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Child Maintenance and Other Payments Bill **Committee Stage** **Report**

Bill No 118 of 2006-07

This is a report on the Committee Stage of the *Child Maintenance and Other Payments Bill* produced in response to a recommendation of the Modernisation Committee in its report on *The Legislative Process* (HC 1097, 2005-06).

The Bill covers two distinct areas: child support maintenance and the provision of lump sum payments in connection with mesothelioma.

The child maintenance provisions are contained in Parts 1-3 and 5 of the Bill. They introduce changes to the child maintenance system which were proposed in the White Paper, *A new system of child maintenance*, published by the Department for Work and Pensions in December 2006.

Part 4 of the Bill includes powers to introduce a new scheme providing up-front lump sum payments for people diagnosed with diffuse mesothelioma and their dependants, to be funded through a compensation recovery mechanism.

The Bill received broad support from all parts of the House at Second Reading and thirteen Government amendments were agreed during Committee.

The Bill extends to England, Wales and Scotland. There are a number of measures which also extend to Northern Ireland.

Manjit Gheera and Steven Kennedy

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Summary of the Bill

The Bill covers two distinct areas: child support maintenance reform and compensation for persons affected by mesothelioma. House of Commons Library Research Paper 07/57, *Child Maintenance and Other Payments Bill*¹ gives a detailed assessment of the Bill in the form it was presented to the House of Commons at Second Reading.

Child maintenance

The *Child Support Act 1991* established the current system of child support maintenance, which came into effect in 1993. Since that date the system has been administered by the Child Support Agency (CSA). Despite substantial legislative reforms, it is widely agreed that the CSA has failed to deliver an effective system of child support for parents and children.

The report by Sir David Henshaw, *Recovering child support: routes to responsibility* and the Government's White Paper, *A new system of child maintenance* have influenced the child maintenance provisions of the Bill.

The Bill proposes to establish a body corporate, the Child Maintenance and Enforcement Commission (C-MEC or the Commission), to deliver child maintenance and replace the CSA. The current functions carried out by the CSA will be transferred to C-MEC.

The Bill proposes changes to the present system of maintenance collection by encouraging parents to make private child support arrangements and by removing the requirement that a parent with care on certain benefits must use the CSA for maintenance collection. It further proposes to make changes to the way maintenance payments are calculated by using a non-resident parent's gross weekly income instead of net income. Maintenance calculations would use financial information from HM Revenue and Customs (HMRC) instead of information provided by the non-resident parent. Further proposals would allow C-MEC to share child support information with credit reference agencies and other specified bodies.

The Bill proposes to increase the methods of collection and enforcement available to C-MEC by allowing greater use of Deduction from Earnings Orders; enabling deductions to be made directly from bank accounts; and allowing administrative liability orders to be issued. New powers of enforcement would be available to C-MEC, including curfew orders and the power to disqualify non-resident parents from holding or obtaining travel authorisation.

New powers to manage debt are also proposed in the Bill. They include the power to negotiate settlements for maintenance arrears; write off arrears in certain circumstances; apply to recover maintenance from the estate of a deceased non-resident parent; and sell debt to a third party in specified circumstances.

¹http://10.160.3.10:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/RESEARCH_PAPER/Rp07-057.pdf

The changes to the child maintenance system were broadly supported by the House when the Bill had its Second Reading. The Public Bill Committee meetings resulted in eleven Government amendments being agreed to the clauses.

Mesothelioma

Mesothelioma is a cancer of the protective lining of the lungs or abdomen, linked to exposure to asbestos. There is presently no known cure and mesothelioma sufferers usually die within months of diagnosis. Making a civil claim for compensation for mesothelioma can be difficult; for example, an employer may have ceased to exist and its insurer may be difficult to trace. Those exposed to asbestos other than at work face particular problems. Even where a claim is possible, the time involved means that sufferers often die before compensation is paid.

Following a consultation on what might be done to ensure that sufferers received compensation when they themselves could benefit from it, on 13 March 2007 the Government announced its intention, subject to legislative approval, to ensure that everyone with mesothelioma could obtain early access to a substantial payment, normally within six weeks of diagnosis.

Part 4 of the Bill contains provisions to extend payment of compensation to all people suffering from diffuse mesothelioma - or their dependants, if they have died - regardless of the person's employment status and irrespective of how exposure occurred. The cost of the new scheme would be met by amending the *Social Security (Recovery of Benefits) Act 1997* to allow for payments under both the *Pneumoconiosis etc (Workers' Compensation) Act 1979* and the new scheme to be recovered if a subsequent civil compensation claim is successful. The level of payments under the new scheme would initially depend on the total amount recovered from compensation awards, but the Government's intention is to increase them, as and when funds allow, until they are equal to the level of payments made under the 1979 Act. The detail of the new arrangements is to be set out in regulations.

The provisions in Part 4 of the Bill received broad support from all parts of the House at Second Reading and there were only two minor Government amendments to the clauses in Committee.

I Parts 1-3 and 5: Child maintenance

A. Background

The Bill was presented to the House of Commons on 5 June 2007.² Announcing the legislation, John Hutton, Secretary of State for Work and Pensions, outlined the changes in the Bill:

The new rules would be simpler and more transparent, making it harder to hide income and giving us the power to deduct money direct from bank accounts as well as from earnings.

This legislation would provide a strong framework to enable the new child maintenance body to deliver a system that puts the needs of the children who depend on it first, and ensures that families and children do not slide into poverty when parents split up.³

The House of Commons considered the Bill on 4 July 2007 when it was given a Second Reading without division. The Bill was committed to a Public Bill Committee for 12 sittings between 17th July and 16 October 2007.

Documents relating to the Bill, including Library publications, are available on the Library's Bill Gateways page at:

<http://hcl1.hclibrary.parliament.uk/parliament/bills/gateways.asp?session=2006-07&billid=93>

B. Second Reading Debate

The *Child Maintenance and Other Payments Bill* (Bill 118 of 2006-07) was given its Second Reading in the House of Commons on 4 July 2007.⁴ The Bill was introduced by the new Secretary of State for Work and Pensions, Peter Hain. Mr Hain repeated the Government's intention to make tackling child poverty a priority for the child maintenance system by ensuring that more of the maintenance paid goes directly to the children. He also outlined how parents would be given greater choice to make their own arrangements:

The Bill actively promotes parental responsibility by removing the barriers that prevent parents from reaching their own voluntary agreements. Never again will mutually agreed maintenance arrangements be forcibly overturned by a compulsion for parents with care receiving benefits to use the Child Support Agency. The Bill embeds the principle of choice whereby those on benefits should have the same choice as those not on benefits to make their own arrangements or to utilise the new child maintenance and enforcement

² HC Deb 5 June 2007 c137. The Bill was published on 6 June 2007.

³ Department for Work and Pensions Press Release, *Hutton: Child Maintenance reforms to get more money to more children*, 6 June 2007.

⁴ HC Deb 4 July 2007 c981

commission—CMEC—to access the statutory scheme. For the first time, the system will no longer discriminate against people simply because they are poor.⁵

The Shadow Secretary of State for Work and Pensions, Chris Grayling, welcomed the principles behind the Bill, in particular, the proposals to end compulsory participation in the child maintenance collection scheme by all parents with care on benefits.⁶ He however, criticised the lack of detail in the Bill:

Even though it is overdue and the Government have had so much time to prepare it, they have still managed yet again to present Parliament with legislation that is praiseworthy in intent, but which leaves many questions still to answer, many details still to be addressed and a lot of information—although long promised—not yet available to the House. Ironically, the Bill, rather than being flawed in detail, contains very little detail. It is another of those measures that contain little substance and create a loose framework, leaving it to the Secretary of State to work out the details. Many of the Bill's clauses are built around phrases such as “arrangements will be made” and “the Secretary of State may”.

Let me put the Secretary of State on notice that before we step aside to allow him to act, we will expect a lot more detail from him in Committee on how he intends to deal with the small print. It would help the Committee if he published draft regulations before it discusses these issues, so that we could understand the detail behind his intentions.⁷

The Conservatives were of the opinion that the lack of enforcement would “reduce the effectiveness of and public trust in voluntary agreements”⁸ and “fundamentally undermine the basic principle of trying to give people an alternative to having to go to the CMEC.”⁹

The Liberal Democrat spokesperson, Danny Alexander, welcomed the Bill's core principles, including the increased focus on tackling child poverty and the idea of encouraging more private arrangements. However, the Liberal Democrats were concerned that the lack of detail in the Bill as to how parents were to make their own private arrangements would pose “a risk that many will end up with no maintenance at all.”¹⁰

Both the Conservatives and the Liberal Democrats questioned whether the Bill was the “radical” reform it was presented as.¹¹ Both parties stressed that improvements to the Bill were necessary during Committee stage.¹²

The Bill was given a Second Reading without division.

⁵ *Ibid*

⁶ HC Deb 4 July 2007 c993

⁷ HC Deb 4 July 2007 c996

⁸ HC Deb 4 July 2007 c985 (John Penrose)

⁹ HC Deb 4 July 2007 c985

¹⁰ HC Deb 4 July 2007 c1007

¹¹ HC Deb 24 July 2007 cc996-7 (Chris Grayling); c1007 (Danny Alexander)

¹² HC Deb 4 July 2007 c1000, (Chris Grayling); c1012 (Danny Alexander)

C. Committee stage

The Public Bill Committee met over the full 12 sessions allocated in the Programme Motion, commencing on 17 July and finishing on 16 October 2007. The Parliamentary Under-Secretary of State for Work and Pensions, James Plaskitt, commented that child support was a “tough area in which to legislate”¹³ but that the sittings had been “constructive and good natured”¹⁴ and the Bill had been “pretty well scrutinised.”¹⁵

Eleven Government amendments were made to the child maintenance clauses of the Bill.

1. Draft regulations

At the first meeting of the Public Bill Committee, Andrew Selous repeated concerns that had been expressed during the Second Reading debate, namely that the Bill had been published without accompanying regulations.¹⁶

The Parliamentary Under-Secretary for State, James Plaskitt, informed the Committee that although regulations relating to the new Commission’s systems could not be published until the Commission was up and running, other regulations would be published in draft for the Committee to scrutinise.¹⁷ The Minister added:

In respect of those for which we cannot put draft regulations before the Committee, we will produce a dossier for it to consider, which will provide an explanation about regulations that are still forthcoming.¹⁸

Draft regulations under clauses 30¹⁹ (power to accept part payment of arrears in full and final satisfaction), 31²⁰ (power to write off debt), and 34 (recovery of arrears from estates) and information on secondary legislation arising from Part 3 of the Bill were provided to the Committee for its ninth meeting. They are available in the Library²¹ and on the Department for Work and Pensions’ website.²²

2. Evidence

During its first and second sittings, the Committee took evidence from the following representatives from the Department for Work and Pensions:

Lord McKenzie of Luton, the Minister with responsibility for the Child Support Agency;

¹³ PBC Deb 16 October 2007 c430

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ PBC Deb 17 July 2007 c3

¹⁷ PBC Deb 17 July 2007 cc3-4

¹⁸ PBC Deb 17 July 2007 c4

¹⁹ Proposed new section 41D of the *Child Support Act 1991*

²⁰ Proposed new section 41E of the *Child Support Act 1991*

²¹ MGP07/2997

²² <http://www.dwp.gov.uk/childmaintenance/>

James Plaskitt MP, the Bill Minister;

Hilary Reynolds, programme director for the child maintenance redesign;

Stephen Geraghty, the chief executive of the Child Support Agency.

Oral evidence was also given by the following:

Professor Nick Wikeley, John Wilson Chair in Law, University of Southampton; and

Janet Allbeson, One Parent Families.

In addition, written evidence from a number of groups was reported to the House and published.²³

3. Amendments to the child maintenance clauses

There were **eleven** amendments made to the Bill in the course of proceedings in the Public Bill Committee. In the fifth sitting the Government proposed an amendment to clause 6 of the Bill to extend the Secretary of State's regulation-making powers in relation to the collection and enforcement of child maintenance to the collection of fees.²⁴ The Minister explained the intention behind the amendment:

The amendment is modelled on section 47(4) of the *Child Support Act 1991*. Fees will not be an effective tool if they cannot be enforced, which is why the clause originally said that regulations could provide for the recovery of fees. However, we felt that the intent of the provision might not be clear enough, which is why we tabled the amendment.²⁵

The amendment was agreed without division.

In the ninth sitting, **two** Government amendments²⁶ were agreed without division. The amendments insert provisions into clause 9 and schedule 7 of the Bill to clarify the regulation-making powers in respect of administrative collection and enforcement of maintenance.²⁷ The amendments include provision for regulations to specify a time limit for appeals to the court or, in Scotland, the sheriff.

In the tenth sitting, a group of **eight** minor Government amendments were agreed to without debate or division.²⁸ The Minister explained that the amendments "remove the

²³ <http://pubs1.tso.parliament.uk/pa/cm/cmpbchildmain.htm#memo>

²⁴ Amendment No 57.

²⁵ PBC Deb 24 July 2007 c173 (James Plaskitt MP)

²⁶ Amendment No 126 (grouped with No.135)

²⁷ PBC Deb 11 October 2007 c321-22

²⁸ Amendment No 127 (grouped with 128, 129, 130 -134), PBC Deb 11 October 2007.

inconsistencies in the way various appeal rights and regulation-making powers for appeals against administrative liability orders are expressed in the Bill.”²⁹

4. Significant areas of debate not leading to amendment

a. *Registration and enforcement of voluntary arrangements*

During the fourth sitting, the Committee considered two amendments, tabled by Mike Weir, which would create a duty on the Commission to provide information to parents on creating, registering and enforcing voluntary maintenance agreements.^{30, 31} The purpose behind Mr Weir’s amendments was to make it clear to parents that they could enter into an enforceable minute of agreement.³² The amendment would have required the Commission to provide information to parents about this process. The Minister explained why the Commission should not be statutorily obliged to provide such a service:

James Plaskitt: Minutes of agreement and consent orders are not restricted solely to matters of child maintenance. They may deal with a range of financial issues on divorce or separation. It would not be right to involve the commission directly in wider issues of family law, or to require it to provide detailed guidance on what could be highly technical matters that may need to take account of a range of financial issues and other complex individual circumstances.³³

Mr Weir withdrew the amendment.³⁴

b. *Fee charging*

In the fifth sitting, Danny Alexander moved an amendment to clause 6 which would have restricted the charging of fees to non-resident parents who had failed to pay maintenance.³⁵ Mr Alexander explained that the amendment would allow the Commission to charge recalcitrant parents but would exclude charging in the generality of cases. He feared that a general charging regime would act as a disincentive to apply to the Commission and could put pressure on parents to enter into voluntary agreements.³⁶

The Minister reassured the Committee that fees would not be imposed on parents who had been affected by administrative problems.³⁷ The Minister explained that a system of

²⁹ PBC Deb 11 October 2007 c336 (amendments made to clauses 23 and 54)

³⁰ HC Deb PBC 19 July 2007 c127

³¹ Amendment Nos. 87 and 88

³² HC Deb PBC 19 July 2007 c128

³³ PBC Deb 19 July 2007 cc130 -1

³⁴ PBC Deb 19 July 2007 c131

³⁵ Amendment No 68

³⁶ PBC Deb 24 July 2007 c159

³⁷ PBC Deb 24 July 2007 cc161-2

charging would not dissuade vulnerable or low-income parents from applying to the Commission in the first place:

James Plaskitt: Charges may be incurred for a variety of reasons. The intention is that the majority of them, such as penalties for late payment and enforcement measures, will fall only on non-resident and non-compliant parents. However, in a few situations, allowing the commission to charge a fee at an early stage of the process—possibly to both parents—might provide it with a tool to help it achieve its objectives, of which I reminded the Committee at the outset.³⁸

The Minister also reminded the Committee that the Bill required the charging proposals to be laid down in regulations and subject to the affirmative resolution.³⁹

On the basis of the Minister's assurances, Mr Alexander withdrew his amendment.⁴⁰

Danny Alexander proposed a further amendment to the effect that the Secretary of State's power to allow the Commission to charge fees for services should only be exercised once he was satisfied that the Commission was capable of providing a satisfactory service. The Member, referring to evidence given to the Committee by Professor Wikeley,⁴¹ explained that the amendment would establish an equation between the competence of the Commission and the ability to charge fees:

Danny Alexander: Although the Minister offered reassurances on the way in which the Government intend to decide how charges could be applied, a much broader issue needs to be raised in relation to the charging regime, and the amendment seeks to do that. It relates to the evidence that the Committee heard from Professor Wikeley, who said that the obvious point is that charging fees is unlikely to be effective if customer service remains at current levels.⁴²

Mr Alexander remarked that, if the level of competence and administrative efficiency in the Commission did not improve, introducing fees "would add insult to injury to users."⁴³ John Penrose added that if the Commission's performance fell below an acceptable standard, it might be necessary to reimburse any charges that may have been levied.⁴⁴ Mike Weir also opposed the introduction of fees and, in particular, the level at which fees might be set:

There is also the problem of the level of fees on which there has been no indication as yet. I appreciate that this is a matter for CMEC, but unless fees are on a staggered basis, they may not mean much to someone who is earning a reasonable amount of money. For someone on low income or on benefit, however, they make a huge difference to the level of child maintenance.⁴⁵

³⁸ PBC Deb 24 July 2007 c160

³⁹ PBC HC Deb 24 July 2007, c162

⁴⁰ *Ibid.*

⁴¹ PBC Deb 17 July 2007 cc48-9

⁴² PBC HC Deb 24 July 2007, c162

⁴³ PBC HC Deb 24 July 2007, c163

⁴⁴ PBC HC Deb 24 July 2007, c164

⁴⁵ PBC HC Deb 24 July 2007, c168

Nadine Dorries suggested the Commission be given a six month “run-in period” before charging was introduced.⁴⁶

The Minister dismissed Mrs Dorries’s suggestion:

It is important to understand the principle on which we are making these changes. We are moving to a commissioning basis in the system of child maintenance. I really do not want to fetter the commission in the decisions that it is going to make. I understand why the hon. Lady has said that, and I am sure that a whole host of suggestions about making various changes will be made. However, the more that we hem in the commission, the less clean a break it will be. That is how it has to be, and I want those decisions to rest with the commission.⁴⁷

The Minister also explained why he could not support the tabled amendment:

The amendment poses some difficulties, although I understand why it has been tabled. It would require a subjective test of the capability of the commission and of what constitutes a satisfactory service. Any view that the Secretary of State takes on those matters could be open to challenge, which would threaten the validity of any regulations then brought forward.

The amendment would potentially stop the introduction of fees until the new scheme is up and running, when a clearer assessment of the commission’s ability to provide a satisfactory service is possible. That would prevent the commission establishing fees as an integral part of the new scheme.⁴⁸

The amendment was defeated by 10 votes to 9.⁴⁹

c. *Off setting liabilities and writing off arrears*

Clause 29 of the Bill would allow the Secretary of State to make regulations specifying the circumstances in which liabilities to pay child support could be set off. Andrew Selous moved an amendment to the clause which would make it explicit on the face of the Bill that the Commission would require the consent of the parent with care before liability could be off set.⁵⁰ Mr Selous provided:

I have no reason to doubt the good intentions of the Minister or the staff or the staff of the commission, but it would be a real assurance to parents with care if the Bill stated that they had to agree to any offsetting of payments. There may be cases in which non-resident parents have made payments in lieu of the child maintenance payments which the parent with care is happy to have off-set against the payments that should have been made according to the CSA at

⁴⁶ PBC HC Deb 24 July 2007, c171

⁴⁷ PBC HC Deb 24 July 2007, c171 (James Plaskitt)

⁴⁸ PBC HC Deb 24 July 2007, c172

⁴⁹ PBC Deb 24 July 2007, c173

⁵⁰ Amendment No 21 (grouped with No.121, 22 and 23)

present and CMEC in the future. It is important that there is written permission from the parent with care before that offsetting is agreed.⁵¹

The amendment was grouped with a further amendment by Mr Selous to clause 31, which provided the Commission with the power to write off debt. Mr Selous' amendment would have required the Commission to obtain the consent of the parent with care before any debt was written off.⁵² In an earlier meeting, the Minister with responsibility for the Child Support Agency, Lord McKenzie, had given assurances that debt would only be written off with the consent of the parent with care and when the Commission considered it appropriate to do so.⁵³ Mr Selous's amendment sought to put the Minister's assurance on the face of the Bill.

The Liberal Democrats and the Scottish National Party supported the amendment. The Parliamentary Under-Secretary of State for Work and Pensions, Anne MacGuire, stated that the Commission would be dealing with "difficult personal circumstances and attitudes towards payment of maintenance"⁵⁴ which were best left to regulations as these could provide greater flexibility than primary legislation. The Minister confirmed that draft regulations that had been provided to the Committee included a requirement that any off-setting would require the parent with care agreeing to the payment being made:

Anne MacGuire: Therefore, the parent with care still has the right to decide whether to accept payment when it can be off-set. It will then be up to the commission to decide whether to off-set the payment against the non-resident parent's maintenance liability.⁵⁵

In relation to the power to write off debt, the Minister explained that it would not be appropriate to seek consent from the parent with care in all cases. She gave the example of where a non-resident parent had died and it was not possible to recover debt from the estate.⁵⁶

The amendments were withdrawn.⁵⁷

5. Ministerial undertakings

During the Public Bill Committee meetings Ministers gave a number of undertakings to provide the Committee with further information or consider matters further. They included:

⁵¹ PBC Deb 11 October 2007 c357

⁵² Amendment No 22

⁵³ PBC Deb 17 July 2007, c34

⁵⁴ PBC Deb 11 October 2007 cc363-4

⁵⁵ PBC Deb 11 October 2007 c334

⁵⁶ PBC Deb 11 October 2007 c366

⁵⁷ PBC Deb 11 October 2007 c367

a. Secretary of State's directions to the Commission

Danny Alexander moved an amendment to clause 10⁵⁸ to require directions and guidance given by the Secretary of State to be laid before Parliament.⁵⁹ Although the Minister viewed the laying of guidance before Parliament as “unnecessary” and “inappropriate”, he was willing to give further consideration to the amendment as it would apply to directions from the Secretary of State. The Minister said:

I want to look at other examples of how similar powers are used across the Government and specifically at whether such directions are laid before the House. I will return to the matter once I have considered it further.⁶⁰

The amendment was withdrawn.⁶¹

b. Freezing orders

Danny Alexander moved an amendment to clause 22 which would have allowed the Commission, in appropriate circumstances, to apply to the courts for a freezing order under the Civil Procedure Rules.⁶² The Conservatives supported the amendment as “a useful addition to the armoury of tools” that the Commission would have at its disposal.⁶³ The Parliamentary Under-Secretary for State for Work and Pensions, Anne McGuire, stated that the proposal required consideration of how to manage the situation for the whole of Britain as the Civil Procedure Rules did not apply to Scotland. However, she stated that the Government were willing to consider the proposal and undertook to consult the Ministry of Justice and others on the viability of the option.⁶⁴ On the basis of the Government’s undertaking, the amendment was withdrawn.⁶⁵

c. Fee enforcement

Following concerns in an earlier debate that the use of fee charging may become penal,⁶⁶ the Parliamentary Under-Secretary of State of State for Work and Pensions, James Plaskitt, gave the following undertaking:

Measures such as deductions from earnings orders and deduction orders are to be used for the collection of maintenance due for arrears and may also be used for the collection of fees only. However, I can categorically state that none of those enforcement measures, which are compliance tools—by that I refer to commitment to prison, curfew orders, and the removal of passports and driving licences—would ever be used solely to enforce fees owed to the commission.

⁵⁸ Clause 10 relates to directions and guidance provided to the Commission by the Secretary of State

⁵⁹ Amendment No.63 PBC Deb 24 July 2007 c207

⁶⁰ PBC Deb 24 July 2007 c213 (James Plaskitt)

⁶¹ PBC Deb 24 July 2007 c214

⁶² Amendment No.70, PBC Deb 11 October 2007, c331

⁶³ PBC Deb 11 October 2007, c331

⁶⁴ PBC Deb 11 October 2007, c333

⁶⁵ *Ibid.*

⁶⁶ PBC Deb 24 July 2007 cc157- 161

Such use of those powers would be disproportionate, and that will be made absolutely clear in secondary legislation.⁶⁷

d. Debt recovery

During the debate on an amendment to clause 31,⁶⁸ Andrew Selous drew the Minister's attention to a point made by the National Audit Office that some £760 million of debt was not being pursued by the CSA because it was older than the limitation period of 6 years under the *Limitation Act 1980* and could not be subject to a liability order by the courts.⁶⁹

The Minister, Mrs McGuire, clarified that although the debt was not enforceable through the courts it was still recoverable by the CSA.⁷⁰ Mrs McGuire agreed to write to the Committee to clarify what action the CSA was taking to recover the debt.⁷¹

II Part 4: Lump sum payments for mesothelioma

A. Second Reading debate

In his speech at Second Reading, the Secretary of State for Work and Pensions explained the motivation behind Part 4 of the Bill in the following terms:

...those who are suffering [from mesothelioma] rightly deserve to receive some form of monetary compensation, and to receive payment before it is too late. No one should have to wait years before they see a penny of compensation, especially when, as in many of these cases, people do not have years left to wait.⁷²

He explained that Part 4 of the Bill would also correct “an anomaly” which meant that existing lump sum payments made by the state could be deducted from subsequent civil compensation awards, leading to a “windfall for insurers and other liability holders”.⁷³ Mr Hain added that the proposals had been “broadly welcomed by our stakeholders and in all parts of the House”.⁷⁴

In the subsequent debate, Opposition, Liberal Democrat and Nationalist spokespersons, and backbench Labour members, voiced support for the provisions in Part 4 of the Bill. Speaking for the Opposition, Maria Miller added:

We will be pressing the Government for more details on their intentions because, as is the case for so much of the Bill, a great deal will be laid down in regulations.

⁶⁷ PBC Deb 11 October 2007 c345

⁶⁸ Amendment No. 23 (clause 10 concerns the power to write of arrears)

⁶⁹ PBC Deb 11 October 2007 c359

⁷⁰ HC Deb PBC 11 October 2007 c362

⁷¹ HC Deb PBC 11 October 2007 c367

⁷² HC Deb 4 July 2007 c991

⁷³ HC Deb 4 July 2007 c991

⁷⁴ HC Deb 4 July 2007 c992

Again, we hope that the Government will publish draft regulations so that we can discuss them in detail in Committee.⁷⁵

B. Committee Stage

1. Evidence

Of the memoranda submitted to the Public Bill Committee only one – from the Association of Personal Injury Lawyers⁷⁶ – was concerned with Part 4 of the Bill. The provisions relating to mesothelioma were touched upon only briefly in the oral evidence session on 17 July 2007.⁷⁷

2. Secondary legislation

The clauses in Part 4 of the Bill were considered by the Public Bill Committee at its eleventh sitting on 16 October 2007. A note, *Information About Secondary Legislation Arising from Part 4 of the Bill*, was issued by the Department for Work and Pensions on 15 October. It is available in the Library, and also at the DWP website.⁷⁸ The note provides an indication of the content of regulations to be made under clauses 41-45 and 49 of the Bill.

3. Amendments to Part 4 of the Bill

Minor Government amendments were made to clause 42 to clarify that the Government may introduce regulations setting out the connections with the United Kingdom that a sufferer must have in order to be eligible for a payment under the scheme, depending on whether it is considered necessary to do so. The DWP note *Information About Secondary Legislation Arising from Part 4 of the Bill* explained:

Cause 42 allows regulations to provide that the person with mesothelioma must have links with the United Kingdom that are specified in regulations. This is to prevent people who have developed mesothelioma abroad travelling to the UK to access payments from the new scheme. While we consider this to be a possibility, we think it is unlikely that large numbers of people with mesothelioma will do so. But because we do not know the precise circumstances in which people from abroad will seek to access the new scheme, we do not intend to commence this power until we know in practice the precise ways we will need to specify the link to the UK to avoid benefit tourism.⁷⁹

The amendments were agreed without a division. In the debate in Committee⁸⁰, Opposition and Liberal Democrat spokesmen sought clarification from the Government on the circumstances in which a person would or would not be considered to have connection with the UK for the purposes of the scheme. In her response, the

⁷⁵ HC Deb 4 July 2007 c1032

⁷⁶ CM 4

⁷⁷ PBC 17 July 2007 cc37-40

⁷⁸ MGP 07/2977; <http://www.dwp.gov.uk/childmaintenance/pdfs/cmr-mesothelioma.pdf>

⁷⁹ p3

⁸⁰ PBC 16 October 2007 cc386-390

Parliamentary Under-Secretary of State for Work and Pensions, Anne McGuire, said that foreign civilians who had worked overseas for UK firms would not be entitled to compensation unless they had some other link to the UK such as residence.⁸¹ People who retire abroad would be covered by the scheme, if exposure occurred in the UK.⁸² In earlier oral evidence to the Committee, it was also confirmed that former employees of the naval dockyards in Gibraltar would be able to claim lump sum payments.⁸³ The Minister promised to write to Members of the Committee regarding certain other specific cases mentioned in the debate.⁸⁴

No further amendments were made to Part 4 of the Bill.

4. Other debates and ministerial undertakings

Clause 47 provides for payments to be made to trustees appointed by the Secretary of State, where the person eligible for a payment is a minor or lacks financial capacity. In the clause stand part debate, Tim Boswell raised a number of points including how the powers relate to provisions in the *Mental Capacity Act 2005*, their application in the situation where a person recovers capacity, the appointment of trustees and lasting power of attorney.⁸⁵ Replying for the Government, Anne McGuire said that she would reflect on the points raised and whether there were any implications for the legislation as it stood.⁸⁶

In the stand part debate on clause 49, Andrew Selous tabled on behalf of the Opposition new clause 21 requiring employers and insurers to respond to claims in a timely manner and giving the Secretary of State a reserve power to levy charges where there had been an 'unreasonable delay' in the provision of information. This, he argued, would speed up the compensation payment process for sufferers, and increase the rate at which the Government obtained funds via compensation recovery.⁸⁷ In her response, the Parliamentary Under-Secretary of State said that the civil procedure rules, practice directions and pre-action protocols already prescribed timescales, and that courts could apply sanctions where those timescales were not complied with.⁸⁸ Mr Selous did not press a vote on the new clause, but asked the Minister to write to the Committee giving an indication of the frequency with which the courts used their existing powers.⁸⁹

In the course of the stand part debate on clause 49, Michael Clapham mentioned concerns voiced by the Association of Personal Injury Lawyers about recouping sums from general damages paid in respect of pain and suffering.⁹⁰ The Association argues that this contradicts the civil compensation system where the general damages element is ring-fenced. Mr Clapham argued that this could create a precedent and lead to

⁸¹ PBC 16 October 2007 c390

⁸² PBC 16 October 2007 c390

⁸³ PBC 17 July 2007 c39

⁸⁴ PBC 16 October 2007 c389

⁸⁵ PBC 16 October 2007 cc393-395

⁸⁶ PBC 16 October 2007 c395

⁸⁷ PBC 16 October 2007 cc395-397

⁸⁸ PBC 16 October 2007 c400

⁸⁹ PBC 16 October 2007 c402

⁹⁰ See the Association's written memorandum submitted to the Public Bill Committee (CM 4)

challenges in the civil courts. In her response, Anne McGuire said that the lump sum payments were in lieu of compensation and that compensators would be able to deduct the amount of the lump sum from any part of an award. To 'ring-fence' part of an award would mean that sufferers or their dependants could be doubly compensated.¹ The Minister added however:

As for the broader application in respect of general damages, I shall carefully reflect on what my hon. Friend said. I do not believe that our proposals for lump sums have set any form of precedent. They are intended only to apply to lump sum payments, but I shall read carefully what he has highlighted and, if need be, we can come back to such matters.²

I Annex - Members of the Public Bill Committee

Chairmen: Mr David Taylor and Mr Christopher Chope.

Members:

Alexander, Mr Danny (LD)
 Boswell, Mr Tim (Con)
 Clapham, Mr Michael (Lab)
 David, Mr Wayne (Lab)
 Dorries, Mrs Nadine
 (Mid Bedfordshire)
 Engel, Natascha (Lab)
 Griffith, Nia (Lab)
 Harper, Mr Mark (Con)
 Hesford, Stephen (Lab)
 Jackson, Mr Stewart (Con)
 James, Mrs Siân C. (Lab)
 McCarthy-Fry, Sarah (Lab/Co-op)
 McGuire, Mrs Anne (Parliamentary Under-Secretary for State for Work and Pensions)
 Owen, Albert (Lab)
 Penrose, John (Con)
 Plaskitt, Mr James (Parliamentary Under-Secretary for State for Work and Pensions)
 Rowen, Paul (LD)
 Selous, Andrew (Con)
 Touhig, Mr Don (Lab/Co-op)
 Turner, Dr Desmond (Lab)
 Weir, Mr Mike (SNP)

Committee Clerk: Chris Shaw

¹ PBC 16 October 2007 c400

² PBC 16 October 2007 c401