable if it commits a criminal act.

88. *Subsection (6)* ensures that a person who is authorised to carry out a function on behalf of the Commission has a right to claim damages or compensation for repudiation of the contract if the Commission withdraw their authorisation thereby making it impossible for the contractor to perform.

Section 9: Annual report to the Secretary of State

89. This section requires the Commission to produce a report for each financial year (to 31 March). The report must:

- deal with the activities of the Commission in the financial year for which it is prepared; and
- include the report prepared by the non-executive functions committee.

90. *Subsection (3)* sets out the activities that should be covered in the report as follows:

- the strategic direction of the Commission and how this is being monitored and reviewed;
- the objectives and targets of the Commission, what steps have been taken to meet them and the extent to which they have been met;
- how performance of the Commission has been monitored;
- the extent to which the Commission has relied upon its power to enter into arrangements with government departments and other public bodies; and
- the extent to which the Commission has contracted out its functions.

91. *Subsections (4) and (5)* require the Commission to publish the report and send it to the Secretary of State to be laid before Parliament.

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Section 10: Directions and guidance

92. This section provides that the Secretary of State may give written guidance and directions to the Commission regarding the exercise of its functions.

93. *Subsection (2)* requires the Commission to have regard to any guidance given, and also to comply with directions.

94. *Subsections (3) and (4)* provide that guidance and directions given under this section should be in writing and can be varied or revoked by the Secretary of State.

95. *Subsection (5)* requires the Secretary of State to lay before Parliament any directions he gives under *subsection (1)*.

96. *Subsection (6)* allows the Secretary of State to exclude from laying in Parliament, any information that he considers to be against the commercial interests of any person, or any information which may lead to an individual being identified.

Section 11: Review of the status of the Commission

97. *Section 11* sets out that the Secretary of State must review the status of the Commission as a Crown Body, as soon as is reasonably practicable after the end of an initial three year period, and may review any other time after that if he considers it appropriate.

98. *Subsections (4) and (5)* require the Secretary of State to prepare a report of any review and lay it before Parliament.

99. *Subsections (6) and (7)* enable the Secretary of State to make an order to provide that the Commission ceases to be a Crown body, if it appears that it is appropriate to do so following a review. The order may amend Schedule 1 and provide for the Transfer of Undertakings (Protection of Employment) Regulations 2006 to apply.

Section 12: Supplementary provisions

100. *Section 12* sets out the definition of ‘child’ for the purposes of Part 1 (the same as for the 1991 Act) and makes provision for the Secretary of State to make regulations about when a child is to be regarded as living apart from a parent or not, to ensure, for example, that a child is not regarded as living apart from a parent simply because they are at boarding school.

Part 2 – Transfer of child support functions etc. to the Commission

Section 13: Transfer of child support functions

101. This section transfers most of the functions under the Child Support Act 1991 from the Secretary of State to the Commission, including functions relating to, for example, calculation, collection and enforcement. The exceptions to this (the functions that will either remain solely with the Secretary of State, or be exercisable both by the Secretary of State and the Commission) are listed at *subsection (2)*. These are:

- Functions under section 23A, 24 and 25 of the 1991 Act which enable the Secretary of State to appeal to the Child Support Commissioner. It is appropriate for the Secretary of State to retain the right to appeal as he is responsible for child support legislation. This is why *Schedule 2* to this Act ensures that this function is both given to the Commission and retained by the Secretary of State.
- Functions under section 46 of the 1991 Act, under which the Secretary of State may apply a reduced benefit decision to those parents with care in receipt of a prescribed benefit who choose to opt out of the statutory scheme without good cause. The Secretary of State is to retain this function because it relates to decisions on the amount of benefit a person is to receive. This function will be repealed soon after the introduction of the Commission.
- The function under section 50(7)(c) of the 1991 Act which enables the Secretary of State to authorise a ‘responsible person’ for the purposes of disclosure of information. This is necessary to enable the disclosure of information between the Secretary of State and the Commission. *Schedule 6* to this Act ensures that this function is exercisable by both the Commission and the Secretary of State.
- Functions under section 58 of the 1991 Act which provides a power for the Secretary of State to commence the provisions of the 1991 Act and to make consequential amendments.
- The function under paragraph 2A of Schedule 4 to the 1991 Act which enables the Secretary of State for Scotland to provide travel expenses for a person attending proceedings before a Child Support Commissioner in Scotland. As this function refers to the Secretary of State for Scotland it will not be transferred to the Commission.
- Power for the Secretary of State to make regulations under any other provision of the Child Support Act 1991.

102. *Subsection (3)* transfers any functions conferred on the Secretary of State by those provisions of secondary legislation listed in *Schedule 2* apart from those related to reduced benefit decisions under section 46 of the Child Support Act 1991.

103. *Subsection (4)* introduces *Schedule 3* which makes consequential amendments and transitional provision and savings.

Section 14: Transfer of property, rights and liabilities

104. This section enables the Secretary of State to make one or more schemes to transfer property, rights and liabilities which he is entitled or subject, in connection with the transferred functions, or under arrangements entered into in preparation for the coming into force of the Commission's functions under Part 1 of this Act.

105. *Subsection (2)* sets out that a scheme under *subsection (1)*, (a transfer scheme) may:

- provide for the transfer of property, rights and liabilities that it would not otherwise be possible to transfer, for example, a contract which does not contain a clause allowing it to be assigned;
- create for the Secretary of State interests in or rights over property transferred by virtue of the scheme. For example, it enables any property that may transfer to the Commission to continue to be used by the Secretary of State;
- create for the Commission, interests in or rights over property retained by the Secretary of State. Such a scheme could enable the Commission to make use of a property that the Secretary of State may own;
- create rights and liabilities between the Secretary of State and the Commission, for example, if a contract were transferred to the Commission, the scheme could allow for the Commission to be indemnified by the Secretary of State in respect of previous breaches; and
- make such supplementary, incidental, consequential or transitional provision or savings as the Secretary of State considers appropriate.

106. *Subsection (3)* provides that a transfer scheme shall come into force in accordance with the terms provided by the transfer scheme itself.

107. *Subsection (4)* provides that a certificate given by the Secretary of State will provide evidence that any property, rights or liabilities have been transferred

108. *Subsection (5)* defines 'transferred functions' as those functions transferred under section 13.

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.

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

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

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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. New *subsection (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 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.

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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.

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.

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.

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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 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.

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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.

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

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 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.

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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.

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

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 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.

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

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.

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

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, 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.

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

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.
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.

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

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;
- 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.

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

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.

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which received Royal Assent on 5 June 2008*

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.

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.

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which received Royal Assent on 5 June 2008*

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.

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)*.

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which received Royal Assent on 5 June 2008*

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;

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- 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;
- 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)*.

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which received Royal Assent on 5 June 2008*

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.

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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 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.

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.

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which received Royal Assent on 5 June 2008*

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 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. 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.

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

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.

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

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

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

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.

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which received Royal Assent on 5 June 2008*

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.

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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.

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which received Royal Assent on 5 June 2008*

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.

Part 4 – Lump Sum Payments: Mesothelioma etc.

Mesothelioma lump sum payments

Section 46: Lump sum payments

392. This section provides for the Secretary of State to make a lump sum payment to either a person with diffuse mesothelioma, or to their dependant if the person with diffuse mesothelioma is deceased.

393. *Subsection (2)* provides that entitlement to a lump sum payment is dependent on satisfying certain conditions which are specified in *section 47*.

394. *Subsection (3)* provides that regulations may:

- set out the amount that should be paid as a lump sum; and
- set the amount at different levels for different people. This may be based on factors such as, for example, whether they are a person with mesothelioma, or a dependant of a person with mesothelioma.

395. *Subsection (4)* defines what is meant by a 'dependant' of a person who, immediately before their death, suffered from mesothelioma. It also defines "diffuse mesothelioma" as having the same meaning as under the Pneumoconiosis etc. (Workers' Compensation) Act 1979. A dependant can bring a claim for a lump sum payment under this part of the legislation if their relative with mesothelioma has died. A dependant is defined as:

- a wife or husband or civil partner who was living with the person with mesothelioma;
- children under 16 years of age;
- children under 21 years of age who are not receiving wages from full time employment;
- children of any age who are permanently unable to support themselves;
- a person living with the person with mesothelioma as if they were husband and wife or as if they were civil partners;

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- any other relatives who are completely or mostly dependent on the person with mesothelioma immediately before their death and who are also under the age of 16, under the age of 21 and not receiving wages from full time employment, or permanently unable to support themselves.

396. Payments are to be made to the dependant who is listed first in the above definition.

397. *Subsection (5)* provides that where more than one dependent may claim, the Secretary of State will decide whether the payment is paid to one or more of them. This could happen, for example, when a person with mesothelioma does not have a wife or husband, or civil partner, who was living with them, but has three children under the age of 16.

Section 47: Conditions of entitlement

398. *Section 47* sets out the conditions that must be satisfied by persons with mesothelioma, and by a dependant of a person who, immediately before their death, suffered from mesothelioma in order for a lump sum payment to be made.

399. *Subsection (1)(a)* provides that to be entitled to a lump sum payment a person with mesothelioma must not have already received a payment in respect of mesothelioma contained in the provisions of *subsection (3)*.

400. *Subsection (1)(b)* provides that to be entitled to a lump sum payment a person must not be eligible, in respect of mesothelioma, for a payment of a type prescribed by regulations.

401. *Subsection (1)(c)* provides that there may be a requirement for the person to have links with the United Kingdom. Any links would be prescribed by regulations.

402. *Subsection (2)(a)* provides that for a dependant of a deceased person who suffered from mesothelioma immediately before their death to be entitled to a lump sum payment, neither they, nor the deceased person with mesothelioma, nor the deceased person's estate, nor any other dependant, must have already received a payment in respect of mesothelioma contained in the provisions of *subsection (3)*.

403. *Subsection (2)(b)* provides that for a dependent of a deceased person who suffered from mesothelioma immediately before their death to be entitled to a lump sum payment, neither they, nor the deceased person with mesothelioma, must be eligible, in respect of mesothelioma, for a payment of a type prescribed by regulations.

404. *Subsection (2)(c)* provides that there may be a requirement for the deceased person to have links with the United Kingdom. Any links would be prescribed by regulations.

405. *Subsection (3)* provides that the payments mentioned in *subsections (1)(a)* and *(2)(a)* are: a payment under this Part, a payment under corresponding Northern Ireland provisions, a payment under the 1979 Act, an extra-statutory payment for mesothelioma after making a claim under that Act, or a payment of a type prescribed by regulations.

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406. *Subsection (4)* provides that a payment under this Part, a payment under corresponding Northern Ireland provisions, a payment under the 1979 Act, an extra-statutory payment for mesothelioma after making a claim under that Act, or a payment of a type prescribed by regulations, will not disqualify a person from receiving a mesothelioma lump sum payment if that payment was made in consequence of a misrepresentation or failure to disclose material facts (whether fraudulently or otherwise), and an obligation to repay it has arisen under section 49 of this Part or section 5 of the 1979 Act or for some other reason.

407. *Subsection (5)* defines an extra-statutory payment as a payment made by the Secretary of State when a claim has been rejected under the 1979 Act (by cross reference to the definition in the section inserted by *section 54*).

Section 48: Determination of claims

408. *Section 48* sets out how a claim for a lump sum payment is to be made.

409. *Subsection (1)* provides that a claim for a lump sum payment as made under *section 46* will be made in the manner and within the period prescribed by regulations.

410. *Subsection (2)* sets out that the lump sum payment can be set at different levels for different people based on different factors.

411. *Subsection (4)* provides that, if any questions concerning the claim arise before the claim is decided, then the Secretary of State may appoint someone to inquire into the issues or to request answers to those questions. The person appointed will then report their findings to the Secretary of State.

Section 49: Reconsideration

412. *Section 49* enables the Secretary of State to reconsider a decision not to make a lump sum payment where there is a change in circumstances that may affect the claim since the decision was taken, or a decision to make or not to make a lump sum payment if the original decision was made in ignorance or based on error about the facts of the case.

413. *Subsection (2)* provides that regulations must prescribe how and within what timescale, a person may apply to the Secretary of State for a decision to be reconsidered, or for the Secretary of State to reconsider a decision without an application to do so being made.

414. *Subsection (3)* provides that *subsection (4)* of *section 48* will apply to any reconsideration of a decision under this section, in the same way as it applies to the decision on a claim.

415. *Subsections (4)* and *(5)* provide that where a person, either fraudulently or otherwise, provides misleading or false information, or does not disclose relevant information, and a lump sum payment for mesothelioma is paid to them as a result of this, they will be liable to repay any lump sum payment they receive. This liability to repay would not apply if the

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person can show that they had not given permission or had not been involved in the failure to disclose, or the provision of misleading or incorrect, information.

416. *Subsection (6)* provides that a mesothelioma lump sum payment can not be recovered where a decision has been reconsidered, unless the payment was obtained by providing misleading or false information, or because relevant information was not properly disclosed.

417. *Subsection (7)* provides for any sums repaid to the Secretary of State to be paid in to the Consolidated Fund.

Section 50: Appeal to appeal tribunal

418. This section provides that a person who has made a claim for a payment under *section 46*, will have a right of appeal to an appeal tribunal against a decision made by the Secretary of State on the claim, or a decision made following a reconsideration under *section 49*.

419. *Subsection (2)* provides that, subject to regulations under *subsection (4)(c)*, the Secretary of State must refer any appeal to an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998.

420. *Subsection (3)* provides the tribunal with the power to substitute a decision on matters decided in accordance with Part 4.

421. *Subsection (4)* provides that regulations may make provision:

- as to the manner in which, and the time within which, an appeal may be brought;
- as to the procedure to be followed if an appeal is made; and
- for the purposes of enabling an appeal to be treated as an application for a reconsideration under *section 49*.

Section 51: Appeal to Social Security Commissioner

422. This section provides a right of appeal to a Social Security Commissioner against any decision of an appeal tribunal under *section 50*, on the ground that the decision was wrong in law.

423. *Subsection (2)* states that an appeal to the Commissioner may be made by the Secretary of State, or by the person who brought the appeal under *section 50*.

424. *Subsection (3)* provides that *section 14(7) to (12)* of the Social Security Act 1998 apply to an appeal under this section, as they apply to an appeal under that section.

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which received Royal Assent on 5 June 2008*

Section 52: Minors and people who lack capacity

425. *Section 52* concerns how lump sum payments are to be made to a person under the age of 18, or a person who lacks capacity within the meaning of the Mental Capacity Act 2005 (or, in Scotland, who is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000) in relation to financial matters.

426. *Subsection (2)* provides for a lump sum payment in respect of these persons to be made to any trustees appointed by the Secretary of State.

427. *Subsection (3)* provides for those trustees to hold the lump sum payment in trust, or in Scotland, under the conditions and for the purposes that the Secretary of State may declare.

Section 53: Regulations: Part 4

428. *Section 53* provides power to the Secretary of State to make regulations by statutory instrument, which includes power to make such incidental, supplementary or transitional power as the Secretary of State thinks fit.

429. *Subsection (3)* provides that any regulations made under *section 46* of this Part must be subject to the affirmative resolution procedure. *Subsection (4)* provides that the first regulations made under *section 47* of this Part must be subject to the affirmative resolution procedure.

430. *Subsection (5)* provides that any other regulations made under any other provision of this Part will be subject to the negative resolution procedure.

Recovery of mesothelioma and other lump sum payments

Section 54: Amendment of Social Security (Recovery of Benefits) Act 1997

431. This section inserts a new *section 1A* into the Social Security (Recovery of Benefits) Act 1997, which provides the Secretary of State with powers to make regulations providing for the recovery of lump sum payments made under the Pneumoconiosis etc. (Workers' Compensation) Act 1979, the new scheme or those made on an extra-statutory basis following the rejection of a claim made under that Act.

432. *Subsection (1)* of new *section 1A* sets out that the Secretary of State may by regulations make provision about the recovery of a lump sum payment to which *subsection (2)* applies, where:

- a compensation payment is made to, or in respect of a person to whom, or in respect of whom, a lump sum payment has been made or is likely to be made; and
- the compensation payment is made in respect of the same disease as the lump sum payment.

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

433. *Subsection (2)* applies to:

- a payment made in accordance with the Pneumoconiosis etc. (Workers' Compensation) Act 1979;
- an extra-statutory payment following the rejection of a claim made under the 1979 Act; or
- a payment made under the new scheme.

434. *Subsection (3)* sets out that regulations made under new *section 1A* may in particular:

- make provision about the recovery of the lump sum payment made to, or in respect of a dependant of the person with mesothelioma;
- make provision enabling the recovery of a lump sum payment from a compensation payment (including provision enabling the recovery of an amount that reduces the compensation payment to nil);
- enable the amount of lump sum payment made before commencement to be recovered from a compensation payment made after commencement;
- make provision about certificates in respect of lump sum payments;
- apply any provision of the Social Security (Recovery of Benefits) Act 1997, with or without modifications.

435. *Subsection (4)* provides that reference in *subsection (1)* to a payment in consequence of a disease are references to a payment made by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the disease.

436. *Subsection (5)* sets out definitions for the purposes of new *section 1A*. In particular, commencement means the date on which the section comes into force.

Part 5 - General

Section 55: Regulations and orders: general

437. This section has effect in relation to regulations under this Act, except Part 4 which relates to lump sum payments. It provides that, where the Secretary of State is empowered to make regulations, these are to be made by statutory instrument.

438. *Subsection (3)* provides that such regulations may include power to make incidental, consequential, transitional or saving provisions.

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439. *Subsection (4)* provides that power to make regulations under this Act may be exercised:

- in relation to all cases to which it extends, in relation to those cases but subject to specified exceptions, or in relation to any specified cases or classes of case;
- to make full provision for which it extends, the same or different provision for different cases or classes of case, or different provision for the same case or class of case. Provisions can be unconditional or subject to any specified conditions; and
- to provide for a person to exercise discretion in dealing with any matter.

440. *Subsection (5)* provides that any regulations made under *section 6(1)* or *6(4)*, which relate to fees, the first regulations made under *paragraphs 2(1), 3(1), 5(1) or (2), 6(1) or (3) or 7 of Schedule 5* which relate to transfer of cases onto the new calculation rules, or any order made under *section 11(6)* which relates to the review of the status of the Commission, are subject to the draft affirmative resolution procedure.

441. *Subsection (6)* provides that any regulations not subject to the affirmative resolution procedure will be subject to the negative resolution procedure.

Section 56: General interpretation

442. This section sets out definitions for the purposes of the Act. *Subsection (1)* defines the ‘Commission’, for the purposes of this Act, as a body corporate to be known as the Child Maintenance and Enforcement Commission.

443. *Subsection (2)* sets out that for the purposes of amendments or repeals, where the Child Support Act 1991 has been amended by the Child Support, Pensions and Social Security Act 2000, for limited purposes only, the amendment will apply to both versions of the Act unless otherwise stated.

Section 57: Minor and consequential amendments

444. *Section 57* gives effect to *Schedule 7*, which contains minor and consequential amendments, as a consequence of the measures in the Act.

445. *Subsection (2)* provides regulation-making powers to the Secretary of State to make consequential provisions on this Act in subordinate legislation.

Section 58: Repeals

446. This section gives effect to the repeals set out in *Schedule 8*.

Section 59: Transition

447. *Subsection (1)* provides that until the functions of the Secretary of State are transferred to the Commission, all references to the Commission included in the Child Support Act 1991 will be treated as if they were references to the Secretary of State.

448. *Subsection (2)* gives the Secretary of State the power to make regulations to modify the textual amendments made in *Schedule 3* as necessary during any transitional period between the functions being transferred to the Commission and the repeal of section 6 (applications by those claiming or receiving prescribed benefit) and section 46 (reduced benefit decision) of the Child Support Act 1991.

449. *Subsection (3)* gives the Secretary of State power to make regulations modifying the effect of sections 6 and 46 before they are repealed. This is to enable changes to be made in preparation for the removal of compulsion for benefit claimants.

450. *Subsections (4) and (5)* ensure that some of the new provisions which the Act inserts into the Child Support Act 1991 will apply in relation to cases under the CSA 'old scheme'.

451. *Subsection (4)* provides that new *sections 20(5A), 32A, 32E, 32F, 32J, 32L, 32M, 41C to 41E, 43A, 49A, 49B and 49D* of the Child Support Act 1991 will have effect as if references to child support maintenance included maintenance due under an old scheme assessment.

452. *Subsection (5)* provides that new *sections 20(7A), 32A, 32C, 32E, 32F, 32J, 32L, 32M, 39B, 39H, 40, 40A, 40B and 49B* of the Child Support Act 1991 will have effect as if references to maintenance calculations included assessments made under the old scheme.

453. *Subsection (6)* provides that *sections 35, 36, 38, 39B, 39H, 39K, 40, 40B and 49D* of the Child Support Act 1991 will have effect as if orders made under section 33 of that Act had been made under *section 32M* of that Act. This ensures that any references to the liability orders in the 1991 Act include an administrative liability order made by the court after *section 32M* comes into force.

454. *Subsection (7)* enables an administrative liability order to be made in respect of unpaid child support maintenance, even though the time within which an application to the courts for a non-administrative liability order has expired.

455. *Subsection (8)* is a general power enabling the Secretary of State to make transitional provision or savings in relation to the coming into force of any provision under this Act.

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

Section 60: Financial provisions

456. *Section 60* provides that there shall be paid out of money provided by Parliament:

- any expenditure incurred by the Secretary of State or a government department in consequence of this Act; and
- any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

457. *Subsection (2)* provides that there shall be authorised the extinguishing in consequence of this Act of liabilities owed to the Crown under the Child Support Act 1991.

Section 61: Extent

458. This section sets out the territorial extent of the Act. The provisions of the Act extend to England, Wales and Scotland only, apart from the sections below which will also extend to Northern Ireland:

- *Sections 55, 57(2), 62 and 63;*
- *Paragraphs 4 to 6 of Schedule 6, and section 44 so far as relating to those paragraphs;*

459. Any amendment or repeal made by the Act has the same extent as the enactment to which it relates.

Section 62: Commencement

460. *Sections 55, 59(8), 61 and 63*, come into force on Royal Assent. *Section 35* regarding Registered Maintenance Agreements: Scotland come into force on the day after the day of Royal Assent. The remaining provisions of the Act come into force on such days as the Secretary of State may by order appoint, apart from an order commencing *section 39* in England and Wales which may only be made with the consent of the Lord Chancellor. A commencement order may include such transitional provision or savings as the Secretary of State considers necessary or expedient in connection with bringing any provision of this Act into force.

Section 63: Citation

461. The Act may be cited as the Child Maintenance and Other Payments Act 2008.

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

Schedule 1: The Commission

462. This Schedule makes more detailed provision about the Commission including its structure and how appointments will be made.

463. The table below summarises the appointment procedures for the Commission and its staff as set out in *paragraphs 2 to 10* of this Schedule.

	Initial appointment by	Subsequent appointment by	Terms and conditions (including remuneration) set by
Chair	Secretary of State	Secretary of State	Secretary of State
Chief Executive	Secretary of State	Commission with approval of Secretary of State	Initially by Secretary of State, and subsequently by non-executive functions committee with approval of Secretary of State
Non executive directors (other than Chair)	Chair with approval of Secretary of State	Chair with approval of Secretary of State	Chair with approval of Secretary of State
Executive directors (other than Chief Executive and other staff)	Commission with approval of Secretary of State	Commission with approval of Secretary of State	Non-executive functions committee
Other staff	Commission	Commission	Commission

464. *Paragraph 1* sets out that the Commission shall consist of:

- a person appointed to chair the Commission;
- a chief executive of the Commission who will be known as the Commissioner for Child Maintenance;
- one or more executive directors, appointed from the staff of the Commission; and
- two or more non-executive directors, who must not be staff of the Commission.

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

465. *Paragraphs 3(3) and (4)* require that there are always more non-executive directors than executive directors.

466. *Paragraphs 4 and 5* make provision for the tenure of members of the Commission.

467. *Paragraph 5(2)* states that an executive director will no longer be a member of the Commission if they cease to be a member of its staff.

468. *Paragraph 5(3)* states that the Chair or any non-executive member will cease to be a member of the Commission if they become a member of its staff.

469. *Paragraph 6* stipulates that remuneration paid by the Commission to the Chair may be determined by the Secretary of State, as may any pension, allowances or gratuities paid to or in respect of the Chair.

470. *Sub-paragraph (3)* allows the Commission to pay compensation to the Chair upon early expiry of the appointment if the Secretary of State considers it appropriate.

471. *Paragraph 7* stipulates that remuneration paid by the Commission to a non-executive director, may be determined by the Secretary of State, as may any pension, allowances or gratuities paid to or in respect of a non-executive director.

472. *Sub-paragraph (3)* allows the Commission to pay compensation to a non-executive director upon early termination of the appointment if the Chair considers it appropriate. The amount of any such payment will be determined by the Chair, with the approval of the Secretary of State.

473. *Paragraph 8* requires the Chair to appoint one of the non-executive directors as a deputy chair.

474. *Paragraph 9* provides that the Commission will have a chief executive who will be a civil servant. The Secretary of State will make the initial appointment of the Chief Executive, and determine the terms and conditions with approval of the Minister for the Civil Service. Subsequent appointments will be made by the Commission with approval of the Secretary of State, on terms and conditions determined by the Commission with the approval of the Secretary of State and the Minister for the Civil Service.

475. *Paragraph 10* enables the Commission to appoint staff as it considers appropriate and determine their terms and conditions including remuneration with the approval of the Minister for the Civil Service.

476. *Paragraph 11* enables the Commission to establish committees and sub-committees (in addition to the non-executive functions committee established under *paragraph 20*). Committees and sub-committees established under this paragraph may include or be entirely made up of people who are not members of the Commission or the Committee by which it is established.

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

477. *Paragraph 12* enables the Commission to determine terms and conditions for committee members who are not Commission members or staff. This function will be exercised on behalf of the Commission by the non-executive functions committee.

478. *Paragraph 13* enables the Commission to set its own procedure and procedure of its committees.

479. *Paragraph 14* enables the Commission to authorise any member of the Commission, its staff or a committee member, to carry out its functions (apart from the non-executive functions) on its behalf.

480. *Paragraph 15* enables the Chair to delegate their functions of determining the terms and conditions, including remuneration, of non-executive directors, to any executive member of the Commission, any member of staff of the Commission, or subject to *sub-paragraph (2)*, any of its committees.

481. *Sub-paragraph (2)* prevents these functions from being delegated to any committee that has a non-executive director as a member, or if a committee is carrying out one of these functions on behalf of the Chair, the authority to do so must cease if a non-executive director becomes a member of the committee.

482. *Paragraph 16* makes provisions relating to how the common seal is authenticated and provides that any document which appears to be executed under the Commission's seal or signed on its behalf is to be presumed to be sealed or signed for the Commission unless it is proved otherwise. This provision does not apply in relation to Scotland.

483. *Paragraph 17* makes provision for the Secretary of State to fund the Commission out of money provided by Parliament through a grant in aid. *Sub-paragraph (2)* allows the Secretary of State to make such funding subject to conditions

484. *Paragraph 18* requires the Commission to keep proper accounts and produce an annual statement of accounts. A copy of each statement of accounts must be sent to the Secretary of State and the Comptroller and Auditor General. The Comptroller and Auditor General will report on, and certify, the statement which he will then return to the Secretary of State who will then lay the report and statement before Parliament.

485. *Paragraph 19* requires the Commission to keep its internal financial controls under review. This function is to be carried out by the non-executive functions committee.

486. *Paragraph 20* requires the Commission to establish a non-executive functions committee, and sets out the structure of, and functions that are to be carried out by, such a committee.

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

487. *Sub-paragraph (1) of paragraph 20* lists the functions to be carried out by the non-executive functions committee. These are:

- to determine the terms and conditions of the chief executive, with approval of the Secretary of State;
- to determine the terms and conditions of the Commission's executive directors;
- to determine the terms and conditions of committee or sub-committee members who are not members of the Commission or its staff; and
- to monitor and audit the Commission's internal financial controls.

488. *Sub-paragraphs (2), (3) and (4)* stipulate that the non-executive functions committee must consist of at least three members who are non-executive members of the Commission, and that the Chair is prevented from being a chair of the non-executive functions committee.

489. *Sub-paragraphs (5) and (6)* require the non-executive functions committee to produce a report on its own functions to include within the Commission's annual report to Secretary of State. The report should cover the same period as the Commission's report.

490. *Sub-paragraphs (7) to (10)* provide for the non-executive functions committee to be able to set up sub-committees to carry out its monitoring and audit and report functions. Sub-committees may include people who are not members of the Commission but may not include executive members or staff of the Commission.

491. *Paragraph 21* allows the Commission to do anything (other than borrow money) which is conducive or incidental to the carrying out of its functions. This would for example, enable the Commission to enter into contracts for supply of goods and services.

492. *Paragraph 22* sets out that the Commission's functions shall be exercised on behalf of the Crown. This effectively makes the Commission a Crown body. For the purposes of any civil proceedings arising out of those functions, sub-paragraph (2) makes provision for the Crown Proceedings Act 1947 and the Crown Suits (Scotland) Act 1857 to apply to the Commission. These Acts set out jurisdiction and procedure for legal proceedings involving the Crown, and the 1947 Act provides that the Crown may be liable in tort for the acts of its servants and agents.

493. *Paragraph 23* enables the Commission to carry out its functions even if there is not a full board in place or there has been a defect in an appointment.

494. *Paragraph 24* amends the Public Records Act 1958 to include the Commission so that records held by the Commission will fall within the definition of public records.

495. *Paragraph 25* amends the Parliamentary Commissioner Act 1967, to include the Commission as a department or authority subject to investigation.

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

496. *Paragraph 26* provides that the Commission will be required to fund the increased cost of providing pensions under section 1 of the Superannuation Act 1972 to its current or former staff.

497. *Paragraph 27* amends the House of Commons Disqualification Act 1975, disqualify members of the Commission from being members of the House of Commons.

498. *Paragraph 28* amends the Northern Ireland Assembly Disqualification Act 1975, to disqualify members of the Commission from being members of the Northern Ireland Assembly.

499. *Paragraph 29* ensures that the Commission is subject to the Freedom of Information Act 2000.

500. *Paragraphs 30 to 32* set out various definitions for the purposes of the Commission structure. Specifically that:

- executive members of the Commission are the Chief Executive and the executive directors;
- non-executive members are members of the Commission who are not executive members;
- references to staff of the Commission should be read as references to the Commissioner for Child Maintenance and other employees of the Commission
- committees of the Commission are:
 - the non-executive functions committee and any of its sub-committees; and
 - any other committee or sub-committee set up by the Commission.

Schedule 2: Transfer of functions under subordinate legislation

501. This Schedule lists the functions under subordinate legislation which will transfer to the Commission. The following table sets out what this legislation refers to.

Number	Title	Explanation of functions transferred
SI 1992/1812	The Child Support (Information, Evidence and Disclosure) Regulations 1992	These regulations confer functions allowing the Secretary of State to request information for child support maintenance purposes. These functions will be transferred to the Commission.

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which received Royal Assent on 5 June 2008*

SI 1992/1813	The Child Support (Maintenance Assessment Procedure) Regulations 1992	The functions being transferred to the Commission are those relating to processing maintenance applications and making revisions and supersessions under the old scheme. These regulations also confer functions in relation to reduced benefit decisions which will remain with the Secretary of State.
SI 1992/1815	The Child Support (Maintenance Assessments and Special Cases) Regulations 1992	The functions conferred by these regulations relate to the determination of income, and the assessment of maintenance under the old scheme, and they will transfer to the Commission.
SI 1992/1816	The Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992	These regulations confer functions allowing the Secretary of State to serve notices, make agreements and adjustments in cases where there have been arrears in payments or overpayments. These functions will transfer to the Commission.
SI 1992/1989	The Child Support (Collection and Enforcement) Regulations 1992	These regulations confer functions in relation to specification of timing and method of payment of maintenance and deduction from earnings orders. These functions will transfer to the Commission.
SI 1992/2643	The Child Support (Collection and Enforcement of Other Forms of Maintenance) Regulations 1992	These regulations allow the Secretary of State to bring proceedings for enforcement in England Wales and Scotland in relation to other forms of maintenance. The functions conferred will transfer to the Commission.
SI 1992/2645	The Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992	These regulations confer notification functions on the Secretary of State where there is a court order in force, which may be affected by a maintenance calculation. These functions will transfer to the Commission.
SI 1993/627	The Family Proceedings Courts (Child Support Act 1991) Rules 1993	These rules specify that the Secretary of State is to be the respondent to any appeal under section 20 of the Child Support Act 1991. The Commission will be the respondent following the transfer.

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which received Royal Assent on 5 June 2008*

SI 1994/227	The Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations 1994	These regulations confer functions on the Secretary of State in relation to how transition from the old scheme to the new scheme is handled. These functions will transfer to the Commission.
SI 1995/1045	The Child Support and Income Support (Amendment) Regulations 1995	These regulations confer functions on the Secretary of State in relation to determining exempt and protected income. The functions will be transferred to the Commission.
SI 1996/2907	The Child Support Departure Direction and Consequential Amendments Regulations 1996	The functions conferred relate to determining departure decisions and will be transferred to the Commission. The functions conferred in regulation 47 are not transferred as these relate to departure direction applications that have been made prior to 2 December 1996.
SI 1999/991	The Social Security and Child Support (Decisions and Appeals) Regulations 1999	These regulations confer functions in relation to the making of decisions and appeals both in Child Support and Social Security cases. These functions will be transferred to the Commission insofar as they relate to Child Support.
SI 1999/1305	The Child Support Commissioners (Procedure) Regulations 1999	Regulation 20 of these regulations requires the Secretary of State to issue notices under section 28ZB of the Child Support Act 1991 (i.e. notices to stop dealing with an appeal or to deal in a particular way) in writing and to contain certain information. This requirement will be transferred to the Commission.
SI 1999/1510	The Social Security Act 1998 (Commencement No.7 and Consequential and Transitional Provisions) Order 1999	These regulations confer functions on the Secretary of State as a result of the changeover from child support officers. These functions will be transferred to the Commission.

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which received Royal Assent on 5 June 2008*

SI 2000/3173	The Child Support (Variations) (Modification of Statutory Provisions) Regulations 2000	These regulations confer functions on the Secretary of State in relation to how variations should be dealt with in certain cases. Those functions will be transferred to the Commission.
SI 2000/3177	The Child Support (Voluntary Payments) Regulations 2000	These regulations confer functions on the Secretary of State in relation to determining whether a payment is a voluntary payment. These functions will be transferred to the Commission.
SI 2000/3186	The Child Support (Transitional Provisions) Regulations 2000	These regulations confer functions on the Secretary of State in relation to case conversion. The functions will be transferred to the Commission.
SI 2001/155	The Child Support (Maintenance Calculations and Special Cases) Regulations 2000	The functions conferred by these regulations relate to the determination of income and the calculation of maintenance under the new scheme and will transfer to the Commission.
SI 2001/156	The Child Support (Variations) Regulations 2000	These regulations confer functions in relation to the determination of variations applications. These functions will be transferred to the Commission.
SI 2001/157	The Child Support (Maintenance Calculation Procedure) Regulations 2000	The functions being transferred to the Commission are functions which relate to processing maintenance applications under the new scheme. These regulations also confer functions in relation to reduced benefit decisions. These functions will remain with the Secretary of State.

Schedule 3: Transfer of child support functions

502. *Part 1:* makes the consequential amendments to the Child Support Act 1991 and the Social Security Act 1998, which are necessary as a result of provisions for the transfer of functions from the Secretary of State to the Commission.

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

503. *Part 2*: concerns transitional provision and savings.

504. *Paragraph 55* makes provision to ensure continuity in the transfer of functions from Secretary of State to the Commission.

505. At the time the Commission comes into being, anything which Secretary of State is in the process of doing in relation to any of the transferred functions may be continued by the Commission.

506. Any acts of the Secretary of State for the purpose of, or in connection with, any of the transferred functions prior to the transfer will be treated as acts of the Commission where this is necessary to ensure their continuing effect.

507. Documents, legislation etc which refer to the Secretary of State will be treated as referring to the Commission where it is necessary to make sense of them after the transfer of functions.

508. No Secretary of State act prior to the transfer will be invalidated by virtue of the transfer. However, the Secretary of State will remain liable for any acts or omissions of the Secretary of State prior to the transfer.

Schedule 4: Changes to the calculation of maintenance

509. This Schedule amends Part 1 of Schedule 1 to the Child Support Act 1991, and concerns changes to the calculation of maintenance.

510. The table below summarises the changes

	Old Scheme Child Support Act 1991	New Scheme Child Support, Pensions and Social Security Act 2000	New arrangements under the Child Maintenance and Enforcement Commission
Income to calculate maintenance	Net income	Net weekly income	Gross weekly income
	Obtained from the child's parents or their employer	Obtained from the non-resident parent or their employer	Obtained from information supplied by HMRC
	Current income	Current income	Income from past periods

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

Existing private arrangements	Not taken into account for private arrangements, but taken into account where CSA is not empowered to act	Not taken into account for private arrangements, but taken into account where CSA is not empowered to act	Certain types of private arrangements will be taken into account for calculating maintenance liability
Basic rate levels	Not part of formula	15 % 1 child 20% 2 children 25% 3 or more children	NRPs earning between £200 and £800 per week (and the first £800 per week for NRPs earning over that amount)
			12% 1 child 16% 2 children 19 % 3 or more children
Flat rate maintenance	Not part of formula	£5 per week	NRPs earning over £800 per week (rate applies in relation to any amounts over £800 per week)
			9% 1 child 12% 2 children 15% 3 or more children
Flat rate maintenance	Not part of formula	£5 per week	£7 per week

511. *Paragraph 2* replaces reference to ‘net’ weekly income with ‘gross’ wherever it occurs in Part 1 of Schedule 1 to the Child Support Act 1991. This change means that where a calculation of liability is currently based on the net weekly income of a non-resident parent, in the future it will be based on their gross weekly income.

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

512. *Paragraph 3* replaces paragraph 2 of Schedule 1, to amend the basic rate of maintenance. Basic rate is a percentage of the non-resident parent's income and the changes will be:

- for one qualifying child – from 15% to 12%;
- for two qualifying children – from 20% to 16%; and
- for three or more qualifying children – from 25% to 19%.

513. *Sub-paragraph (2)* of paragraph 2 makes provision for a new rate for non-resident parents whose weekly income exceeds £800. The basic rate in these circumstances will be an aggregate of an amount resulting from the percentages above for the first £800, and an amount resulting from the percentages below for earnings over £800:

- for one qualifying child – 9%;
- for two qualifying children – 12%; and
- for three or more qualifying children – 15%.

514. *Sub-paragraph (3)* amends the percentage rate for non-resident parents who have one or more relevant other children. In these circumstances before the percentages above are applied, gross weekly income shall be reduced by a certain amount. Changes to these amounts will be:

- for one relevant other child – 15% to 12 %;
- for two relevant other children – 20% to 16%; and
- for three or more relevant other children – 25% to 19%.

515. *Paragraph 4* amends sub-paragraphs 3(3), 4(1) and 7(7) of Schedule 1. The effect of these provisions is to increase the amount of flat rate maintenance paid by non-resident parents in receipt of benefit, or earnings lower than £100 per week, from £5 to £7 per week and apply the same increase to the minimum amount of liability due under the basic or reduced rates.

516. *Paragraph 5* inserts a new *paragraph 5A* into Schedule 1 to the Child Support Act 1991. It also amends paragraph 1(1) of that Schedule, so that paragraph 1(1) is subject the new *paragraph 5A*.

517. The new *paragraph 5A* will makes provision for circumstances where a non-resident parent, in addition to their obligations under the statutory scheme, pays maintenance for a child or children under an existing private arrangement of a prescribed description or court order.

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

518. Currently, all children would normally need to be brought into the statutory scheme for them to be accounted for in a maintenance calculation. This change will mean that the Commission will consider any children who are subject to certain types of private maintenance arrangements, when calculating a basic or reduced rate maintenance liability under the new arrangements.

519. *Sub-paragraph (2) of new paragraph 5A* sets the weekly rate of child support maintenance for cases that fall within *paragraph 5A* at the greater of £7 per week and the amount calculated in accordance with *sub-paragraphs (3) to (5)*.

520. *Sub-paragraphs (3) to (5)* make provision for the calculation of child support maintenance where the non-resident parent is party to a qualifying private child support maintenance arrangement. Liability is calculated as though all the children supported by the non-resident parent, by virtue of a qualifying maintenance arrangement, were subject to the statutory scheme.

521. *Sub-paragraph (6)* makes provision for the types of arrangement that will be 'qualifying maintenance arrangements' for the purposes of *paragraph 5A*.

522. *Paragraphs 6 to 8* amend paragraphs 7(2), 8(2) and 9 of Schedule 1 to the 1991 Act, which allows for a reduction to basic or reduced rate where a shared care arrangement is in place. These changes will allow regulations to provide for a reduction on the basis of an agreement between the parents as to shared care. Regulations can also allow the Commission to work on the basis of an assumed pattern of shared care with a corresponding reduction on an interim basis. The intention is to use this where there is an agreement to share care, but no agreement as to the pattern or amount of shared care.

523. *Paragraph 9* amends paragraph 10 of Schedule 1 to the Child Support Act 1991 to provide that, regulations about the manner in which gross weekly income is determined may provide that gross weekly income may be income from a past period.

524. This change will mean that where currently weekly income is based on information currently obtained from the non-resident parent, in the future it can be taken directly from information supplied by HMRC and based on previous income tax years.

525. *Paragraph 10* increases the maximum amount of weekly income that will be taken into account for calculating maintenance, from £2,000 to £3,000 per week.

Schedule 5: Maintenance calculations: transfer of cases to new rules

526. This Schedule provides for arrangements to be made with regard to existing cases moving onto the new calculation rules. The Commission may require the parties to choose whether to remain in the statutory scheme under the new calculations rules. If they do not, then liability stops accruing under the scheme.

527. *Paragraph 1* sets out that the Commission may require CSA clients on both existing CSA schemes, to choose whether to remain in the statutory scheme.

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

528. *Paragraph 2* enables the Secretary of State, by regulations, to make provision about the power referred to in *paragraph 1*. The regulations may include, for example, provision about timing, stages and in which order cases will be transferred.

529. *Paragraph 3* provides regulation-making powers to the Secretary of State in relation to how the parties exercise their right to choose whether or not to stay in the statutory scheme, and how they apply to stay within the statutory scheme.

530. *Paragraph 4* stipulates that where either of the two parents chooses to remain in the statutory scheme, the case will remain in the statutory scheme, even if the other parent wishes to opt out.

531. *Paragraph 5* sets out the effect of the Commission requiring the parties to exercise a choice under *paragraph 1*. If a calculation (or assessment under the old scheme) is in force, then maintenance will stop accruing from a date specified in regulations. If there is an outstanding application for maintenance calculation or assessment, it may be made only in respect of the period up to that date.

532. *Paragraph 6* provides regulation-making powers to the Secretary of State in relation to a person's decision not to leave the statutory scheme. These regulations may include provision about how an application to stay in the statutory scheme is determined, how the Child Support Act 1991 in relation to a maintenance calculation is to apply to such an application, and whether any adjustment is required to the resulting calculation. They may also include provision for treating an existing application as withdrawn where no maintenance calculation or assessment has been made.

533. *Paragraph 7* sets out definitions for the purposes of moving of cases to the new calculation rules.

Schedule 6: Use of information

Powers in relation to use of information

534. This Schedule sets out gateways for the supply of information between the Commission and certain government departments.

535. *Paragraph 1* enables information held in relation to child support functions by the Commission, or a person providing services to the Commission, to be used by or disclosed to any person providing services to the Commission for use for the purpose of functions relating to child support.

536. *Paragraph 2* allows information relating to income tax, contributions, tax credit, child benefit or the guardian's allowance, held by HMRC or a person providing a service to them, to be disclosed to the Commission or any person providing services to the Commission for use for the purpose of functions relating to child support.

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

537. *Paragraph 3* concerns information held by the Secretary of State, or a person providing services to the Secretary of State, which relates to social security, or employment or training. It enables such information to be disclosed to the Commission or a person providing services to the Commission, for use for the purpose of functions relating to child support.

538. *Paragraph 4* concerns information held for purposes relating to social security, child support or employment training, by the Northern Ireland Department or a person providing services to them. It enables such information to be disclosed to the Commission or a person providing services to the Commission, for use for the purpose of functions relating to child support.

539. *Paragraph 5* concerns information held for use for the purpose of functions relating to child support, by the Commission or a person providing services to it. It enables such information to be disclosed to the Secretary of State, HMRC or the Northern Ireland Department or a person providing services to any of them, for purposes of certain functions.

540. *Paragraph 6* defines the Northern Ireland Department as meaning the Department for Social Development in Northern Ireland or the Department for Employment and Learning in Northern Ireland.

Schedule 7: Minor and consequential amendments

541. This Schedule contains amendments which are minor or consequential on the measures in the Act. In particular the Schedule provides for amendment to the Child Support Act 1991, the Social Security Administration Act 1992, the Social Security Act 1998 and the Tax Credits Act 2002.

542. Section 20 of the Child Support Act 1991 is amended to provide for an appeal to the appeal tribunal against the making of a liability order by the Commission under the new *section 32M*. An appeal will lie on limited grounds, that is, that the person has not failed to pay an amount of child support maintenance or that the amount of the liability order exceeds the amount owing. In deciding any appeal against the making of a liability order, the appeal tribunal will not be able to question the maintenance calculation in relation to which the order is made.

543. Section 50 of the Child Support Act 1991 is amended so that the offence of unauthorised disclosure of information covers members and staff of the Commission, employees of those providing services to the Commission and those employed in employment of a kind prescribed in regulations. The latter could include, for example, employment with a credit reference agency.

544. Section 108 of the Social Security Administration Act 1992 is amended to include the definition of a maintenance order. The equivalent definition is currently contained in section 107 of that Act, but the repeal of this section is provided for in *Schedule 8* to this Act. Section 121E is also amended in consequence of the transfer of functions relating to child support from the Secretary of State to the Commission. Information supplied by HMRC to

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

the Secretary of State will no longer be provided for the purposes of functions relating to child support. This information will now be provided to the Commission.

545. Section 3 of the Social Security Act 1998 is amended to remove references to child support pertaining to the use of information held by the Secretary of State or the Northern Ireland Department.

546. Section 81 is amended to remove the responsibility for the Secretary of State to report on the standard of decisions made following appeals regarding child support maintenance. This responsibility will fall to the Commission.

547. Schedule 5 to the Tax Credits Act 2002 is amended in consequence of the transfer of functions relating to child support from the Secretary of State to the Commission. Information supplied by HMRC to the Secretary of State will no longer be provided for the purposes of functions relating to child support. This information will now be provided to the Commission.

Schedule 8: Repeals

548. This Schedule provides for repeals consequential on the provisions of the Act.

COMMENCEMENT

549. The following provisions will come into force on Royal Assent:

- section 55;
- subsection (8) of section 59;
- section 61; and
- section 63.

550. Section 35 (relating to Scottish maintenance agreements) will come into force on the day after the day of Royal Assent. The remaining provisions come into force on such days as the Secretary of State may by order appoint.

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

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	05 June 2007	Vol. 461 Col. 137
Second Reading	4 July 2007	Vol.462 Col. 981
Committee	7 July 2007, 7 July 2007, 19 July 2007, 19 July 2007, 24 July 2007, 24 July 2007, 9 October 2007, 9 October 2007, 11 October 2007, 11 October 2007, 16 October 2007, 16 October 2007	Child Maintenance and Other Payments Committee
Re-introduction and Second Reading	07 November 2007	Vol. 467 Col. 142
Report and Third Reading	03 December 2007	Vol. 468 Col. 575 and Col 639
House of Lords		
Introduction	04 December 2007	Vol. 468 Col. 1610
Second Reading	18 December 2007	Vol. 697 Col. 581
Committee	29 January 2008, 31 January 2008, 5 February 2008, 7 February 2008, 20 February 2008	Vol. 698 Col, GC275 Vol. 698 Col. GC379 Vol. 698 Col. GC495 Vol. 698 Col. GC615 Vol. 699 Col. GC1

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

Consideration of Motion	5 March 2008	Vol. 699 Col 1094
Report	7 May 2008 and 13 May 2008	Vol. 701 Col. 642, Col. 945
Third Reading	2 June 2008	Vol. 702 Col. 30
Commons Consideration of Lords Amendments		
Commons Consideration of Lords Amendments	3 June 2008	Vol. 476 Cols. 648-686
Royal Assent - 5 June 2008 - House of Commons Hansard Vol. 476 Col 937		

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