



HOUSE OF LORDS

Select Committee on the Constitution

3rd Report of Session 2007–08

Child Maintenance and Other Payments Bill

Report

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To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

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Child Maintenance and Other Payments Bill

Introduction

1. The Committee is appointed “to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution”. In carrying out the former function, we endeavour to identify questions of principle that arise from proposed legislation and which affect a principal part or parts of the constitution. This report draws to the attention of the House clauses in the Child Maintenance and Other Payments Bill.
2. The bill will establish the Child Maintenance and Enforcement Commission (CMEC), a new non-departmental public body that will replace the Child Support Agency. The bill equips CMEC with a range of powers to compel non-resident parents to pay child maintenance. In cases where CMEC considers that a person’s failure to pay is due to wilful refusal or culpable neglect, CMEC may apply to a magistrates’ court for a curfew order and an order disqualifying the person from holding or obtaining a driving licence.
3. The bill also confers on CMEC a power to make an order under which a person who fails to pay is “disqualified from holding or obtaining a travel authorisation while the order has effect” (clause 25). This will prevent the person in question from having a British passport or a UK identity card. While curfew orders and driving licence orders will be made by independent and impartial judges on the application of CMEC, orders in relation to passports and identity cards will be made administratively by civil servants within CMEC. Under clause 8 of the bill, CMEC has very broad powers to contract out any of its functions, so it is possible that decisions about passports and identity cards may in due course be made by employees of a business or other organisation. We agree with the description of Mr James Plaskitt MP (Parliamentary Under-Secretary of State for Work and Pensions) that “this kind of administrative decision making is a major step”.¹
4. It will be for the House as a whole to consider the merits of the bill. In doing so, the House will wish to consider whether it is constitutionally appropriate for a British citizen to be prevented from leaving the country by administrative action rather than an order of a court. During the bill’s passage through the House of Commons, the justifications given by the Government for this provision did not, in our view, adequately address the constitutional issues that are at stake. Mr Plaskitt said that “the threat of imminent action by the Commission will be more effective in securing compliance than an inevitably drawn out court process, which can be further delayed or frustrated by the non-resident parent’s tactics” and that “caseworkers will receive a higher level of training and guidance to aid them in the decision-making process”.² Mr Plaskitt also implied that passports are

¹ Public Bill Committee on the Child Maintenance and Other Payments Bill, 11 October 2007 (Afternoon), col 346.

² Ibid.

less important than driving licences because while the latter are often necessary to earn a livelihood, the former “relates rather more to discretionary activity—the drive to go on holiday, for example—and it is appropriate that such powers can be handled administratively”.³

Issuing and Withdrawing Passports

5. British passports may be withdrawn in a variety of contexts, for example to prevent potential wrongdoing. Thus, under the Football (Disorder) Act 2000, magistrates’ courts may issue “international football banning orders” which may lead to a requirement that people subject to such orders “surrender their passports in connection with certain association football matches played outside the United Kingdom”. Under the Serious Crime Act 2007, the High Court of England and Wales and the Crown Court may make “serious crime prevention orders”, which may “include prohibitions or restrictions on, or requirements in relation to ... an individual’s travel (whether within the United Kingdom, between the United Kingdom and other places or otherwise)”. Passports may also be ordered to be withdrawn by the Crown Court as part of a sentence for drug trafficking offences under the Criminal Justice and Police Act 2001. In all these cases, the restrictions on having a passport are a result of judicial determination.
6. Where the Identity and Passport Service (an executive agency of the Home Office) takes administrative action to withdraw a passport, this appears usually to be in support of a court order or police investigations. On 30 July 1998, Lord Williams of Mostyn (the then Minister of State for the Home Office) said in a written answer:

The circumstances in which a British passport would be withdrawn have been reported to Parliament on a number of occasions, the last being 7 February 1995, and have not changed. Withdrawal of a passport would be considered: (a) if it came to the Passport Agency’s attention⁴ on replacement that it had been issued incorrectly; and (b) on the same basis as the refusal of an application. That is in the case of: (i) a minor whose journey was known to be contrary to a court order, to the wishes of a parent or other person or authority in whose favour a residence or care order had been made or who had been awarded custody; or care and control, or to the provisions of Section 25(1) of the Children and Young Persons Act 1933 as amended by Section 42 of the Children and Young Persons Act 1963, or Section 56 of the Adoption Act 1976, as amended by the Children Act 1989; (ii) a person for whose arrest a warrant had been issued in the United Kingdom, or a person who was wanted by the United Kingdom police on suspicion of a serious crime; (iii) in very rare cases, a person whose past or proposed activities were so demonstrably undesirable that the grant or continued enjoyment of passport facilities would be contrary to the public interest; (iv) a person repatriated from abroad at public expense until the debt has been repaid.⁵

³ HC Deb 4 July 2007 col 1037.

⁴ Now the Identity and Passport Service.

⁵ WA 238.

The Need for Judicial Control

7. The freedom to leave and return to one's country is recognised as a fundamental right in international law, including Article 13(2) of the Universal Declaration of Human Rights and Article 2 of the Fourth Protocol of the European Convention on Human Rights. Free movement of persons is also a key right within the European Union. It is not for our Committee to consider in detail the human rights implications of what is proposed in the bill, nor do we express a view on whether it is constitutionally appropriate to use travel restrictions as a sanction for non-payment of liability in this context. We are, however, clear that it is wrong to trivialise access to a passport as being only for the purpose of going on holiday.
8. Furthermore, we are unconvinced that these provisions will meet the Government's aim of avoiding a lengthy decision-making process. The bill provides a person made subject to an order disqualifying him from holding or obtaining travel authorisation with 28 days to appeal against the order to a magistrates' court. If such an appeal is made, the order is suspended until such time as the appeal is determined. Therefore, it is not immediately obvious to us that the scheme of the bill to have an administrative decision followed by a right of appeal (with suspensory effect) will meet the Government's policy goal of avoiding "an inevitably drawn out court process" any better than a straightforward power for CMEC to seek an order from the magistrates' court.
9. Finally, we note that the Government intends to place the prerogative power to issue and withdraw passports on a statutory footing as part of the Governance of Britain reforms.⁶ Pending the review of existing powers it is in our view undesirable to extend the circumstances in which passports may be withdrawn administratively.
10. **The freedom to travel to and from one's country is a right of great significance and should only be curtailed after a rigorous decision process. We can therefore see no justification for granting CMEC the right to remove a person's passport and identity card without reference to the courts; as with the other sanctions in this bill, CMEC should be required to obtain an order from the magistrates' courts.**

⁶ Ministry of Justice, *The Governance of Britain* (Cm 7170), July 2007, paragraph 50.