



Northern Ireland
Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Child Support Enforcement Bill:
Department for Communities

6 June 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mrs Ciara Ferguson (Deputy Chairperson)

Mr Brian Kingston

Mr Maolíosa McHugh

Ms Sian Mulholland

Witnesses:

Ms Ros Agnew

Department for Communities

Mr John Noble

Department for Communities

The Deputy Chairperson (Ms Ferguson): I welcome John Noble, who is head of the social security policy, legislation and decision-making division; and Ros Agnew, who is from the Child Maintenance Service. You are very welcome. John, I invite you to make a brief opening statement. You have about five to 10 minutes before we move to members' questions. Thank you.

Mr John Noble (Department for Communities): Thank you very much, Chair and Committee members, for allowing us to come along this morning to brief you on the Child Support Enforcement Bill, which the Department is bringing forward in the Assembly. As you said, I have policy lead responsibility for child maintenance along with some other policy areas in the social security policy, legislation and decision-making services directorate in the Department. My colleague Ros Agnew is the operational deputy director of the Child Maintenance Service.

Currently, where the Child Maintenance Service's administrative enforcement functions are inappropriate or have proven ineffective in collecting arrears that non-resident parents owe, the service must apply to the Magistrates' Court to obtain a liability order. The liability order then allows the Child Maintenance Service to take forward enforcement powers through the Northern Ireland Courts and Tribunals Service (NICTS). That court-based process can take an average of up to 22 weeks.

As part of the commitment to improve the Child Maintenance Service's ability to secure maintenance for qualifying children, our counterparts in the Department for Work and Pensions (DWP) brought forward the Child Support (Enforcement) Act in 2023. That Act permits the use of administrative liability orders, which improves the enforcement process by making it more straightforward and faster to recover child maintenance arrears from non-paying parents. That Act extended only to England, Scotland and Wales, and, at the time, it was not possible for us to be included in that legislation. To maintain parity with DWP, it is now the Department's intention to bring forward a child support enforcement Bill that will be introduced in the Assembly later this month and will ensure that we in Northern Ireland have the same provisions as are in the 2023 Act.

The Bill has two clauses and one schedule. Clause 1 is headed "Rules relating to liability orders", and clause 2 is headed "Commencement and short title". The schedule is headed "Amendment of statutory provisions". I will quickly take you through some background to those.

Clause 1, which is on making and varying liability orders and appealing against liability orders, outlines the amendments in the schedule. Clause 1 also defines the Child Support (Northern Ireland) Order 1991 and the Child Maintenance Act (Northern Ireland) 2008.

Clause 2 provides for the commencement of the provisions and the short title of the Bill. The schedule contains provisions that amend uncommenced articles 32M and 32N of the 1991 Order, and that alters the basis on which the administrative liability order is made, allows regulations under article 32N to make provision about the variation of liability orders and requires regulations under article 32N to make provision about appeals while repealing the 2008 Act changes to the 1991 Order that deal with appeals of liability orders. The schedule also makes provision for some minor consequential technical amendments, such as adding details about the Department making liability orders to the 1991 Order and adding updated references.

Once the Bill attains Royal Assent, the Child Maintenance Service will be able to make an administrative liability order without requiring application to the Magistrates' Court. The new administrative liability orders are intended to replace the existing court-based liability order process and to substantially speed up the time that it takes for the Child Maintenance Service to initiate its enforcement powers. The new administrative liability orders can substantially shorten the liability order process from, as I said, an average of about 22 weeks to about six weeks.

As officials developed the proposal for the Bill, there was engagement with our counterparts in the Northern Ireland Courts and Tribunals Service. When the Bill attains Royal Assent, the Department will bring forward the secondary legislation that will be required to implement and commence the Act. Officials are undertaking the policy development work for the secondary legislation, which we expect to be introduced at a later stage. In developing appropriate secondary legislation, officials will continue to collaborate with our colleagues in the Northern Ireland Courts and Tribunals Service to ensure that the regulations on the appeal of administrative liabilities are developed.

It is expected that the regulations will set out the non-resident parent's right of appeal against an administrative liability order and the period when the right of appeal may be exercised. As with the protocol for secondary legislation, the Committee will be apprised as the Department brings forward further regulations.

We in the Department are of the view that the policy proposal in the Bill is a positive measure and should help to improve the enforcement process by making it more straightforward and faster to recover child maintenance arrears from non-paying parents.

That is a summary of the Bill. We thank you for the opportunity to brief the Committee. We are happy to take any questions.

The Deputy Chairperson (Ms Ferguson): I thank both of you for the detailed briefing, which is in the Committee pack. I will start with a few questions, and then other members may have a few questions.

Firstly, the briefing discusses amending the uncommenced articles of the 1991 Order. Why were those articles not commenced? I do not think that the equivalent articles were commenced in Westminster either. Secondly, can you give more detail on the administrative liability orders so that there is a more general understanding of them? How will the expected reduction in processing time for enforcement actions from 22 weeks to six weeks be enabled? Will the administrative liability orders work in the same way as a court order? Will they be equivalent? That would be useful to know. Will the administrative liability orders improve the collection of the child maintenance arrears? Those are my questions to start things off.

Mr Noble: We brought in the powers at the time of the 1991 Order and the 2008 Act. We did not commence them because, along with our counterparts in DWP, we did not have the process and procedures in place. We constantly review our policies and procedures, and the opportunity has now arisen for us to revisit them and bring them forward in conjunction with the Northern Ireland Courts and Tribunals Service, as I said. Yes, there is a bit of a time lag, but sometimes that happens. As we move forward, other priorities and policy areas sometimes take over. We have small numbers of liability orders, so we felt at that time that it was not appropriate to commence those provisions, but we now want to move to that stage. Ros, do you want to comment on the reduction from 22 weeks?

Ms Ros Agnew (Department for Communities): On the practicalities, at the moment, if the service applies for a liability order, it has to go through the Magistrates' Court. Essentially, the process dates can be changed. The non-resident parent can ask for the process to be delayed. There is a series of events that can mean that a judge can change a date, and various delays can happen throughout the period. For instance, they can send the case back to have the details on the accounts checked and things like that. If we move to an administrative liability order, that will be done in-house, so any communication with the non-resident parent will be directly with the service. All the checks and balances on the accounts and everything are done prior to a liability being drawn up. That will continue, but we will have a much more direct route to the non-resident parent, which will eradicate the court-type delays that you see in any court process.

Will it improve collection? Obviously, it is our aim and hope that it will. Since the process is delivered directly from the service, if, at any point, the non-resident parent engages with us, we can stop the process and enter into an agreement to re-engage with compliance and start payments again or to initialise them. I cannot give a direct answer to the question of whether it will improve collection, but it will improve the process, and it is hoped that, by improving it, we are more likely to get engagement from the non-resident parent and, therefore, compliance.

The Deputy Chairperson (Ms Ferguson): To be clear, how successful have the courts been in the process? Are they currently successful?

Ms Agnew: The courts will set out the liability order. That allows the Child Maintenance Service to go to the Enforcement of Judgments Office (EJO) to use its powers to recover funds or to look to recover assets through the EJO, given that it can do charging orders, and it opens up other powers that the Child Maintenance Service has to gain compliance.

The Deputy Chairperson (Ms Ferguson): It would be useful to get an insight into how successful it currently is —

Mr Noble: I can give you some stats.

The Deputy Chairperson (Ms Ferguson): — so that we are comparing like with like. Obviously, you will not have stats on the new process. Hopefully, the new process will improve the services, but it would be useful to have a baseline. That is one thing.

Mr Noble: We have some figures up until the end of December 2023.

The Deputy Chairperson (Ms Ferguson): Very good.

Mr Noble: We took forward 218 liability orders, which brought in just over £1 million. Obviously, when we go to the administrative liability order, we will be able to see the differences and how it improves, if it improves. We are not expecting significant numbers, because there are small numbers, but, yes, we can compare the court-based approach with the new administrative liability order approach. We will be able to make that comparison. The key issue is that it will speed up the process of getting the arrears. I mentioned just over £1 million, for example, if we did 218 administrative liability orders, that £1 million would come in more quickly and go out to the resident or receiving parent.

You asked whether a liability order and an administrative order have the same legal basis: yes, if we bring it forward through the Bill, the administrative liability order will have the same legal basis as the current liability order, but the process will be quicker for the Child Maintenance Service.

The Deputy Chairperson (Ms Ferguson): So it is about speeding up the process.

Ms Agnew: Absolutely.

The Deputy Chairperson (Ms Ferguson): You mentioned some of the delays that are in the court system, but some of those might be genuine delays regarding the non-resident parent. It is about using your judgement, and, given the experience in the Department, thinking about how both parents can engage prior to having the likes of an order, because having an order is the last thing that you want. I assume that it is preferable if both parents can work cooperatively; that is the ethos of it.

Ms Agnew: Absolutely. This is very much the end of our process, but, even when we reach this point, if the non-resident parent engages with us, we can stop those more stringent enforcement processes at any point through cooperation.

The Deputy Chairperson (Ms Ferguson): Thank you. I will pass you over to Sian, who is online.

Ms Mulholland: Anything that can be done to reduce the administration of the process and to reduce any delay in the parent with custody receiving the maintenance is to be welcomed. I have a couple of questions about the Department's capacity to roll this out. Will it create any significant resource pressures? Will there be staff training? How different will the process be from what the staff are currently engaged in? Secondly, has there been any engagement with the Department of Justice and the Courts and Tribunals Service about the change, and what has that engagement entailed? Is there any feedback on it?

Finally, I want to mention something that was raised with me to do with a parent with custody who has been the victim of domestic violence. That person may not wish the Department to issue an order if the non-resident parent has been an abusive ex-partner. That reluctance can stem from fears that the order might lead to further repercussions, and they may prefer to receive less financial support than risk further abuse. The Bill uses the word "may": are there circumstances where the Department would decide not to issue an order as a result of working alongside the parent with custody? Are there ways that the parent with custody can change their mind about whether the Department should issue an order against the non-resident parent, should circumstances change?

Ms Agnew: I will answer the first couple of points on the logistics of introducing the measure. When it comes to resourcing pressures and subsequent training for staff, you are absolutely right: staff will be required to be trained to take it forward. We are working with our colleagues in the Department for Work and Pensions, who are introducing the same type of change. We will work through the process of what that means for our caseworkers. As John mentioned, because of the small numbers, a very small part of our caseload gets to this level. We do not anticipate that the process will have any direct resource implications. Given the small number of cases that we produce each year, I do not foresee the process itself having any significant impact on resources. We will work with our DWP colleagues to develop the training and ensure that it is in place.

I will jump to your questions about the parent with care who is, perhaps, a victim of domestic abuse, and then John can come back to the interaction with the courts. If a parent with care or either parent advises us that they have been the victim of or are concerned about domestic abuse in any way, we can absolutely stop the process at any time. If a parent with care asks us not to proceed, we will not proceed. We have mechanisms in place for payments that go out to a parent with care. We can advise them of non-geographical sort codes, for example, so that they would not necessarily give an indication of where they live. If a parent with care is concerned that the enforcement action that we take would put them in any kind of jeopardy or any sensitive position at all or if they simply need to engage with us, we will work with them, but we will never push ahead if they do not want us to.

You talked about individuals changing their mind. While the case remains open, we can pursue debt, so they could ask for the case to be paused. We can leave the case open, and they can ask us not to continue with enforcement action at that time. If they feel that they want to engage with us later, we could do that and look at the situation again.

Mr Noble: I will pick up on the point about engagement with the Department of Justice. To confirm, yes, we have had engagement with our colleagues in the Courts and Tribunals Service, and we continue to have that engagement. Obviously, we had engagement with them when we were developing the Bill, and they work very closely with us. We will continue to have that engagement with them throughout the development of the secondary legislation, which will be around, potentially, the appeals process and so on. There may be a role for them in that. That is still to be defined. Yes, we continue to have ongoing engagement with them.

I will also pick up on the domestic abuse aspect, which is another piece of work that we are involved with. A UK-wide Domestic Abuse Bill — sorry, Act, as it is now — was passed in 2021, and its scope was extended to Northern Ireland. We are working with our colleagues in the Department for Work and Pensions on some proposals that would mean that, if somebody is on direct pay and is a victim of abuse, we will work alongside the claimant so that, for example, there will be no engagement. Direct pay is when the two parents pay the child maintenance between them. The proposals will look at them being automatically moved to collect and pay, so there would be no engagement. We are still working

through those proposals, and we will come to the Committee to provide further information once we have developed them.

Ms Mulholland: Thank you so much for that comprehensive answer. Any time that children are involved, especially when you get to a point of having to get any form of an order to encourage someone to pay, particularly when there has been abuse, it is a really sensitive issue. I am really thankful for your response to that, for how comprehensively you are dealing with it and for the reassurance that there is the scope to pause the process and to resume if and when circumstances change. Are there fees for that? Are there any financial implications for the claimant or for either parent?

I have a last question; apologies, Chair. Is there anything in this legislation that is not currently in place in England and Wales?

Ms Agnew: If parents use the direct pay service, no fees are incurred. Fees are incurred when we use the collect-and-pay service. That is when the Child Maintenance Service gets involved in collecting from the non-resident parent and paying out to the parent with care. Broadly, I can give you the fees for collection. It is 20% from the non-resident parent, and the parent with care is charged 4% of the maintenance liability. When you move into the realms of enforcement, the fees can vary, depending of the type of enforcement. They start from around £30 and go up to £300, depending on what enforcement level we use. That could be a deduction from earnings order, a lump sum deduction order or we could be moving into the more serious enforcement areas.

Mr Noble: I will add to that and say that, on the Domestic Abuse Bill — sorry, it is the Domestic Abuse Act; I keep forgetting that it is an Act of Parliament now. As Ros outlined, there are fees in that collect-and-pay service. As part of our development of secondary legislation, we will work with DWP to see whether we should look at those fees. Obviously, we cannot give any commitment at this stage, but we will look at those fees to determine whether they could be waived in any way. However, that is policy that is still under development along with our colleagues in DWP.

The other question was about the Bill being the same as the Act in GB. Yes, we are bringing the Bill forward in order to maintain parity with our colleagues in the Department for Work and Pensions, so it should be the same as that across in GB.

Ms Mulholland: Thank you so much. Chair, if it is possible, may I ask for an action to write to DWP to put forward our suggestion that, if there is a parent who has experienced domestic violence, they should never have to pay through the collect-and-pay service to protect their identity or where they live? If a parent does not want to have direct engagement with their abuser, they absolutely should not have to pay to avail themselves of that service. I would really appreciate it if we could write to DWP to ask for a policy direction on that.

The Deputy Chairperson (Ms Ferguson): We will take a note of that and come back to it next week when we have a quorum.

Ms Mulholland: Of course. No problem. Thanks so much, Chair.

Mr Kingston: Thank you for the information that you provided. It seems entirely sensible that we take measures to reduce the timescale through — I am reading the notes here — administrative liability orders rather than court-based liability orders, if we can reduce it from 22 weeks to six weeks. I assume that no negative consequences have been experienced in GB since the Act was passed there. Am I right to presume that the system is now in operation in GB?

Mr Noble: No. The secondary legislation has not been introduced. The Government were due to bring it in shortly, but, obviously, the general election has delayed that. It is still being progressed, and we work alongside them on that. So far, nothing has been indicated in those discussions, but, as we move forward with the secondary legislation, we will come back to brief the Committee on it if anything is raised. We were just about to do a consultation exercise, but, unfortunately, the general election hit us as well. We will do a consultation on the Bill, so we will see whether anything comes from our stakeholders. Nothing has been raised in our early discussions, but we will take account of anything that is raised.

Mr Kingston: So it is not live, as such, in GB.

Mr Noble: No.

Mr Kingston: Will we maybe have an opportunity to take from any learnings there before the —?

Mr Noble: We were running a bit behind GB, but, with the general election, they have been held back, so we may catch up with them. There may be a time lag of a few weeks, so we may be able to get additional learning from that.

Mr Kingston: On the real-life consequences of the system, if a non-resident parent does not make child maintenance payments, does that mean that the parent with care loses out on that money, or does the Department or the Child Maintenance Service compensate for the money that the non-resident parent is not paying?

Ms Agnew: Obviously, parents can make their own family-based arrangements, which means that they do not come near the statutory service at all. If they use the statutory service, yes: if the non-resident parent is failing to pay, the money does not go to the parent with care. The short answer is, no, the Department does not recompense that directly through child maintenance. Obviously, the parent with care may be entitled through the benefit system. Child maintenance does not affect any benefits. Parents are still entitled to claim whatever benefits they may be entitled to, and child maintenance is over and above that. In effect, yes, they do not receive that money, and the Department does not pay out in its stead.

Mr Kingston: Obviously, the quicker it can be resolved, the better.

Ms Agnew: Absolutely.

Mr McHugh: Fáilte romhaibh, John agus Ros. [*Translation: Welcome, John and Ros.*] The development of legislation ensuring that children receive the maintenance that they need is welcome. It should become a lot less hassle for the carer too, in many respects.

In your briefing, you indicated that you were developing an equality impact assessment (EQIA). What stage is that at?

Mr Noble: It is at an advanced stage. We are just about to finalise it. We have been working on it over the past number of weeks. We are about to finalise it in the Department, and it will then be shared with the Committee and published.

In our early, initial assessment, we do not see any significant issues under section 75. There are probably only two elements that stand out. One is the fact that the majority — it is about 96%, I think — of the receiving parents or the parents with care are women, so it will obviously have a positive impact if we speed up the process of getting the child maintenance to that parent. Males are predominantly the people who pay the child maintenance, and I think that the statistic is around the same. There will be an impact on them because we are recovering the arrears from them. However, it is child maintenance that has been agreed, so, although it has a minor impact on them, it is actually recovering only the arrears of the child maintenance that they were entitled to pay.

The Deputy Chairperson (Ms Ferguson): I have one final question about the stakeholder engagement. Did the Westminster Parliament do extensive stakeholder engagement on the development? If so, were any key challenges or concerns raised during that process?

Mr Noble: Yes. They did stakeholder engagement, and there were a couple of points that we have taken account of. Two issues were raised. One was on the appeals process, which is still work in progress. We will take on board the feedback from that and from our stakeholder engagement consultation when we do that. The other point was not really related, but there was a discussion about the shortfalls in the performance of the Child Maintenance Service in GB. From our perspective, learning from their stakeholder engagement was really about the appeals process.

The Deputy Chairperson (Ms Ferguson): There are no further questions from members. I thank John and Ros for their detailed presentation today. It is much appreciated, so thank you.