

The Confiscation of Driving Licences and Travel Documents

A briefing by **Families Need Fathers, Resolution, The Centre for Separated Families, Jewish Unity for Multiple Parenting** and **Mothers Apart from their Children** on the Welfare Reform Bill



FAMILIES NEED FATHERS

A handwritten signature in black ink, appearing to read 'Jon Davies'.

Jon Davies, CEO



A handwritten signature in black ink, appearing to read 'Kim Fellowes'.

Kim Fellowes
Chair, CSA Committee



Karen Woodall, Director



Penny Cross, Chair



A handwritten signature in black ink, appearing to read 'Lisa Cohen'.

Lisa Cohen, Director

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SUGGESTED AMENDMENT

Delete Clause 40 (p 43, line 13 – p 47, line 21), Clause 41 (p 47, line 22 - p 48, line 25) and Schedule 5 (p 87, line 20 - p 89. line 32)

KEY POINTS

The Welfare Reform Bill contains provisions concerning the possible confiscation of driving licences and travel documents by the Child Maintenance and Enforcement Commission (CMEC) without going to court (clauses 40 and 41 and Schedule 5).

Key objections to these proposals are:

- They conflict with the citizen's direct access to the courts when the state could be seen to be acting in a way clearly against the person's interests and their right to a fair trial.
- The provisions depend crucially on CMEC's ability to communicate effectively with the persons whose licence or documents they are confiscating. We know from long experience of CMEC's predecessor, the Child Support Agency (CSA), that communications with payers of maintenance have often been poor. Until CMEC is fully operational it will be difficult to trust them with such onerous responsibilities.
- The costs provisions include letting CMEC award costs even when an order has been revoked, yet no provision is made to allow such individuals to recover their costs.
- CMEC may deprive individuals of their driving licenses even when they are needed for the person's livelihood.
- The provisions are likely to be in breach of the Human Rights Act 1988 and Article One and Article Six of the First Protocol of the European Human Rights Convention.
- They may drive irresponsible non-payers underground, and make their ex-partners fearful of the consequences of an application to CMEC.

Background

These proposals have a number of serious shortcomings.

Fundamentally, they conflict with the citizen's direct access to the courts when the state could be seen to be acting in a way clearly against the person's interests and their right to a fair trial. If the Commission make these Orders administratively, there are no safeguards to have the matter properly considered. If the Orders are made administratively, they are effectively being made by Civil Servants, who may

be quite junior in position and, again, there are no 'checks and balances'. The Bill attempts to deal with this by providing that the seizure will only take place by an administrative decision if the individual decides not to appeal to the court. But that is well short of direct and full access to the court. Many of the individuals concerned may be poorly equipped to take sound advice from the legal profession or elsewhere when confronted with the threat to confiscate any of these documents.

Secondly, the provisions depend crucially on CMEC's ability to communicate effectively with the persons whose licence or documents they are confiscating. We know from long experience of CMEC's predecessor, the Child Support Agency (CSA), that communications with payers of maintenance have often been poor. Until CMEC is fully operational it will be difficult to trust them with such onerous responsibilities. It is quite feasible that there will be a considerable number of cases where CMEC is writing to the wrong address, or a person simply has not received the paperwork etc. What system will be in place to ensure that, to the greatest extent possible, the NRP is aware that the application is going to be made? What if letters simply go missing at the Post Office stage and never actually reach the individual concerned?

We understand an individual will have the opportunity to submit an appeal, but this is effectively reversing the burden of proof to the paying party to demonstrate why the Order should not remain in place. This does not make sense.

There are also concerns about the costs provisions. The Bill states that CMEC can recover their costs in confiscating driving licence/travel documents. However, if we have read clause 40 (5) (3) correctly, there is no provision that, if the Court revoke a disqualification Order, the individual against whom the Order has been made can actually recover their costs.

The bill provides that CMEC would consider "whether the person needs the relevant document in order to earn a living". That is far from a guarantee that they would not do so if it prevented the person earning a living. We know from our experience of the CSA that on occasion they have proposed taking away driving licences from people whose jobs required a current licence. What safeguards will be put in place to ensure proper consideration of the individual case? Such actions militate against the provisions' objective of maximising the payments of child support due.

In view of the proposed measures, we also believe that provisions are likely to be in breach of the Human Rights Act 1988 and Article Six (on the right to a fair trial) and Article One (on the protection of property) of the First Protocol of the European Human Rights Convention.

These draconian sanctions may simply encourage some parents to go underground, to avoid their responsibilities and be counter-productive, where such parents are likely to pay some monies if treated differently.

Similar provisions were rejected by Parliament during the passage of the Child Maintenance and Other Payments Act 2008. The Government promised a review of the need for such provisions, yet this proposal comes at least two years before CMEC will be fully operational.

For the avoidance of doubt, we all support the Government's aim of ensuring that parents pay their appropriate share of child maintenance after divorce or separation. However, we believe that that is best pursued by making the regime more efficient and effective, rather than attempting to introduce provisions which have already been rejected by Parliament as being inappropriate.