

# CHILD SUPPORT (ENFORCEMENT) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Child Support (Enforcement) Bill as brought from the House of Commons on 20 March 2023 (HL Bill 120).

- These Explanatory Notes have been provided by the Department for Work and Pensions, with the consent of Baroness Redfern, 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 Section 25 of the Child Maintenance and Other Payments Act 2008 (2008 Act) makes provision for the Secretary of State (SoS) to make administrative liability orders. It replaces the existing requirement under section 33 of the Child Support Act 1991 (1991 Act) for the SoS to apply to the courts for a liability order. The 2008 Act makes significant amendments to the 1991 Act, including repealing sections 33 and 34 of the 1991 Act and inserting sections 32M and 32N into the 1991 Act. Section 25 of the 2008 Act (which inserts new sections 32M and 32N) has not yet been commenced.
- 2 This Bill amends uncommenced sections 32M and 32N of the 1991 Act 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 2008 Act changes to the 1991 Act dealing with appeals of liability orders). It also makes some consequential amendments.

## Policy background

- 3 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 the Department for Work and Pensions (DWP) and administered by the Child Maintenance Service (CMS).
- 4 The statutory child maintenance scheme was introduced by 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 Parent With Care (PWC) cannot bring enforcement proceedings against the Non Resident Parent (NRP) for the child maintenance payments due. Only the CMS has legal standing to take enforcement action against the NRP.
- 5 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.
- 6 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.
- 7 Under existing legislation, the CMS can 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.
- 8 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.

- 9 If the NRP fails to make one or more payments as instructed, arrears accrue and stand-alone administrative enforcement powers can be used to collect those arrears. These administrative enforcement powers are a Deduction from Earnings Order (DEO) or a Deduction from Bank or Building Society Accounts (DOs).
- 10 For employed NRPs, the CMS may make a DEO instructing the NRP's employer to make deductions directly from the NRP's earnings and pay the CMS. For NRPs who are not in employment, CMS may make a DO requiring a Bank or Building Society to make deductions from a NRP's Bank or Building Society Account and pay the CMS.
- 11 Where CMS administrative enforcement functions are inappropriate or prove ineffective in collecting the arrears, the CMS must apply to the Magistrates' Court in England and Wales, or Sheriff's Court in Scotland to obtain a LO before the use of more stringent enforcement powers such as instructing enforcement agents or other court-based enforcement actions.

## Legal background

- 12 Under section 4 of the 1991 Act, either parent (or a child in Scotland under s.7) may apply to the CMS for a maintenance calculation to be made. Where a maintenance calculation has been made, the PWC may apply to the CMS to arrange for collection and enforcement of child maintenance.
- 13 Liability for child maintenance is calculated under section 11 and in accordance with Schedule 1 of the 1991 Act.
- 14 When the SoS (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).
- 15 Section 29 of the 1991 Act permits the SoS to make arrangements to collect child support maintenance.
- 16 Sections 31 – 32K of the 1991 Act sets out the administrative enforcement measures (DEOs and DOs) that can be used to secure arrears of child support maintenance.
- 17 Under section 33 of the 1991 Act, where a NRP fails to make one or more child maintenance payments, and it appears a DEO is inappropriate or ineffective, the CMS may apply to a Magistrates court (or Sheriff's Court in Scotland) for a LO against the NRP.
- 18 The 2008 Act was introduced to establish the Child Maintenance and Enforcement Commission CMEC (a non-departmental government body) to take on some of the functions previously undertaken by DWP under the Child Support Agency (CSA). CMEC was subsequently abolished, and the functions of the statutory child maintenance system were transferred back to the DWP. The 2008 Act made a number of amendments to the 1991 Act. Some of those amendments, such as those set out in section 25 of the 2008 Act, were not commenced at the time that Act was passed.
- 19 This Bill amends the uncommenced provisions in section 25 of the 2008 Act. When these provisions are commenced, it will enable the SoS to make administrative liability orders. They will have similar effect to liability orders currently issued by the courts under section 33 of the 1991 Act in that it certifies the debt that is owed by the NRP and allows the CMS to take further enforcement actions. A liability order is required before the CMS can take action to:
  - i. Take control of and sell goods.
  - ii. Disqualify the NRP from driving or from holding or obtaining a UK passport.
  - iii. Imprison the NRP.

## Territorial extent and application

- 20 Clause 6 of the Bill sets out the extent, that is the jurisdiction in which the Bill forms part of the law. The Bill extends to England and Wales, and Scotland.
- 21 In Scotland, whilst Child Maintenance is reserved, the judicial system is devolved. As such the Scottish Government is engaged on its impact in Scotland and how it will be reflected in legislation.
- 22 Child maintenance is a transferred matter in Northern Ireland.
- 23 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

## Commentary on provisions of Bill

### Clause 1: Interpretation

- 24 Clause 1 defines “the 1991 Act” and “the 2008 Act”.

### Clause 2: Making of liability order

- 25 Clause 2 amends section 32M(1) of the 1991 Act (as inserted by section 25 of the 2008 Act) for the making of administrative liability orders. It provides that the SoS may make an administrative liability order where a NRP has failed to pay an amount of child maintenance due and where a DEO is inappropriate or ineffective.

### Clause 3: Power to vary liability order

- 26 Clause 3 amends section 32N of the 1991 Act (as inserted by section 25 of the 2008 Act) to expand the power to make regulations for the variation of a liability order. For example, the amount of arrears upon which the LO is based is subsequently found to have been incorrect.

### Clause 4: Appeal of a liability order

- 27 Currently, section 25 of the 2008 Act provides for appeals against liability orders to the First Tier Tribunal. Clause 4 amends the route of appeal to allow a right of appeal to a court and provides for consequential amendments.
- 28 Subsection (2) inserts new provisions in new section 32N of the 1991 Act which sets out regulation making powers of the SoS:
  - New section 32N(3) of the 1991 Act requires the SoS to make regulations giving a NRP a right of appeal to a court against a liability order.
  - New section 32N(4) of the 1991 Act provides that on an appeal the court cannot question the maintenance calculation itself (this is currently the case with liability orders issued under section 33 of the 1991 Act).
  - New section 32N(5) of the 1991 Act provides that the SoS may make regulations about the period in which to exercise the right of appeal and about the powers of the court on appeal.
- 29 Subsection (3) sets out consequential amendments to section 32M(3) of the 1991 Act.
- 30 Subsection (4) amends section 52 of the 1991 Act by requiring the first regulations under the new section 32N(3) to be subject to the affirmative parliamentary procedure.

- 31 Subsection (5) amends Schedule 7 to the 2008 Act by removing paragraph 1(3) to (6), which provide for consequential amendments to section 20 of the 1991 Act relating to an appeal to the First-tier Tribunal.

### Clause 5: Consequential amendments

- 32 Clause 5 sets out minor and consequential amendments to section 59 of the 2008 Act.

### Clause 6: Extent, commencement and short title

- 33 Subsection (1) provides that this Act extends to England and Wales and Scotland.
- 34 Subsection (2) provides that clause 1 and clause 6 come into force on the day on which the Bill receives Royal Assent.
- 35 Subsection (3) provides that clause 4(5) and clause 5 come into force at the end of the period of two months beginning with the day on which this Act is passed.
- 36 Subsection (4)(a) provides that the rest of this Act comes into force in England and Wales, at the same time as section 25 of the 2008 Act comes into force in England and Wales.
- 37 Subsection (4)(b) provides that the rest of this Act comes into force in Scotland, at the same time as section 25 of the 2008 Act comes into force in Scotland.
- 38 Subsection (5) provides that this Act may be cited as the Child Support (Enforcement) Act 2023.

## Financial implications of the Bill

- 39 The Government anticipate that once secondary legislation is enacted operational savings of £0.75m per annum will be realized.

## Parliamentary approval for financial costs or for charges imposed

- 40 The Bill does not impose any financial costs or charges and accordingly no money resolution or ways and means resolution is required for this Bill.

## Compatibility with the European Convention on Human Rights

- 41 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the bill with the Convention rights (as defined in section 1 of the Act). However, it is not necessary for ministers to sign a statement under section 19 Human Rights Act 1998 in respect of compatibility with the ECHR if the bill is a private member's bill.

## Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	No	N/A
Clause 2	Yes	Yes	No	Yes	No	No	N/A
Clause 3	Yes	Yes	No	Yes	No	No	N/A
Clause 4	Yes	Yes	No	Yes	No	No	N/A
Clause 5	Yes	Yes	No	Yes	No	No	N/A
Clause 6	Yes	Yes	No	Yes	No	No	N/A

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