

THE CHILD SUPPORT COLLECTION (DOMESTIC ABUSE) BILL 2022

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 Collection (Domestic Abuse) Bill 2022 (“the Bill”). The Bill was introduced in the House of Commons on 15 June. 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. The Bill amends primary legislation to expand the circumstances in which the Secretary of State may make arrangements for the collection of child maintenance under the “collect and pay” service set out in the Child Support Act 1991.
3. 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 Non-Resident Parent (NRP) pays the maintenance to the Person with Care (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. 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.
4. 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 currently applies to all cases irrespective of any other personal circumstances between parents, including domestic abuse.
5. Changes to the Child Support Act 1991 will allow for a case to be placed onto collect and pay where either parent (or a child in Scotland) applies on the grounds of domestic abuse and there is evidence of domestic abuse against the objecting parent or children in their household by the other parent involved in the case. The aim is to strengthen our support to victims of domestic abuse who use the Child Maintenance Service (CMS)
6. The Independent Case Examiner (ICE) recently highlighted a case in which a NRP was allowed access to direct pay due to a period of sustained compliance with their maintenance liability, despite there being a non-molestation order in place related to domestic abuse. ICE felt it was inappropriate for the NRP in this case to be permitted access to direct pay but found in the report on the complaint that this is in line with current policy and legislation.

7. The Department recognises there is a need to amend primary legislation to strengthen support for domestic abuse victims.
8. The provisions in the Bill will:
 - Allow the Secretary of State to place a child maintenance case onto the collect and pay service when the Secretary of State is satisfied on the basis of evidence of a prescribed kind relating to behaviour that amounts to domestic abuse as set out in the Domestic Abuse Act 2021, against the objecting parent or children in their household, that it is appropriate to make such arrangements.
 - Allow for regulations to be made to set out the kind of evidence required.

C. DELEGATED POWERS

Clause 1(2)

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative

Context and Purpose

9. Clause 1 relates to the collection of maintenance in England and Wales and Scotland. It amends the Child Support Act 1991 to expand the circumstances in which the collection of child maintenance may be arranged to include cases where the PWC or the NRP applies and the Secretary of State is satisfied on the basis of evidence of a prescribed kind relating to domestic abuse against the applicant NRP or PWC or children in the household, by the other party to the calculation, that it is appropriate to make such arrangements.
10. Clause 1(2) amends section 4 of the Child Support Act 1991 to provide for a power to prescribe in regulations the kind of evidence relating to relevant domestic abuse that is required

Justification for taking the power

11. The provisions relating to the kind of evidence are expected to be technical and specific, containing requirements relating to different circumstances and periods of time. They may contain a significant level of detail regarding procedural requirements as to form and content and may need to cross-refer to other secondary legislation. The nature of what constitutes domestic abuse is evolving, and evidence required will need to keep up. It is therefore appropriate for these requirements to be set out in regulations.

Justification for the procedure

12. Regulations made under clause 1(2) will be subject to the affirmative procedure. This ensures parliamentarians are able to scrutinise the detailed proposals.

Clause 2(2)

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative

Context and Purpose

13. Clause 2 makes further provision about the collection of maintenance in Scottish cases involving domestic abuse. It amends the Child Support Act 1991 to expand the circumstances in which the collection of child maintenance may be arranged to include cases where the PWC or the NRP or the child concerned applies and the Secretary of State is satisfied on the basis of evidence of a prescribed kind relating to domestic abuse against the applicant NRP or PWC or children in the household, by the other party, that it is appropriate to make such arrangements.
14. Clause 2 (2) amends section 7 of the Child Support Act 1991 to provide for a power to prescribe in regulations the kind of evidence relating to relevant domestic abuse that is required

Justification for taking the power

15. As above, the provisions relating to the kind of evidence are expected to be technical and specific, containing requirements relating to different circumstances and periods of time. They may contain a significant level of detail regarding procedural requirements as to form and content and may need to cross-refer to other secondary legislation. The nature of what constitutes domestic abuse is evolving, and evidence required will need to keep up. It is therefore appropriate for these requirements to be set out in regulations.

Justification for the procedure

16. Regulations made under clause 2(2) will be subject to the affirmative procedure. This ensures parliamentarians are able to scrutinise the detailed proposals.

Clause 4

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: None

Context and Purpose

17. Clause 4 (3) provides that, subject to subsections (4) and (5), the Bill comes into force on such a day as the Secretary of State may by regulations made by statutory instrument appoint.
18. Clause 4(5) provides that clause 4 itself comes into force on the day the Bill is passed.
19. Clause 4(6) provides the Secretary of State may by regulations make such transitional or saving provision in connection with the coming into force of clauses 1 to 3 as the Secretary of State considers appropriate.

Justification for taking the power

20. Clauses 1 and 2 expand the circumstances in which cases can be placed onto collect and pay to include cases where there is evidence of domestic abuse. The kind of evidence required will be set out in regulations. Therefore, it is not appropriate for the Bill to commence on the date that Royal Assent is given but rather on a date by which all necessary implementation measures are in place. This power allows commencement to occur on such a date, which will be specified by the Secretary of State in regulations.

Justification for the procedure

21. As is usual with commencement powers, regulations made under this clause are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at the appropriate time.

Department Name: Department for Work and Pensions

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