

These notes refer to the Child Maintenance Act (Northern Ireland) 2008 (c.10) which received Royal Assent on 2 July 2008

Child Maintenance Act (Northern Ireland) 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Child Support etc.

Collection and enforcement

Section 18: Disqualification for holding or obtaining a travel authorisation

This section inserts five new *Articles*, 36B, 36C, 36D, 36E and 36F into the Child Support (Northern Ireland) Order 1991 and provides the Department with a power to apply to a court for an order to disqualify a non-resident parent for holding or obtaining a travel authorisation.

New *Article 36B* enables the Department to apply to a court of summary jurisdiction to disqualify a non-resident parent, against whom a liability order has been made, for holding or obtaining a travel authorisation if:

- it has sought to recover the arrears through the use of the Enforcement of Judgments Office;
- 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.

Paragraph (2) 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.

Paragraph (3) of *Article 36B* requires the court to inquire about (in the presence of the person against whom the order is made), that person's means, whether he requires a travel authorisation to earn a living, and whether he has wilfully refused or culpably neglected to pay maintenance.

Paragraph (4) prevents the court from making an order under *Article 36B* unless it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

Paragraph (5) prevents the court from both disqualifying the non-resident parent for holding a travel authorisation and sending him to prison.

Paragraph (6) prevents the court from questioning the liability order on which the application for disqualification for holding a travel authorisation is made, or the original maintenance calculation which is the basis of the liability order.

Paragraph (7) 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 an amount to be recovered by the Department in respect of costs arising from making the application for the order.

Paragraph (8) stipulates that the court shall require the person against whom it makes an order under this Article to surrender to the court any travel authorisation he holds.

Paragraph (9) provides that the court shall forward any travel authorisation it obtains under paragraph (8) to a prescribed person.

Paragraph (10) requires the court to send notice of any order it makes under this Article, or of any appeal allowed against such an order, to the Department. The Department may determine the details which such a notice should contain.

Paragraph (11) sets out definitions for the purposes of the Article. 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.

Paragraph (12) defines a court, for the purposes of the Article, as a court of summary jurisdiction (with exception relating to appeals).

Article 36C concerns the duration of an order made under this Article.

Paragraph (1) of *Article 36C* sets out that the order will specify for how long it will have effect. This period cannot exceed two years.

Paragraphs (2), (3) and (4) enable the court to suspend an order in exceptional circumstances on such conditions as it thinks just. It may also suspend an order where the non-resident parent agrees to pay the amount specified in the liability order.

Paragraph (5) provides that the Department may make another application for an order disqualifying 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.

Article 36D provides a power for the court to order a search of a non-resident parent against whom it has made an order to disqualify for holding or obtaining a travel authorisation.

Paragraph (2) of Article 36D 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 on the affirmation or revision of the order, and the balance, if any, returned to the non-resident parent.

Paragraph (3) prevents the court from taking any money found on the non-resident parent if it was satisfied that it did not belong to the non-resident parent.

Where the non-resident parent makes part payment of the amount stated in the order, *Article 36E* enables the court to either revoke, or reduce the period of, that order.

Paragraph (2) states that the court must, on application by the Department or the non-resident parent, revoke the order where the amount specified in the order is paid in full to the person authorised to receive it.

Paragraph (3) provides the opportunity for the Department to make representations to the court as to the amounts it will accept before the court should revoke the order. The non-resident parent is also provided with the opportunity to reply to those representations.

Paragraph (4) allows the court to either revoke or reduce the period of the order where it has found money during a search of the non-resident parent, and that money is applied to the maintenance outstanding. No application by the Department or the non-resident parent is necessary.

Paragraph (5) requires the court to send notice of any order it makes under this Article to the Department. The Department may determine the details which such a notice should contain.

Article 36F provides regulation-making powers to the Department with regard to the practicalities and procedure relating to orders to disqualify a non-resident parent for holding or obtaining a travel authorisation. The regulations may also make provision for the implementation of Articles 36C to 36E where the non-resident parent, against whom the order has been made, is resident outside the United Kingdom.