

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 introduced in the House of Commons on 15 June 2022.

- These Explanatory Notes have been provided by the Department for Work and Pensions with the consent of Sally-Ann Hart, the member 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 Bill

1. This Bill will amend existing legislation to allow for the collection of child maintenance payments by the Secretary of State on behalf of the Non-Resident Parent (NRP) or the Person with Care (PWC) (The collect and pay service) where the Secretary of State is satisfied that it is a case involving domestic abuse. 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 and administered by the Child Maintenance Service (CMS).
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 receiving parent (RP) 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 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 paying parent 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 to place a child maintenance case onto the collect and pay service when the Secretary of State 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, 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, she is 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 PP 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. The changes made by this Bill will allow for child maintenance to be collected by the CMS in cases involving domestic abuse.

Territorial extent and application

16. Clause 4 of the Bill sets out the territorial extent. The Bill will extend and apply to England and Wales and Scotland.
17. Whilst Child Support is a transferred matter in Northern Ireland, there is long-standing policy of parity in this area and it is customary for Northern Ireland to mirror child maintenance legislation. On this occasion discussions between officials have revealed that due to the suspension of the Northern Ireland assembly the necessary mirroring legislation will not be possible at this time. They do not wish to extend the provisions of the Bill to Northern Ireland because they do not expect to be able to obtain the required Legislative Consent Motion due to the suspension of the assembly. In any case, the corresponding provision to s.4 of the Child Support Act 1991 in Northern Ireland (Article 7 of the Child Support (Northern Ireland) Order 1991), is not currently in step with Great Britain legislation. The provision corresponding to the existing Great Britain criteria for making collect and pay arrangements has been made but is not yet commenced.

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 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 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
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 Extent, commencement and short title

29. Subsection (1) provides that an amendment made by the Bill has the same extent as the provision to which it relates.
30. Subsection (2) provides that clause 4 itself extends to England and Wales and Scotland.
31. Subsection (3) provides that the Bill, subject to subsections (4) and (5), comes into force on such day or days as the Secretary of State may by regulations appoint.
32. 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.
33. Subsection (5) provides that clause 4 itself comes into force on the day on which the Bill is passed.
34. Subsection (6) 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.
35. Subsection (7) establishes the short title of the Act (once passed) as the Child Support Collection (Domestic Abuse) Act 2022.

Commencement

36. 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.
37. Subsection 3(4) comes into force at the same time as section 34 of the Child Maintenance and Other Payments Act 2008.
38. Clause 4 comes into force on the day on which this Bill is passed as an Act.

Financial implications of the Bill

39. The Bill does not impose any new costs or requirements on the Child Maintenance Service as the Private Members Bill is only taking the primary power to place cases onto the collect and pay service when there is evidence of domestic abuse. Secondary legislation will set out the evidence requirements. We will work on detailed policy developments and an assessment of costs will form part of the considerations when establishing the scope of the secondary legislation.

Parliamentary approval for financial costs or for charges imposed

40. The Bill does not impose any financial costs or charges

Annex A - Territorial extent and application in the United Kingdom

41. The provisions of this apply to England, Wales and Scotland.

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	No	No	N/A	N/A	N/A	N/A
Clause 2	No	No	Yes	No	N/A	N/A	N/A	N/A
Clause 3	Yes	Yes	Yes	No	N/A	N/A	N/A	N/A
Clause 4	Yes	Yes	Yes	No	N/A	N/A	N/A	N/A

Subject matter and legislative competence of devolved legislatures

42. Primary Child Maintenance legislation is a reserved matter for Wales and Scotland, but it is devolved for Northern Ireland (NI).
43. Whilst it is customary for NI to mirror Child Maintenance legislation, due to the suspension of the Northern Ireland assembly, officials in the Department for Communities in NI have confirmed that it will not be possible at this time. The Department and Northern Ireland colleagues considered the option of legislating for Northern Ireland by extending the provisions of the Bill to Northern Ireland. However, officials confirmed that this will not be possible because they do not expect to be able to obtain the required Legislative Consent Motion because of the suspension of the assembly.

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These Explanatory Notes relate to the CHILD SUPPORT COLLECTION (DOMESTIC ABUSE) BILL as introduced in the House of Commons on 15 June 2022 (Bill 32).

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