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Our ref: SUB-1399-2024
25 June 2024

Ms Emer Boyle
Communities Committee Clerk
Room 430
Parliament Buildings
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Belfast
BT4 3XX

Dear Emer,

**CHILD SUPPORT ENFORCEMENT BILL – DELEGATED POWERS
MEMORANDUM**

Further to the above Bill passing Second Stage in the Assembly on 25 June 2024, I attach the related Delegated Powers Memorandum to assist the Committee for Communities in its consideration of this matter at Committee Stage.

Yours sincerely,

Megan Rooney
Deputy Departmental Assembly Liaison Officer
Private Office

CHILD SUPPORT ENFORCEMENT BILL

DELEGATED POWERS MEMORANDUM

DEPARTMENT FOR COMMUNITIES

JUNE 2024

Introduction

1. The Child Support Enforcement Bill will be introduced in the Northern Ireland Assembly on 17 June 2024.
2. The Child Maintenance Act (Northern Ireland) 2008 made several amendments to the Child Support (Northern Ireland) Order 1991. Some of those amendments, such as those set out in section 17 of the Child Maintenance Act (Northern Ireland) 2008, were not commenced at the time that Act was passed.
3. This Bill amends the uncommenced provisions in section 17 of the Child Maintenance Act (Northern Ireland) 2008. When these provisions are commenced, it will enable the Department to make administrative liability orders. These provisions will have similar effect to liability orders currently issued by the courts under Article 33 of the Child Support (Northern Ireland) Order 1991 in that it certifies the debt that is owed by the non-resident parent and allows the Child Maintenance Service to take further enforcement actions.
4. This Delegated Powers Memorandum explains the purpose of the delegated powers provided for within the Bill, the reason for the delegation and the rationale for the chosen control.

Background on Child Maintenance

5. 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 and administered by the Child Maintenance Service.
6. In general, Northern Ireland's child maintenance policy and legislation operate in line with corresponding child maintenance provision in Great Britain in line with section 87 of the Northern Ireland Act 1998. In effect there is a single child maintenance system and regulatory regime across the United Kingdom. The Child Maintenance Service in Great Britain operates very similarly to the Child

Maintenance Service in Northern Ireland, and legislative parity between the jurisdictions is usually maintained. Therefore, it is highly desirable that the same provisions are in place in Northern Ireland to ensure parity across both jurisdictions.

7. The statutory child maintenance scheme was introduced by the Child Support (Northern Ireland) Order 1991 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.)
8. Under the statutory scheme, the Child Maintenance Service is responsible for calculating child maintenance payments and, in some cases, collecting and enforcing them. A parent with care cannot bring enforcement proceedings against the non-resident parent for the child maintenance payments due. Only the Child Maintenance Service has legal standing to take enforcement action against the non-resident parent.
9. The Child Maintenance Service manages cases through one of two service types: direct pay and collect and pay. In direct pay cases, the Child Maintenance Service calculates how much maintenance should be paid, issues a payment schedule, and the non-resident parent pays the maintenance to the parent with care. For collect and pay, Child Maintenance Service calculates how much maintenance should be paid, collects the money from the non-resident parent and pays it to the parent with care.
10. 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 non-resident parent, and 4% of the maintenance received for the parent with care.
11. If the non-resident parent 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 or a Deduction from Bank or Building Society Accounts. Once commenced, this Act will also allow administrative liability orders to be made.

12. For employed non-resident parents, the Child Maintenance Service may make a Deduction from Earnings Order instructing the non-resident parent's employer to make deductions directly from the non-resident parent's earnings and pay the Child Maintenance Service. For non-resident parents who are not in employment, Child Maintenance Service may make a Deduction from Bank or Building Society Accounts requiring a Bank or Building Society to make deductions from a non-resident parents' Bank or Building Society Account and pay the Child Maintenance Service.
13. Under current legislation, where Child Maintenance Service administrative enforcement functions are inappropriate or prove ineffective in collecting the arrears, the Child Maintenance Service is required to apply to the Magistrates' Court in Northern Ireland to obtain a liability order before the use of more stringent enforcement powers or other court-based enforcement actions. Once commenced, this Act will allow the Child Maintenance Service to make an administrative liability order without requiring application to the Magistrates' Court in Northern Ireland.

Child Support Enforcement Bill

14. The Child Support Enforcement Bill makes provision for Northern Ireland corresponding to provisions of the Child Support (Enforcement) Act 2023 (c. 35) which was passed by the Westminster Parliament.
15. The Bill comprises two Clauses and one Schedule:
 - Clause 1 – Rules relating to liability orders.
 - Clause 2 – Commencement and short title.
 - Schedule – Amendment of statutory provisions.

Assembly Scrutiny

16. The Department for Communities has considered in each case the appropriate procedure to be followed in exercising the delegated powers under the Bill. The Assembly procedure selected for the exercise of the delegated powers takes account of the parliamentary procedure that applies to the corresponding

delegated powers in the Child Support (Enforcement) Act 2023 (c. 35), which was passed by the Westminster Parliament.

17. All of the delegated powers are to be exercised by way of Statutory Rule, made by the Department for Communities. The first Statutory Rule stemming from the Bill is expected to be made via the confirmatory procedure.
18. The commentary below on each power sets out which Assembly procedure has been proposed and why that procedure is considered appropriate.

Analysis of delegated powers by Clause – Reason for Delegation and Rationale for Control

Clause 1: Rules relating to liability orders

19. Subsection (1): with regards to making and varying liability orders, and appealing against liability orders, this subsection outlines the amendments contained within the Schedule to this Act.
20. Subsection (2) defines “the 1991 Order” and “the 2008 Act”.

Clause 2: Commencement and short title

21. This clause provides for the commencement of provisions and the short title of the Bill. These provisions were previously uncommenced due to other competing issues and policy changes taking priority over the years. This is not uncommon due to primary legislation being made far less frequently than secondary legislation.

Schedule: Amendment of statutory provisions

22. Paragraph 1 amends Article 32M(1) of the Child Support (Northern Ireland) Order 1991 (as inserted by section 17 of the Child Maintenance Act (Northern Ireland) 2008) for the making of administrative liability orders. It provides that the Department may make an administrative liability order where a non-resident parent has failed to pay an amount of child maintenance due and where a Deduction from Earnings Order is inappropriate or ineffective.

23. Paragraph 2 amends Article 32N of the Child Support (Northern Ireland) Order 1991 (as inserted by section 17 of the Child Maintenance Act (Northern Ireland) 2008) to expand the power to make regulations for the variation of a liability order. For example, the amount of arrears upon which the liability order is based is subsequently found to have been incorrect.
24. Paragraph 3(1) provides for a consequential amendment of the Child Support (Northern Ireland) Order 1991 following amendments made to Article 32N of that Order.
25. Paragraph 3(2) inserts new provisions in new Article 32N of the Child Support (Northern Ireland) Order 1991 which sets out the regulation making powers of the Department:
 - New Article 32N(3) of the Child Support (Northern Ireland) Order 1991 requires the Department to make regulations giving a non-resident parent a right of appeal to a court against a liability order,
 - New Article 32N(4) of the Child Support (Northern Ireland) Order 1991 provides that the Department may make regulations about the period in which to exercise the right of appeal and about the powers of the court on or regarding appeal,
 - New Article 32N(5) of the Child Support (Northern Ireland) Order 1991 provides that on an appeal the court cannot question the maintenance calculation itself (this was previously the case with liability orders issued under Article 33 of the Child Support (Northern Ireland) Order 1991).
26. Paragraph 3(3) provides for a consequential amendment to the Child Support (Northern Ireland) Order 1991, by inserting “32N(3),” in Article 48, following amendments made to Article 32N of that Order.
27. Paragraph 4 provides for a consequential amendment to the Child Maintenance Act (Northern Ireland) 2008, by inserting “32N,” in section 40, following the amendment to Article 32N of the Child Support (Northern Ireland) Order 1991.
28. Paragraph 5(1) provides for consequential amendments to section 40 of the Child Maintenance Act (Northern Ireland) 2008, by repealing “22(5A),” in

subsection (2), and “22(7A),” in subsection (3), following amendments made to Schedule 4 of that Act.

29. Paragraph 5(2) amends Schedule 4 to the Child Maintenance Act (Northern Ireland) 2008 by removing paragraph 1(5) to (8), which provide for consequential amendments to Article 22 of the Child Support (Northern Ireland) Order 1991 relating to an appeal to an appeals tribunal.