

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Child Support etc.

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

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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.

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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.
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.
349. *Subsection (10)* sets out further that the regulations may include:

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- 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.