

Joint Committee on Human Rights

House of Commons · 7 Millbank · London · SW1P 3JA

Tel 020 7219 2797 Fax 020 7219 8393 Email JCHR@parliament.uk Website www.parliament.uk

From Andrew Dismore MP, Chair

Rt Hon Peter Hain M.P.
Secretary of State for Work and Pensions
Department for Work and Pensions
Caxton House
Tothill Street
London SW1H 9DA

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Child Maintenance and Other Payments Bill

The Joint Committee on Human Rights is considering the compatibility of the *Child Maintenance and Other Payments Bill* with the United Kingdom's human rights obligations. The Committee would be grateful if you could provide a further explanation of the Government's view that the proposals in the Bill are compatible with the Convention rights guaranteed by the Human Rights Act 1998. In particular, we would be grateful for an explanation of the Government's views on a number of matters which we consider capable of raising significant human rights issues.

a) New Enforcement Powers for C-MEC

The Bill creates a presumption that a deduction of earnings order will be used as the first method of collecting child maintenance. The Government accepts that these provisions may engage Article 8 ECHR as such orders will alert an individual's employer to his liability for child maintenance. The Government considers that these provisions are justified because there are adequate safeguards in place. The Bill provides that C-MEC must consider whether there is a "good reason" not to make a deduction from earnings order. A "good reason" is to be defined by the Secretary of State in Regulations. These proposals will be piloted before their introduction (Clause 19). The Bill also provides C-MEC with powers to collect amounts of maintenance and arrears from a non-resident parents current or savings accounts. (Clauses 21-22). The Government accepts that these provisions also engage the right to private life. The Explanatory Notes explain that the Government consider that the proposals are justified and proportionate. They note that safeguards such as the stipulation that a "maximum percentage of money" in an account will be protected will be provided in Regulations.

(1) Why does the Government consider that it is appropriate to leave these matters to secondary legislation, if they are relevant to compliance with Article 8 ECHR?

I would be grateful if you could provide us with a draft copy of the Regulations as soon as they are available.

The Bill removes the need to secure a liability order from the court before pursuing any further enforcement action, as is currently required. It is proposed that C-MEC have the power to impose administrative liability orders subject to appeal to an independent tribunal. The Committee have previously asked the Government to explain why this administrative action would be compatible with Article 6 ECHR and the right to a fair hearing. The Explanatory Notes accept that Article 6 ECHR will be engaged, but rely on the right of appeal to an independent tribunal for compliance with the Convention. The Bill provides for such an appeal, but leaves the composition and powers of that tribunal to secondary legislation. It is impossible to assess whether a particular appeals process complies with the right to a fair hearing without information on the composition of the appeal body and their powers (Clause 23).

(2) Why is the Government persuaded that the rights to appeal provided for in the Bill will be adequate to ensure that where the civil rights and obligations of non-resident parents are determined, they will have access to a hearing by an independent and impartial tribunal?

(3) Why does the Government consider that it is appropriate to leave these matters to secondary legislation, if they are relevant to compliance with Article 6 ECHR?

I would be grateful if you could provide us with a draft copy of the Regulations as soon as they are available.

b) Debt, Negotiation and Cancellation etc

The Bill provides the Secretary of State with regulation making powers designed to allow C-MEC to set off liabilities. It also provides C-MEC with the power to accept part payment of arrears in full and final satisfaction in certain circumstances (Clause 30) and to write off certain arrears (Clause 31). The Bill also provides powers to the Secretary of State in relation to the transfer, selling or “factoring” of debt to third parties (Clause 32). We wrote to the Minister, after the publication of the White Paper to investigate whether this power engaged the rights of children or parents with care under Article 6 (the right to a fair hearing), Article 8 (the right to private or family life) or Article 1, Protocol 1 (the right to the peaceful enjoyment of possessions). The Minister, in his response to our pre-legislative scrutiny, explained that the Convention did not treat child maintenance administered by a central body as a debt which could be considered a possession, where the beneficiary parent had no right to direct enforcement. This would rule out the application of Article 1, Protocol 1 ECHR and Article 6 ECHR in this context. This is an accurate analysis of the limited Convention case law on the management of child maintenance.

Although the Government accept that Article 8 ECHR may be engaged in some circumstances by these provisions, they explain that the circumstances where debt would be written off would be extremely limited, for example where parties have reconciled or where the parent with care has asked C-MEC not to enforce the debt or where the liable person has died and there are no funds in the estate. The Bill does not limit the powers of C-MEC in this way, but generally leaves the power to set conditions or limits to the regulation making powers of the Secretary of State.

(4) Why does the Government consider that it is appropriate to leave these matters to secondary legislation, if they are relevant to compliance with Article 8 ECHR?

I would be grateful if you could provide us with a draft copy of the Regulations as soon as they are available.

c) Information Sharing Gateways

The Bill provides for new information sharing gateways for information held by Her Majesty's Revenue and Customs (HMRC) which is already shared with DWP to be directly shared with C-MEC or with any "person providing services to them". Similarly, information held by the Secretary of State or the Northern Ireland Department for the purposes of functions relating to social security, employment or training may be supplied to C-MEC or any person providing C-MEC with services. Information gathered by C-MEC for the purposes of child support may be shared with HMRC, the Secretary of State or the Northern Ireland Department. The Explanatory Notes do not address this issue.

The Minister's response to the Committee's pre-legislative scrutiny accepted that the creation of these gateways would engage an individual's right to protect his private information (as protected by Article 8 ECHR). That response explained that "it will be necessary for C-MEC to have access to certain information held by DWP and HMRC as well as information already supplied to DWP by HMRC and held on DWP's database in order to achieve the policy intentions, including to improve the process of calculating child support maintenance by using historical tax information".

The Bill does not limit the exchange of information to historical tax information and allows for a two-way flow of information between C-MEC and HMRC and between C-MEC and the Secretary of State for the purposes of fulfilling any of those authorities' functions. This is far broader than the gateway considered in the Minister's earlier response.

(5) We would be grateful if you could explain why the Government considers that the gateways created by the Bill are compatible with Article 8 ECHR and, specifically, why the Government considers the broad information sharing powers proposed are necessary and proportionate to meet the objectives of the Bill.

The Bill also gives C-MEC a broad power to disclose information about non-resident parents to credit reference agencies (Clause 35). The Government has explained that this may impact upon defaulting parents' powers to secure credit, and specifically, to obtain a mortgage. Clause 35 allows C-MEC to disclose any "qualifying information" to a credit reference agency. Qualifying information is defined very broadly to include any information held by C-MEC for the purposes of the Child Support Act 1991 and which relates to a person liable to pay child support. The Explanatory Notes explain that the Government consider that these provisions engage Article 8 ECHR, but that any interference is justified and proportionate. They explain that information should only be disclosed with consent, unless the relevant person is subject to a liability order. The Government goes on to explain that credit reference agencies will only be able to use information by C-MEC to inform the financial standing of an individual. The disclosure of information with consent is unlikely to lead to any risk of incompatibility with the Convention or with Data Protection Act principles. It is clear from domestic case-law that the application of a civil order or a conviction does not exclude individuals from the protection of Article 8 ECHR. The publication of personal information relating to the order or the Conviction (in this case, the imposition of liability or other information, including personal details) must serve a legitimate aim and any interference with the private life of the defaulting parent, their children or any new family must be necessary and proportionate.

(6) We would be grateful if you could explain the Government’s view that the disclosure of information on individuals subject to a liability order is compatible with the right to private and family life enjoyed by the defaulting parent, their children or any new family.

d) Contracting Out

The Bill provides C-MEC with the power to contract out its functions (Clause 8). The Explanatory Notes accept that C-MEC will be a public body for the purposes of the HRA and explain that the Government is satisfied that the human rights of individuals interacting with contractors will be adequately protected by the use of contract compliance. In our recent Report on the Meaning of Public Authority for the purposes of the HRA, we reiterated our view that this approach was generally unacceptable.¹ In short: a) contractual provisions vary according to the terms contractors are willing to accept and b) contractual terms between a commissioning body and a contractor cannot generally be enforced by third parties, including the service users they may be intended to protect. In evidence to us, Government representatives, including the former Lord Chancellor, have presented an inconsistent view of whether or not the Government considers contract compliance an adequate means of protecting human rights.²

(7) We would be grateful if you could give reasons for your view on the adequacy of contract compliance as a means of protecting Convention rights;

(8) We would be grateful if you would explain:

(a) Whether or not your view is limited to the circumstances in which C-MEC might be empowered to contract out their functions; and

(9) Whether your view represents a cross-government consensus on the adequacy of contract compliance as a means of protecting Convention rights.

e) “Naming and Shaming” defaulting parents

The Child Maintenance White Paper proposed that C-MEC should be encouraged to “publicise successful enforcement activity”, including by publishing the names of certain non-resident parents who were successfully prosecuted on their website. The responses to the consultation on this issue expressed concern about the implications of “naming and shaming” for the children involved and for any new family of the non-resident parent. For example, Barnardo’s expressed concern about “unnecessary bullying and stigma”. The Government have decided to take forward these plans, but have explained that they “genuinely wish to give non-resident parents an opportunity to comply before any enforcement action is taken”. It does not appear that any legislative reforms are necessary to allow the Government to take this action, so this issue is not affected by the publication of the Bill.

These proposals engage the rights of non-resident parents, their children and any new family to respect for their private and family life. In order to be justifiable, any “naming and shaming” scheme must be for the purpose of achieving a legitimate aim and the

¹ Ninth Report of Session 2006–07, paras 33 – 61, 118 - 123

² See for example, Thirty Second Report of Session 2005-06, paras 86 – 92 and Seventh Report of Session 2003-04, paras 78 – 85.

interference must necessary and proportionate to the achievement of that aim. The domestic courts have considered “naming and shaming” of both offenders and those subject to ASBOs and have stressed the need to consider proportionality on a case by case basis and that the interests of any relevant family members, in particular, affected children, must be taken into account during this assessment. It is clear that the Government has received submissions on these important issues, but they have not clearly identified the purpose served by “naming and shaming” nor have they considered whether consultation of the parent with care will be adequate to meet concerns not only for the rights of the child for whom maintenance is sought but also the rights of any children of the non-resident parent’s family.

(10) Why does the Government consider that the publication of the personal details of defaulting parents a) serves a legitimate aim and b) will be accompanied by adequate safeguards to protect the private lives of children and other family members associated with the defaulter (as required by Article 8(2) ECHR).

I would be grateful for your response by 26 July 2007.

Andrew Dismore MP
Chair, Joint Committee on Human Rights