

CHILD SUPPORT COLLECTION (DOMESTIC ABUSE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Child Support Collection (Domestic Abuse) Bill as brought from the House of Commons on 6 March 2023 (HL Bill 110).

- These Explanatory Notes have been prepared by the Department for Work and Pensions, with the consent of Lord Farmer, the Peer in Charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Child Support Collection (Domestic Abuse) Bill will amend existing legislation to allow for the collection of child maintenance payments by the Secretary of State or the Department for Communities (DfC) in Northern Ireland on behalf of the Non-Resident Parent (NRP) or the Person with Care (PWC) where the Secretary of State or DfC is satisfied that there is evidence of behaviour of a parent that amounts to domestic abuse against the other parent or children in their household, and that it is appropriate to make the arrangements. The Bill provides that regulations will set out the evidence required for the condition to be met.

Policy background

- 2 All parents have a legal responsibility to support their children financially until they are 16 years old and, in some circumstances, until they are 20. This can be through voluntary arrangements between separated parents, arrangements made by way of a court order, or by way of child maintenance calculated and enforced under the statutory child maintenance scheme run by DWP (or by the Department for Communities in Northern Ireland) and administered by the Child Maintenance Service (CMS) (or the Child Maintenance Service in Northern Ireland).
- 3 The statutory child maintenance scheme was introduced by the Child Support Act 1991 (the 1991 Act) and has been in operation since 1993. The current scheme was introduced in December 2012 and all applications since November 2013 have been calculated under the “2012 rules”. (The two previous schemes, the “1993 rules” and the “2003 rules” are now closed.) Under the statutory scheme, the CMS is responsible for calculating child maintenance payments and, in some cases, collecting and enforcing them. A PWC cannot enforce child maintenance payments calculated by the CMS. Child maintenance legislation provides a comprehensive set of powers and obligations.
- 4 The CMS manages cases through one of two service types: direct pay and collect and pay. In direct pay cases, the CMS calculates how much maintenance should be paid, issues a payment schedule, and the NRP pays the maintenance to the PWC. For collect and pay, CMS calculates how much maintenance should be paid, collects the money from the NRP and pays it to the PWC.
- 5 There are collection charges set out in regulations for the use of the collect and pay service: 20% on top of the liability for the NRP, and 4% of the maintenance received for the PWC.
- 6 Under existing legislation, the Secretary of State has the power to collect maintenance payments (under the collect and pay service) only where:
 - the NRP agrees to the arrangements, or
 - the CMS is satisfied that without the arrangements child support maintenance is unlikely to be paid in accordance with the calculation.
- 7 Therefore, under existing legislation, direct pay is the default option, unless the NRP agrees to collect and pay, or is deemed ‘unlikely to pay’ by demonstrating an unwillingness to pay their liability. This applies to all cases irrespective of any other personal circumstances between parents, including domestic abuse.
- 8 There are procedures in place to ensure that direct pay is safe for all parents to use. The CMS ensures there is no unwanted contact between parents and provides information on how parents can set up a bank account with a centralised sort code so they cannot be traced.

- 9 This power is being introduced to further strengthen the existing support for domestic abuse victims. The measures will amend existing legislation to create an additional power to collect maintenance payments. This will allow the Secretary of State (or the DfC in Northern Ireland) to place a child maintenance case onto the collect and pay service when the Secretary of State or DfC is satisfied that there is evidence of behaviour of a parent that amounts to domestic abuse as set out in the Domestic Abuse Act 2021 (or the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 in Northern Ireland), against the other parent or children in their household, and that it is appropriate to make the arrangements. The evidence requirements will be set out in secondary legislation.

Legal background

- 10 Under section 4 of the Child support Act 1991 (“the 1991 Act”), either parent (or a child in Scotland under s.7) may apply for a maintenance calculation to be made.
- 11 Liability for child maintenance is calculated under section 11 and in accordance with Schedule 1 of the 1991 Act.
- 12 When the Secretary of State (through the CMS) exercises any discretionary power in the 1991 Act, they are obliged to consider the welfare of any child affected by the decision (section 2 of the 1991 Act).
- 13 Under section 4(2)(a) of the 1991 Act, the CMS has the power to collect maintenance payments (under the collect and pay service) where:
- the NRP agrees to the arrangements (section 4(2A)(a) of the 1991 Act); or
 - the CMS is satisfied that without the arrangements child support maintenance is unlikely to be paid in accordance with the calculation (section 4(2A)(b) of the 1991 Act).
- 14 Sections 7(3) and 7(3A) of the 1991 Act provide this power in Scotland when the child maintenance application has been made by a child.
- 15 Article 7 of the Child Support (Northern Ireland) Order 1991 provides for corresponding provisions in Northern Ireland to section 4 of the Child Support Act 1991.

Territorial extent and application

- 16 Clause 5 of the Bill sets out the territorial extent. Clause 1 extends and applies to England and Wales and Scotland. Clause 2 extends and applies to Scotland. Clause 4 extends and applies to Northern Ireland.
- 17 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. The Bill does contain provision that would engage the legislative consent process in the Northern Ireland Assembly. However, in the absence of a fully functional Assembly, the Bill’s provisions will also extend to Northern Ireland.

Commentary on provisions of Bill

Clause 1: Collection of maintenance in England and Wales and Scotland: cases involving domestic abuse

- 18 Clause 1 amends section 4 of the 1991 Act to make provision for the collection of maintenance in England and Wales and Scotland in cases involving domestic abuse.
- 19 Subsection (2) expands the circumstances in which arrangements may be made to collect maintenance. It gives the Secretary of State the power to place a child maintenance case onto the collect and pay service when the Person with Care or the Non-Resident Parent applies, and the Secretary of State is satisfied on the basis of evidence of a prescribed kind relating to relevant domestic abuse that it is appropriate for such arrangements to be made. It defines relevant domestic abuse for the purposes of the subsection.
- 20 Subsection (3) expands the power to make regulations about the provision of information to cover applications on the basis of domestic abuse.

Clause 2: Further provision about collection of maintenance in Scottish cases involving domestic abuse

- 21 Clause 2 amends section 7 of the 1991 Act to make provision for the collection of maintenance in Scotland in cases involving domestic abuse.
- 22 Subsection (2) expands the circumstances in which arrangements may be made to collect maintenance. It gives the Secretary of State the power to place a child maintenance case onto the collect and pay service when the Person with Care or the Non-Resident Parent or the child concerned applies and the Secretary of State is satisfied on the basis of evidence of a prescribed kind relating to relevant domestic abuse that it is appropriate for such arrangements to be made. It defines relevant domestic abuse for the purposes of the subsection.
- 23 Subsection (3) expands the power to make regulations about the provision of information to cover applications on the basis of domestic abuse.

Clause 3: Minor and consequential amendments

- 24 Clause 3 sets out minor and consequential amendments relating to England and Wales and Scotland.
- 25 Subsection (2) amends section 29 of the 1991 Act.
- 26 Subsection (3) amends section 41D of the 1991 Act.
- 27 Subsection (4) amends section 49A of the 1991 Act.
- 28 Subsection (5) amends section 52 of the 1991 Act.

Clause 4: Collection of maintenance in Northern Ireland: cases involving domestic abuse

- 29 Clause 4 amends article 7 of the Child Support (Northern Ireland) Order 1991 to make provision for the collection of maintenance in Northern Ireland in cases involving domestic abuse.
- 30 Subsection (2) inserts a new paragraph into Article 7 which expands the circumstances in which arrangements may be made to collect maintenance. It gives the Department the power to place a child maintenance case onto the collect and pay service when the Person with Care or the Non-Resident Parent applies and the Department is satisfied on the basis of evidence of

a prescribed kind relating to relevant domestic abuse that it is appropriate for such arrangements to be made. It inserts a second new paragraph into Article 7 which defines relevant domestic abuse for the purposes of the first paragraph.

- 31 Subsection (2)(b) expands the power to make regulations about the provision of information to cover applications on the basis of domestic abuse.
- 32 Subsection (3) sets out minor and consequential amendments. It amends Article 29 and Article 48 of the Child Support (Northern Ireland) Order 1991.

Clause 5: Extent, commencement and short title

- 33 Subsection (1) provides that an amendment made by the Bill has the same extent as the provision to which it relates.
- 34 Subsection (2) provides that clause 5 itself extends to England and Wales, Scotland and Northern Ireland.
- 35 Subsection (3) provides that the Bill, subject to subsections (4), (5) and (6), comes into force on such day or days as the Secretary of State may by regulations appoint.
- 36 Subsection (4) provides that clause 3(4) comes into force at the same time as section 34 of the Child Maintenance and Other Payments Act 2008.
- 37 Subsection (5) provides that clause 4 (Collection of maintenance in Northern Ireland: cases involving domestic abuse) comes into force at the same time as Article 127(2)(b) of the Welfare Reform (Northern Ireland) Order 2015.
- 38 Subsection (6) provides that clause 5 itself comes into force on the day on which the Bill is passed.
- 39 Subsection (7) provides that the Secretary of State may by regulations make transitional or savings provisions in connection with the coming into force of sections 1 to 3.
- 40 Subsection (8) provides that the Department for Communities in Northern Ireland may by regulations make transitional or saving provision in connection with the coming into force of clause 4.
- 41 Subsection (9) provides that the power to make regulations under subsection (8) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
- 42 Subsection (10) establishes the short title of the Act (once passed) as the Child Support Collection (Domestic Abuse) Act 2023.

Commencement

- 43 Clauses 1, 2 and 3 (except subsection 3(4)) come into force on such day or days as the Secretary of State may by regulations appoint.
- 44 Subsection 3(4) comes into force at the same time as section 34 of the Child Maintenance and Other Payments Act 2008.
- 45 Clause 4 comes into force at the same time as Article 127(2)(b) of the Welfare Reform (Northern Ireland) Order 2015.
- 46 Clause 5 comes into force on the day on which this Bill is passed as an Act.

Financial implications of the Bill

- 47 The amendments made by the Bill will enable the Secretary of State (through the CMS) to arrange for the collection of child maintenance in an increased number of cases (to include those in which there is evidence, of a kind to be prescribed in regulations, of domestic abuse). The Bill is expected to have some financial implications, but these are not expected to be significant, and the more precise quantification of those implications is likely to be possible only when the relevant secondary legislation is being developed.

Parliamentary approval for financial costs or for charges imposed

- 48 The Bill does not give rise to any charge on the public revenue, or any new charge on the people, for which Parliamentary approval is required.

Compatibility with the European Convention on Human Rights

- 49 Private Members' Bills do not require human rights statements. However, the Government's view is that the Bill is compatible with the European Convention on Human Rights.

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 1	Yes	Yes	Yes	No	No	No	No	No
Clause 2	No	No	Yes	No	No	No	No	No
Clause 3	Yes	Yes	Yes	No	No	No	No	No
Clause 4	No	No	No	Yes	No	No	Yes	No
Clause 5	Yes	Yes	Yes	Yes	No	No	Yes	No

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