

CHILD SUPPORT ENFORCEMENT BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department for Communities (“the Department”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. This Bill makes provision for Northern Ireland corresponding to provisions of the Child Support (Enforcement) Act 2023 (“the 2023 Act”) which was passed by the Westminster Parliament.
4. 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 (“CMS”) in Great Britain operates very similarly to CMS 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.
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 CMS.
6. The statutory child maintenance scheme was introduced by the Child Support (Northern Ireland) Order 1991 (“1991 Order”) 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.

7. 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.
8. 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.
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”). Once commenced, this Act will also allow administrative liability orders to be made.
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. Under current legislation, where CMS administrative enforcement functions are inappropriate or prove ineffective in collecting the arrears, the CMS 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 CMS to make an administrative liability order without requiring application to the Magistrates’ Court in Northern Ireland.

CONSULTATION

12. A public consultation is planned for publication in July 2024.

OPTIONS CONSIDERED

13. The provisions were developed following options appraisal. Two options were considered –
 - **Option 1:** Do nothing and retain the existing court-based arrangements for obtaining liability orders.
 - **Option 2:** Change the rules so as to allow for the making of liability orders administratively instead.
14. As Option 1 would not meet policy objective of parity in Northern Ireland, Option 2 as provided for in the Bill is therefore the preferred option.

LEGAL BACKGROUND

15. Under Article 7 of the 1991 Order, either parent 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.
16. Liability for child maintenance is calculated under Article 13 and in accordance with Schedule 1 of the 1991 Order.
17. When the Department (through the CMS) exercises any discretionary power in the 1991 Order, it is obliged to consider the welfare of any child affected by the decision (Article 6 of the 1991 Order).
18. Article 29 of the 1991 Order permits the Department to make arrangements to collect child support maintenance.
19. Articles 31 – 32K of the 1991 Order sets out the administrative enforcement measures (DEOs and DOs) that can be used to secure arrears of child support maintenance.
20. Under Article 33 of the 1991 Order, 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 for a liability order against the NRP.
21. The Child Maintenance Act (Northern Ireland) 2008 (“2008 Act”) made a number of amendments to the 1991 Order. Some of those amendments, such as those set out in section 17 of the 2008 Act, were not commenced at the time that Act was passed.
22. This Act amends the uncommenced provisions in section 17 of the 2008 Act. When these provisions are commenced, it will enable the Department to make administrative liability orders. They will have similar effect to liability orders currently issued by the courts under Article 33 of the 1991 Order in that it certifies the debt that is owed by the NRP and allows the CMS to take further enforcement actions.

OVERVIEW

23. Section 17 of the 2008 Act makes provision for the Department to make administrative liability orders. It replaces the existing requirement under Article 33 of the 1991 Order for the Department to apply to the courts for a liability order. The 2008 Act makes significant amendments to the 1991 Order, including repealing Articles 33 and 34 of the 1991 Order and inserting Articles 32M and 32N into the 1991 Order. Section 17 of the 2008 Act (which inserts new Articles 32M and 32N) has not yet been commenced.
24. This Act amends uncommenced Articles 32M and 32N of the 1991 Order to alter the basis on which an administrative liability order is made, allow regulations under Article 32N to make provision about variation of liability orders, and require regulations under Article 32N to make provision about appeals (while repealing 2008 Act changes to the 1991 Order dealing with appeals of liability orders). It also makes some consequential amendments.

COMMENTARY ON CLAUSES

Clause 1: Rules relating to liability orders

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.

Subsection (2) defines “the 1991 Order” and “the 2008 Act”.

Clause 2: Commencement and short title

This clause provides for the commencement of provisions and the short title of the Bill.

Schedule: Amendment of statutory provisions

Paragraph 1 amends Article 32M(1) of the 1991 Order (as inserted by section 17 of the 2008 Act) for the making of administrative liability orders. It provides that the Department 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.

Paragraph 2 amends Article 32N of the 1991 Order (as inserted by section 17 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 liability order is based is subsequently found to have been incorrect.

Paragraph 3(1) provides for a consequential amendment to the 1991 Order following amendments made to Article 32N of that Order.

Paragraph 3(2) inserts new provisions in new Article 32N of the 1991 Order which sets out regulation making powers of the Department:

- new Article 32N(3) of the 1991 Order requires the Department to make regulations giving a NRP a right of appeal to a court against a liability order,
- new Article 32N(4) of the 1991 Order 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 1991 Order 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 1991 Order).

Paragraph 3(3) provides for a consequential amendment to the 1991 Order following amendments made to Article 32N of that Order.

Paragraph 4 provides for a consequential amendment to the 2008 Act following the amendment to Article 32N of the 1991 Order.

Paragraph 5(1) provides for consequential amendments to section 40 of the 2008 Act following amendments made to Schedule 4 of that Act.

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

FINANCIAL EFFECTS OF THE BILL

25. There will be no immediate financial implications because the Bill takes enabling powers to implement the proposed changes through secondary legislation at a later date.

HUMAN RIGHTS ISSUES

26. The provisions of the Bill are compatible with the provisions of the Human Rights Act 1998.

EQUALITY IMPACT ASSESSMENT

27. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted an Equality Impact Assessment. The Assessment found that the proposals to introduce administrative liability orders does not have significant implications for equality of opportunity.

28. The proposals make provision corresponding to provision contained in the Child Support (Enforcement) Act 2023 and are in line with the long-standing principle of parity between Great Britain and Northern Ireland in child maintenance.

29. Copies of the Assessment have been laid in the Northern Ireland Assembly Business Office and placed in the Library of the Northern Ireland Assembly. It can be accessed at <https://www.communities-ni.gov.uk/publications/child-support-enforcement-bill-screening>.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

30. A Data Protection Impact Assessment screen has been carried out. The screen found that a full Data Protection Impact Assessment was not required. It noted that the proposals in the Bill had no new implications for the processing of personal data.

RURAL NEEDS IMPACT ASSESSMENT

31. A Rural Needs Impact Assessment has been carried out. It noted that there would be no difference in the impact between people living in urban or rural areas.

LEGISLATIVE COMPETENCE

32. At Introduction the Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Child Support Enforcement Bill would be within the legislative competence of the Northern Ireland Assembly.”



**Northern Ireland
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