

## **Child Maintenance and Other Payments Act 2008 c. 6**

### **Part 3 CHILD SUPPORT ETC.**

#### **Collection and enforcement**

This version in force from: **date to be appointed**

(version 1 of 1)

#### **27 Disqualification for holding or obtaining travel authorisation**

Before [section 40](#) of the [Child Support Act 1991 \(c. 48\)](#) insert—

##### **“39B Disqualification for holding or obtaining travel authorisation**

(1) The Commission may apply to the court for an order under this section against a person where—

(a) it has sought to recover an amount from the person by means of taking enforcement action by virtue of section 35 or 38, or by means of a third party debt order or a charging order by virtue of section 36;

(b) the whole or any part of the amount remains unpaid; and

(c) the Commission is of the opinion that there has been wilful refusal or culpable neglect on the part of the person.

(2) For the purposes of subsection (1)(a), the Commission is to be taken to have sought to recover an amount by means of a charging order if an interim charging order has been made, whether or not any further steps have been taken to recover the amount.

(3) A person against whom an order under this section is made is disqualified for holding or obtaining a travel authorisation while the order has effect.

(4) On an application under subsection (1) for an order against a person the court shall (in the presence of that person) inquire as to—

(a) whether the person needs a travel authorisation to earn a living;

(b) the person's means;

(c) whether there has been wilful refusal or culpable neglect on the part of the person.

(5) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the person, it may make an order under this section.

(6) The court may not take action under both this section and section 40.

(7) On an application under subsection (1) the court shall not question—

(a) the liability order by reference to which the Commission acted as mentioned in paragraph (a) of that subsection; or

(b) the maintenance calculation by reference to which that liability order was made.

(8) An order under this section shall specify the amount in respect of which it is made, which shall be the aggregate of—

(a) the amount sought to be recovered as mentioned in subsection (1)(a), or so much of it as remains unpaid; and

(b) an amount (determined in accordance with regulations made by the Secretary of State) in respect of the costs of the application under this section.

(9) A court which makes an order under this section shall require the person to whom it relates to produce any travel authorisation that the person holds.

(10) The court shall send to the prescribed person any travel authorisation produced to the court under subsection (9).

(11) Where a court—

(a) makes an order under this section, or

(b) allows an appeal against such an order,

it shall send notice of that fact to the Commission; and the notice shall contain such particulars and be sent in such manner and to such address as the Commission may determine.

(12) In this section "*travel authorisation*" means—

(a) a United Kingdom passport (within the meaning of the Immigration Act 1971);

(b) 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.

(13) In this section (except for the purposes of subsection (11)(b)) and in sections 39C to 39E, "*court*" means—

(a) in relation to England and Wales, a magistrates' court;

(b) in relation to Scotland, the sheriff.

### **39C Period for which orders under section 39B are to have effect**

(1) Disqualification by an order under section 39B shall be for such period not exceeding two years as the court may specify in the order.

(2) On making an order under section 39B, the court may include in the order provision suspending the running of the period for which the order is to have effect until such day and on such conditions (if any) as the court thinks just.

(3) After making such an order the court may by order suspend the running of the period for which it has effect until such day and on such conditions (if any) as the court thinks just.

(4) The powers conferred by subsections (2) and (3) may be exercised by the court only—

(a) if the person against whom the order under section 39B is made agrees to pay the amount specified in the order; or

(b) if the court is satisfied that the suspension in question is justified by exceptional circumstances.

(5) The Commission may make a further application under section 39B if the amount specified in an order under that section has not been paid in full by the end of the period for which the order has effect.

### **39D Power to order search**

(1) On making an order under section 39B the court may order the person against whom the order is made to be searched.

(2) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the amount specified under section 39B(8); and the balance (if any) shall be returned to the person searched.

(3) The court shall not allow the application under subsection (2) of money found on a search under subsection (1) if it is satisfied that the money does not belong to the person searched.

### **39E Variation and revocation of orders following payment**

(1) If part of the amount specified in an order under section 39B is paid to any person authorised to receive it, the court may, on an application made by the Commission or the person against whom the order is made, by order—

(a) reduce the period for which the order under section 39B is to have effect; or

(b) revoke the order under section 39B.

(2) If the whole of the amount specified in an order under section 39B is paid to any person authorised to receive it, the court shall, on an application made by the Commission or the person against whom the order is made, by order revoke the order under section 39B.

(3) The Commission may make representations to the court as to the amount which should be paid before it would be appropriate to make an order under subsection (1) revoking an order under section 39B, and the person against whom the order was made may reply to those representations.

(4) The court may exercise the powers conferred on it by subsection (1) or (2) without the need for an application where money found on a search under section 39D(1) is applied towards payment of the amount specified in the order under section 39B.

(5) Where a court makes an order under this section, it shall send notice of that fact to the Commission; and the notice shall contain such particulars and be sent in such manner and to such address as the Commission may determine.

### **39F Power to make supplementary provision**

The Secretary of State may by regulations—

(a) make provision in relation to orders under section 39B corresponding to the provision that may be made under section 40(11);

(b) make provision for sections 39C to 39E to have effect with prescribed modifications in cases where a person against whom an order under section 39B has effect is outside the United Kingdom.

### **39G Application of sections 39B and 39F to Scotland**

(1) In their application to Scotland, sections 39B and 39F have effect with the following modifications.

(2) In section 39B(6) for “section 40” substitute “section 40A”.

(3) For section 39F substitute—

### **“39F Power to make supplementary provision**

In relation to orders under section 39B—

(a) the Secretary of State may by regulations make provision—

(i) for sections 39C to 39E to have effect with prescribed modifications in cases where a person against whom such an order has effect is outside the United Kingdom;

(ii) that a statement in writing to the effect that wages of any amount have been paid to a person during any period, purporting to be signed by or on behalf of the person's employer, shall be sufficient evidence of the facts stated; and

(b) 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 corresponding to that which may be made by virtue of section 40A(8).”

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**Subject:** Family law

## Annotation

### Section 27

#### Introduction

This section amends the [Child Support Act 1991](#) by inserting new ss.39B–39G which allow the Child Maintenance and Enforcement Commission to apply to a court to disqualify a non-resident parent from holding or obtaining a travel authorisation.

#### Post-Legislative Scrutiny Note:

See the Government's [Memorandum to the Work and Pensions Select Committee on Post-Legislative Scrutiny of the Child Maintenance and Other Payments Act 2008 presented to Parliament by the Secretary of State for Work and Pensions in December 2014 \(Cm 8986\)](#).

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