



EXPLANATORY NOTES

Child Support (Enforcement) Act 2023

Chapter 35

CHILD SUPPORT (ENFORCEMENT) ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Child Support (Enforcement) Act 2023 which received Royal Assent on 20 July 2023 (c. 35).

- These Explanatory Notes have been provided by the Department for Work and Pensions, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Subject	Page of these Notes
Overview of the Act	3
Policy background	3
Legal background	4
Territorial extent and application	4
Commentary on provisions of Act	5
Section 1: Interpretation	5
Section 2: Making of liability order	5
Section 3: Power to vary liability order	5
Section 4: Appeal of a liability order	5
Section 5: Consequential amendments	6
Section 6: Extent, commencement and short title	6
Annex A - Territorial extent and application in the United Kingdom	7
Annex B – Hansard references	8

Overview of the Act

- 1 Section 25 of the Child Maintenance and Other Payments Act 2008 (2008 Act) makes provision for the Secretary of State (SoS) to make administrative liability orders. It replaces the existing requirement under section 33 of the Child Support Act 1991 (1991 Act) for the SoS to apply to the courts for a liability order. The 2008 Act makes significant amendments to the 1991 Act, including repealing sections 33 and 34 of the 1991 Act and inserting sections 32M and 32N into the 1991 Act. Section 25 of the 2008 Act (which inserts new sections 32M and 32N) has not yet been commenced.
- 2 This Act amends uncommenced sections 32M and 32N of the 1991 Act to alter the basis on which an administrative liability order is made, allow regulations under section 32N to make provision about variation of liability orders, and require regulations under section 32N to make provision about appeals (while repealing 2008 Act changes to the 1991 Act dealing with appeals of liability orders). It also makes some consequential amendments.

Policy background

- 3 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 for Work and Pensions (DWP) and administered by the Child Maintenance Service (CMS).
- 4 The statutory child maintenance scheme was introduced by 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 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.
- 5 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.
- 6 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.
- 7 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.
- 8 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.

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- 9 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 England and Wales, or Sheriff's Court in Scotland to obtain a LO before the use of more stringent enforcement powers such as instructing enforcement agents 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 England and Wales, or Sheriff's Court in Scotland.

Legal background

- 10 Under section 4 of the 1991 Act, either parent (or a child in Scotland under s.7) 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.
- 11 Liability for child maintenance is calculated under section 11 and in accordance with Schedule 1 of the 1991 Act.
- 12 When the SoS (through the CMS) exercises any discretionary power in the 1991 Act, he is obliged to consider the welfare of any child affected by the decision (section 2 of the 1991 Act).
- 13 Section 29 of the 1991 Act permits the SoS to make arrangements to collect child support maintenance.
- 14 Sections 31 – 32K of the 1991 Act sets out the administrative enforcement measures (DEOs and DOs) that can be used to secure arrears of child support maintenance.
- 15 Under section 33 of the 1991 Act, 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 (or Sheriff's Court in Scotland) for a LO against the NRP.
- 16 The 2008 Act was introduced to establish the Child Maintenance and Enforcement Commission CMEC (a non-departmental government body) to take on some of the functions previously undertaken by DWP under the Child Support Agency (CSA). CMEC was subsequently abolished, and the functions of the statutory child maintenance system were transferred back to the DWP. The 2008 Act made a number of amendments to the 1991 Act. Some of those amendments, such as those set out in section 25 of the 2008 Act, were not commenced at the time that Act was passed.
- 17 This Act amends the uncommenced provisions in section 25 of the 2008 Act. When these provisions are commenced, it will enable the SoS to make administrative liability orders. They will have similar effect to liability orders currently issued by the courts under section 33 of the 1991 Act in that it certifies the debt that is owed by the NRP and allows the CMS to take further enforcement actions. A liability order is required before the CMS can take action to:
 - i. Take control of and sell goods.
 - ii. Disqualify the NRP from driving or from holding or obtaining a UK passport.
 - iii. Imprison the NRP.

Territorial extent and application

- 18 Section 6 of the Act sets out the extent, that is the jurisdiction in which the Act forms part of the law. The Act extends to England and Wales, and Scotland.

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- 19 In Scotland, whilst Child Maintenance is reserved, the judicial system is devolved. As such Scottish Government is engaged on its impact in Scotland and how it will be reflected in legislation.
- 20 Child maintenance is a transferred matter in Northern Ireland.
- 21 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Section 1: Interpretation

- 22 Section 1 defines “the 1991 Act” and “the 2008 Act”.

Section 2: Making of liability order

- 23 Section 2 amends section 32M(1) of the 1991 Act (as inserted by section 25 of the 2008 Act) for the making of administrative liability orders. It provides that the SoS 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.

Section 3: Power to vary liability order

- 24 Section 3 amends section 32N of the 1991 Act (as inserted by section 25 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 LO is based is subsequently found to have been incorrect.

Section 4: Appeal of a liability order

- 25 Section 4 amends the route of appeal to allow a right of appeal to a court and provides for consequential amendments.
- 26 Subsection (2) inserts new provisions in new section 32N of the 1991 Act which sets out regulation making powers of the SoS:
 - New section 32N(3) of the 1991 Act requires the SoS to make regulations giving a NRP a right of appeal to a court against a liability order.
 - New section 32N(4) of the 1991 Act provides that on an appeal the court cannot question the maintenance calculation itself (this was previously the case with liability orders issued under section 33 of the 1991 Act).
 - New section 32N(5) of the 1991 Act provides that the SoS may make regulations about the period in which to exercise the right of appeal and about the powers of the court on appeal.
- 27 Subsection (3) sets out consequential amendments to section 32M(3) of the 1991 Act.
- 28 Subsection (4) amends section 52 of the 1991 Act by requiring the first regulations under the new section 32N(3) to be subject to the affirmative parliamentary procedure.
- 29 Subsection (5) amends Schedule 7 to the 2008 Act by removing paragraph 1(3) to (6), which provide for consequential amendments to section 20 of the 1991 Act relating to an appeal to the First-tier Tribunal.

Section 5: Consequential amendments

30 Section 5 sets out minor and consequential amendments to section 59 of the 2008 Act.

Section 6: Extent, commencement and short title

- 31 Subsection (1) provides that this Act extends to England and Wales and Scotland.
- 32 Subsection (2) provides that section 1 and section 6 come into force on the day on which the Act receives Royal Assent.
- 33 Subsection (3) provides that section 4(5) and section 5 come into force at the end of the period of two months beginning with the day on which this Act is passed.
- 34 Subsection (4)(a) provides that the rest of this Act comes into force in England and Wales, at the same time as section 25 of the 2008 Act comes into force in England and Wales.
- 35 Subsection (4)(b) provides that the rest of this Act comes into force in Scotland, at the same time as section 25 of the 2008 Act comes into force in Scotland.
- 36 Subsection (5) provides that this Act may be cited as the Child Support (Enforcement) Act 2023.

Annex A - Territorial extent and application in the United Kingdom

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?
Section 1	Yes	Yes	Yes	No
Section 2	Yes	Yes	Yes	No
Section 3	Yes	Yes	Yes	No
Section 4	Yes	Yes	Yes	No
Section 5	Yes	Yes	Yes	No
Section 6	Yes	Yes	Yes	No

Annex B – Hansard references

37 The following table sets out the dates and Hansard references for each stage of the Act’s passage through Parliament.

Stage	Date	Hansard reference
<i>House of Commons</i>		
Introduction	15 June 2022	Bill as introduced Vol. 716 col. 315
Second Reading	09 December 2022	Vol. 724 col. 664
Public Bill Committee	14 December 2022	Col. 1
Third Reading	17 March 2023	Vol. 229 col. 1103
<i>House of Lords</i>		
Introduction	20 March 2023	Bill as introduced Vol. 828 col. 1546
Second Reading	19 May 2023	Vol. 830 col. 560
Grand Committee	19 June 2023	Vol. 831 col. 17
Third Reading	14 July 2023	Vol. 831 col. 1979
Royal Assent	20 July 2023	House of Commons: Vol. 736 col. 1073
		House of Lords: Vol. 831 col. 2498

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Published by TSO (The Stationery Office), a Williams Lea company,
and available from:

Online

www.tsoshop.co.uk

Mail, Telephone & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

E-mail: customer.services@tso.co.uk

Textphone: 0333 202 5077

ISBN 978-0-10-560343-6



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