



EXPLANATORY NOTES

Child Support Collection (Domestic Abuse) Act 2023

Chapter 24

£6.90

CHILD SUPPORT COLLECTION (DOMESTIC ABUSE) ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Child Support Collection (Domestic Abuse) Act 2023 which received Royal Assent on 29 June 2023 (c. 24).

- These Explanatory Notes have been prepared 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 means in practice; provide background information on the development of policy; and provide additional information on how the Act affects 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.

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Overview of the Act

- 1 The primary purpose of this Act is to provide additional legislative protection for victims of domestic abuse who use the Child Maintenance Service (CMS) by allowing for the collection of child maintenance payments by the Secretary of State or the Department for Communities (DfC) in Northern Ireland on behalf of the Non-Resident Parent (NRP) or the Person with Care (PWC) where the Secretary of State or DfC is satisfied that there is evidence of behaviour of a parent that amounts to domestic abuse against the other parent or children in their household, and that it is appropriate to make the arrangements. The Act 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 (or by the Department for Communities in Northern Ireland) and administered by the CMS (or the Child Maintenance Service in Northern Ireland).
- 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 PWC 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 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.
- 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 previous legislation, the Secretary of State had the power to collect maintenance payments (under the collect and pay service) only where:
 - the NRP 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 previous legislation, direct pay was the default option, unless the NRP agreed to collect and pay, or was deemed ‘unlikely to pay’ by demonstrating an unwillingness to pay their liability.
- 8 This power has been introduced to further strengthen the existing support for domestic abuse victims. The Act creates an additional power to collect maintenance payments. This allows the Secretary of State (or the DfC in Northern Ireland) to place a child maintenance case onto the

collect and pay service when the Secretary of State or DfC 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 (or the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 in Northern Ireland), 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

- 9 Under section 4 of the Child support Act 1991 (“the 1991 Act”), either parent (or a child in Scotland under section 7) may apply for a maintenance calculation to be made.
- 10 Liability for child maintenance is calculated under section 11 and in accordance with Schedule 1 of the 1991 Act.
- 11 When the Secretary of State (through the CMS) exercises any discretionary power in the 1991 Act, they are obliged to consider the welfare of any child affected by the decision (section 2 of the 1991 Act).
- 12 Under section 4(2)(a) of the 1991 Act, the CMS had the power to collect maintenance payments (under the collect and pay service) where:
 - the NRP 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).
- 13 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.
- 14 Article 7 of the Child Support (Northern Ireland) Order 1991 provides for corresponding provisions in Northern Ireland to section 4 of the Child Support Act 1991.

Territorial extent and application

- 15 Section 5 of the Act sets out the territorial extent. Section 1 extends and applies to England and Wales and Scotland. Section 2 extends and applies to Scotland. Section 4 extends and applies to Northern Ireland.
- 16 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: Collection of maintenance in England and Wales and Scotland: cases involving domestic abuse

- 17 Section 1 amends section 4 of the 1991 Act to make provision for the collection of maintenance in England and Wales and Scotland in cases involving domestic abuse.
- 18 Subsection (2) expands the circumstances in which arrangements may be made to collect maintenance. It inserts subsection (3A) into section 4 of the 1991 Act which gives the Secretary of State the power to place a child maintenance case onto the collect and pay service when the

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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 inserts subsection (3B) which defines relevant domestic abuse for the purposes of the subsection.

- 19 Subsection (3) amends section 4 (4) of the 1991 Act to expand the power to make regulations about the provision of information to cover applications on the basis of domestic abuse.

Section 2: Further provision about collection of maintenance in Scottish cases involving domestic abuse

- 20 Section 2 amends section 7 of the 1991 Act to make provision for the collection of maintenance in Scotland in cases involving domestic abuse.
- 21 Subsection (2) expands the circumstances in which arrangements may be made to collect maintenance. It inserts subsection (4A) into section 7 of the 1991 Act which 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 inserts subsection (4B) which defines relevant domestic abuse for the purposes of the subsection.
- 22 Subsection (3) amends section 7(5) of the 1991 Act to expand the power to make regulations about the provision of information to cover applications on the basis of domestic abuse.
- 23 Section 3: Minor and consequential amendments
- 24 Section 3 sets out minor and consequential amendments relating to England and Wales and Scotland.
- 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.

Section 4: Collection of maintenance in Northern Ireland: cases involving domestic abuse

- 29 Section 4 amends article 7 of the Child Support (Northern Ireland) Order 1991 to make provision for the collection of maintenance in Northern Ireland in cases involving domestic abuse.
- 30 Subsection (2) inserts a new paragraph (3A) into Article 7 which expands the circumstances in which arrangements may be made to collect maintenance. It gives the Department 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 Department 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 inserts a second new paragraph (3B) into Article 7 which defines relevant domestic abuse for the purposes of the first paragraph.
- 31 Subsection (2)(b) amends Article 7(4) which expands the power to make regulations about the provision of information to cover applications on the basis of domestic abuse.
- 32 Subsection (3) sets out minor and consequential amendments. It amends Article 29 and Article 48 of the Child Support (Northern Ireland) Order 1991.

Section 5: Extent, commencement and short title

- 33 The provisions under this section are self-explanatory.

Commencement

- 34 Sections 1, 2 and 3 (except Section 3(4)) come into force on such day or days as the Secretary of State may by regulations appoint.
- 35 Section 3(4) comes into force at the same time as section 34 of the Child Maintenance and Other Payments Act 2008.
- 36 Section 4 comes into force at the same time as Article 127(2)(b) of the Welfare Reform (Northern Ireland) Order 2015.
- 37 Section 5 comes into force on the day on Royal Assent.

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	No	No	Yes	No
Section 3	Yes	Yes	Yes	No
Section 4	No	No	No	Yes
Section 5	Yes	Yes	Yes	Yes

Annex B – Hansard References

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

Stage	Date	Hansard reference
House of Commons		
Introduction	15 June 2022	Bill as introduced Vol. 716 col. 316
Second Reading	28 October 2022	Vol. 721 col. 555
Public Bill Committee	14 December 2022	Col. 1
Report Stage	3 March 2023	Vol. 728 col. 1000
Third Reading	3 March 2023	Vol. 728 col. 1003
House of Lords		
Introduction	6 March 2023	Bill as introduced Vol. 828 col. 574
Second Reading	21 April 2023	Vol. 829 col. 916
Grand Committee	24 May 2023	Vol. 830 col. 873
Third Reading	16 June 2023	Vol. 830 col. 2201
Royal Assent	29 June 2023	House of Commons: Vol. 732 col. 1
		House of Lords: Vol. 829 col. 1391

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