

CHILD SUPPORT (ENFORCEMENT) BILL

Memorandum from the Department for Work and Pensions to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Child Support (Enforcement) Bill (“the Bill”). The Bill was introduced in the House of Commons on 15 June 2022. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. Section 25 of the Child Maintenance and Other Payments Act 2008 (CMOP 2008) makes provision for the Secretary of State to make administrative liability orders. It replaces the existing requirement under section 33 of the Child Support Act 1991 (CSA 1991) for the Secretary of State to apply to the courts for a liability order. CMOP 2008 amended CSA 1991 in several respects, but most significantly for these purposes, by repealing sections 33 and 34 of CSA 1991 and inserting sections 32M and 32N. Section 25 of CMOP 2008 (which inserts new sections 32M and 32N) has not been commenced (and accordingly new sections 32M and 32N of CSA 1991 have not been commenced).
3. This Bill amends uncommenced sections 32M and 32N of CSA 1991 to alter the basis on which an administrative liability order is made, allow regulations under section 32N to make provision about variation of liability orders, and require regulations under section 32N to make provision about appeals (while repealing CMOP 2008 changes to CSA 1991 dealing with appeals of liability orders). It also makes some consequential amendments.
4. Administrative liability orders will have similar effect to those liability orders currently issued by the courts under section 33 of CSA 1991 in that an order certifies the debt which is owed by the liable person and allows the Child Maintenance Service (CMS) to take further enforcement measures. A liability order is required before the CMS can take action to:
 - i. Take control of and sell goods.
 - ii. Disqualify the Non-Resident Parent (NRP) from driving or from holding or obtaining a UK passport.
 - iii. Imprison the NRP.

5. The Person with Care (PWC) is the person with whom the child has their home and who usually provides day to day care of the child. Operationally PWC is referred to as the 'Receiving Parent'.
6. A parent will be considered an NRP if they do not live in the same household as the child and the child has their home with a PWC. Operationally NRP is referred to as the 'Paying Parent'. The liable person will be the Paying Parent.

C. DELEGATED POWERS

Clause 3

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative

Context and Purpose

7. Clause 3 expands the power in the uncommenced provision at section 25 CMOP 2008 to set out in regulations variation of a liability order.

Justification for taking the power

8. The uncommenced provisions in section 25 CMOP 2008 include regulation making power for the discharge of a liability order but not for variation of a liability order.
9. Provisions relating to variation will be set out in regulations.

Justification for the procedure

10. Regulations made under clause 3 will be subject to the negative procedure as is the position with other regulation making powers in section 32N(2) CSA 1991 (as inserted by section 25 CMOP). The appropriate level of parliamentary scrutiny should therefore be provided by the negative procedure.

Clause 4

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: The first regulations under section 32N(3) to be subject to the affirmative procedure.

Context and Purpose

11. Uncommenced provisions in section 25 CMOP 2008 provide for appeals against liability orders to the First Tier Tribunal. This clause amends the route of appeal to allow a right of appeal to a court. Accordingly, there are consequential amendments.
12. New section 32N(3) CSA 1991 requires the Secretary of State to make provision by regulations giving a person a right of appeal to a court against a liability order.
13. Under new section 32N(5) CSA 1991, those regulations may make provision about the period in which to exercise that right of appeal and about the powers of the court on an appeal.

Justification for taking the power

14. The provisions relating to appeals against liability orders are expected to be technical, specific and procedural. It is therefore appropriate for these requirements to be set out in regulations

Justification for the procedure

15. Regulations under section 32N(3) could have been subject to the negative resolution procedure. However, due to the significance of appeal rights, the first regulations made under section 32N(3) will be subject to the affirmative procedure thereby ensuring enhanced parliamentary scrutiny.

Department Name: Department for Work and Pensions

Date: 17th March 2023