

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 Clause 42, Clause 43 and Schedule 5 of the Welfare Reform Bill



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WELFARE REFORM BILL: THE CONFISCATION OF DRIVING LICENCES AND TRAVEL DOCUMENTS

Signed by;

- Families Need Fathers
- Resolution
- The Centre for Separated Families
- Jewish Unity for Multiple Parenting
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SUGGESTED AMENDMENTS

Delete Clause 42 (p 44, line 4 – p 48, line 10), Clause 43 (p 48, line 11 - p 49, line 14) and Schedule 5 (p 88, line 33 - p 91. line 2)

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 42 and 43 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- The costs provisions include letting CMEC award costs even when an order has been revoked, yet no provision is made to allow such individuals to recover their costs.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. The House of Lords Constitution Committee has already expressed scepticism about these proposals and we hope the House will reject them.

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? It was good that the Minister confirmed at Commons Committee Stage that "in practice, this will be by registered post or by hand delivery." Aggrieved people who deal with the Commission will be able to quote this, if they are aware of the Minister's commitment. But in practice we believe that her promise will often not be honoured. Hard-pressed staff, and some who are simply incompetent, will fall well short of this, on the record of the CSA since 1991 up to the present day

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. One provision at 42(5) is particularly objectionable: it states :

If—

- (a) on an appeal under that section the court revokes a disqualification order made against any person, and
- (b) the court is satisfied that, having regard to all the circumstances,
it is reasonable to require that person to pay an amount in

40

respect of the Commission's appeal costs,
the court shall also make an order requiring that person to pay an amount in respect of those costs.

The Minister justified this in the Commons by saying that it simply gave the Court a choice. As an example, she said “The parent may well need their driving licence in order to earn a living, but has never bothered to communicate that despite numerous attempts to ascertain the situation. It is only when presented with the last possibility to ensure this does not happen that they actually engage.” In those circumstances she believed that the Court could ask the parent to pay all or part of the Commission's costs. This is a very odd approach. The Bill should either be amended to allow parents to claim costs in the event of an application rejected by the Court, or it should be dropped. The Court should not be put in the position of trying to allot blame even when it has rejected an application, when the Court knows it cannot do the same to the Commission.

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.

Scrutiny by the Court is important when such a draconian remedy is being considered. What is of particular importance is that there will be no scrutiny, as to whether or not the alleged arrears (for which it is proposed that the driving licence and passports are removed) have been calculated correctly. There is a considerable problem in applications for liability

orders being submitted to Court by CMEC/CSA. Even now, in a considerable percentage of cases, the applications are defective as the arrears figure is incorrect. The National Audit Office Report of 2006 indicated that in excess of 60% of such applications were wrong and yet we are now going to have this "checks and balance" of judicial scrutiny being removed, if these provisions are accepted.

The Bill also seems to be attempting to change the factors that should be taken into account in deciding whether to confiscate any of the documents covered. In particular, under the 2008 legislation, pursuant to 39B(4), the Courts are obliged to consider:-

- a. Whether the person needs a travel authorisation to earn a living.
- b. The person's means.
- c. Whether there has been wilful refusal or culpable neglect on the part of the person.

The Welfare Reform Bill seems to provide that the only factor the Commission needs to consider, when the removal of a passport/driving licence is concerned, is "whether the person needs the relevant document in order to earn a living". This means the factors being taken into account are far less onerous for the Commission to satisfy. It may be that any alleged arrears can be discharged through the 'non-resident parent's' (NRP) financial means and yet this does not appear to be considered. Additionally, what happens if there has not been wilful refusal or culpable neglect in paying maintenance (for example, post has previously never reached the NRP)? Again, this is a factor which would be disregarded if this Bill is passed in its current form.

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.

The Minister claimed at Committee Stage in the House of Commons that a similar amendment tabled by the Opposition would mean that “we could take away people’s passports or driving licences without notifying them that that was our intention.” It is difficult to see why this would be so. As the first part of Clause 42 makes clear the Child Support Act 1991, as amended by subsequent legislation, currently compels the Commission to go to court on these matters. Without the proposed Clause 42, that will continue.