

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Child Support etc.

Collection and enforcement

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.
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

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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.
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.

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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.
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.