

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Child Support etc.

Miscellaneous

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.
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.