

# Social Welfare (Liable Relatives and Child Maintenance) Bill 2023

Bill No. 96 of 2023

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## Abstract

The Social Welfare (Liable Relatives and Child Maintenance) Bill 2023 seeks to give legislative effect to two changes to the Social Welfare system:

- (a) changes to social welfare means tests so that child maintenance payments will no longer be assessed as means, and
- (b) the discontinuation of the Liable Relative Provisions.



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## Glossary and abbreviations

Some abbreviations and terms are used throughout this Bill Digest, the meaning of which is set out in the below table.

Table 1 Glossary and abbreviations.

| Term                           | Meaning   |
|--------------------------------|---|
| Bill                           | Social Welfare (Liable Relatives and Child Maintenance) Bill 2023 |
| Child Maintenance Review Group | Group   |
| Department                     | Department of Social Protection                                   |
| JST                            | Jobseeker's Transitional Payment                                  |
| Minister                       | Minister for Social Protection                                    |
| OFP                            | One-Parent Family Payment   |
| Principal Act                  | Social Welfare Consolidation Act 2005                             |
| Report                         | Report of the Child Maintenance Review Group                      |

## Introduction

The [Social Welfare \(Liable Relatives and Child Maintenance\) Bill 2023](#) ('the Bill') and the accompanying [Explanatory Memorandum](#) were published on Monday, 18 December 2023. The Bill is scheduled to be taken for Second Stage in Dáil Eireann on Thursday, 18 January 2023.

This Bill seeks to give legislative effect to two changes to the Social Welfare system:

- (a) changes to social welfare means tests so that child maintenance payments will no longer be assessed as means, and
- (b) the discontinuation of the Liable Relative Provisions.<sup>1</sup>

The Minister for Social Protection ('the Minister') described these changes as "significant policy changes which will be of great benefit to lone parents"<sup>2</sup>. In advance of the publication of the Bill, the Minister advised that the disregard<sup>3</sup> of child maintenance payments in the means test for social welfare payments would mean that "many lone parents currently on reduced rates of payment will see their payment increase and some additional lone parents will qualify for a payment". Noting that this measure would cost approximately €10 million per year, she further advised that it would be of direct benefit to approximately 16,000 lone parents.<sup>4</sup>

The policy changes stem from the recommendations of the Child Maintenance Review Group ('the Group'), which was established in January 2020 and reported in November 2022<sup>5</sup>. The Group

<sup>1</sup> [Explanatory Memorandum](#), p.1

<sup>2</sup> [Departmental Policies – Thursday, 14 Dec 2023 – Parliamentary Questions \(33rd Dáil\)](#); [Departmental Data – Tuesday, 12 Dec 2023 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>3</sup> In the context of means testing, income not taken into account is known as an 'income disregard'.

<sup>4</sup> [Legislative Programme – Tuesday, 12 Dec 2023 – Parliamentary Questions \(33rd Dáil\)](#); [Social Welfare Code – Thursday, 7 Dec 2023 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>5</sup> The Group reported to the Minister for Social Protection in April 2022 and the Government published the report in November 2022. [Source: [gov.ie - Report of the Child Maintenance Review Group \(www.gov.ie\)](https://www.gov.ie/en/publications-and-resources/publication/child-maintenance-review-group-report/)]

made a number of recommendations, and this Bill concerns the legislative amendments required to implement two of these<sup>6</sup>. In advance of the publication of the Bill, the Minister advised that:

.. the Government has accepted the Group's recommendations regarding the social welfare system. These changes will decouple child maintenance and social welfare and ... require amendments to both primary and secondary legislation as well as changes to some of the Department's systems, application forms and processes.<sup>7</sup>

This Bill represents the legislative changes that the Government is seeking at the level of primary legislation to give effect to these policy changes.

## Background

### Key statistics concerning one-parent families

Almost 220,000 family households (17%) were headed by one parent in 2022, comprising 186,487 one-parent mother families, and 33,509 one-parent father families (see Table 2 below).<sup>8</sup> At international level, the most recent Eurostat data shows that single parents accounted for 12.8% of households with children in the EU as a whole, with the highest proportions of single parents found in Estonia, Lithuania, and Latvia (all with more than 25%). Conversely, Slovakia, Greece, Slovenia, and Croatia had the lowest proportions, all below 5%.<sup>9</sup>

Table 2 Number of one-parent families, Censuses 2012, 2016, 2022

| Type of Family Unit             | 2012    | 2016    | 2022    |
|---------------------------------|---------|---------|---------|
| One-parent mother with children | 186,284 | 189,112 | 186,487 |
| One-parent father with children | 29,031  | 29,705  | 33,509  |

Source of data: Central Statistics Office<sup>10</sup>

Census 2022 data showed that there was a marginal decrease in the number of one-parent mother with children families (-1%) compared with a rise recorded amongst one-parent father with children families (+13%, +3,804 family units) (see Table 3 overleaf). Nonetheless, there were over five times more one-parent mother families (186,487) than one-parent father families (33,509), a ratio of 5.6 to 1.<sup>11</sup>

Table 3 Percentage change since previous census

| Type of Family Unit             | 2016 | 2022  |
|---------------------------------|------|-------|
| One-parent mother with children | 1.52 | -1.39 |
| One-parent father with children | 2.32 | 12.81 |

Source of data: Central Statistics Office<sup>12</sup>

<sup>6</sup> This Bill sets out the legislative amendments required to implement Recommendations (i) and (iii), with Recommendation (ii) already implemented by amending Regulations (S.I. No. 355/2023).

<sup>7</sup> [Legislative Programme – Tuesday, 12 Dec 2023 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>8</sup> [Press Statement Census 2022 Results Profile 3 - Households, Families and Childcare - CSO](#)

<sup>9</sup> [Household composition statistics - Statistics Explained \(europa.eu\)](#)

<sup>10</sup> [Families - CSO - Central Statistics Office](#)

<sup>11</sup> [Families - CSO - Central Statistics Office](#)

<sup>12</sup> [Families - CSO - Central Statistics Office](#)

Data from the Survey on Income and Living Conditions (SILC) 2022 shows that those living in one-adult households with children under 18 years were amongst the groups most likely to experience enforced deprivation<sup>13</sup>, with over two in five persons in single-adult households with children living in enforced deprivation (43.5%) – compared to 17.7% of the population as a whole.<sup>14</sup> In terms of the ‘at risk of poverty’ rate<sup>15</sup>, this was 23.8% for individuals in households with one adult and one or more children aged under 18 years as compared with 13.1% in the State as a whole. In addition, the consistent poverty rate<sup>16</sup> for this cohort was 14.1%, as compared to 5.3% for the State as whole.<sup>17</sup> Recent findings from [Growing up in Ireland](#)<sup>18</sup> also found higher levels of disadvantage amongst one-parent families as compared to two-parent families. In terms of family structure, 18% of the 13-year-olds<sup>19</sup> lived in one-parent families, with 38% of these families in the lowest income group (quintile<sup>20</sup>) and just 8% in the highest income quintile (as compared to 16% and 23% respectively for two-parent families). Financial strain – characterised as an important indicator of potential financial difficulties for families – was substantially higher for one-parent families (21%) as compared to two-parent families (7%). In addition, families headed by a lone parent at both 9 and 13 years were more likely to report a worsening of financial circumstances (23%) than those headed by two-parent family at both waves (15%).<sup>21</sup> In the context of the higher levels of socio-economic disadvantage experienced by one-parent families, the Irish Human Rights and Equality Commission (IHREC) asserted that the “reliable and adequate provision” of child maintenance can be an effective poverty reduction measure.<sup>22</sup>

## Key terms/concepts related to the Bill

Below is a brief explainer of some of the key terms/concepts related to the Bill.

### Social assistance payments and means testing

The Irish social welfare support system can be best described as a mixed system of universal, insurance-based and means-tested payments. In general, payments to individuals differ as to whether they are social insurance-based (also referred to as ‘contributory’) or social assistance-based (known also as ‘non-contributory’) payments. Social assistance refers to the range of payments that are means-tested, that is those that are subject to individual assessment and not

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<sup>13</sup> This is characterised as where a household experiences two or more of eleven types of deprivation.

<sup>14</sup> [Key Findings - CSO - Central Statistics Office](#); [Enforced Deprivation - Central Statistics Office](#)

<sup>15</sup> This is the share of persons with an equivalised income below a given percentage (usually 60%) of the national median income. [Source: [Background Notes - Central Statistics Office](#)]

<sup>16</sup> This refers to people who are defined as being at risk of poverty and experiencing enforced deprivation (i.e. experiencing two or more types of deprivation). [Source: [Background Notes - Central Statistics Office](#)]

<sup>17</sup> [Poverty - CSO - Central Statistics Office](#) (Table 5.1)

<sup>18</sup> Growing Up in Ireland is the national longitudinal study of children and young people. The study follows the progress of two groups of children: 8,000 9-year-olds (Cohort '98) and 10,000 9-month-olds (Cohort '08). The members of Cohort '98 are now 24-25 years old and those of Cohort '08 are around 14 years old. [Source: [Growing Up in Ireland - Growing Up in Ireland](#)]

<sup>19</sup> These children are part of Cohort '08. [Source: [Key Findings: Cohort '08 at 13 Years Old](#), July 2023, p.1]

<sup>20</sup> The authors note that income refers to the total disposable income of the household, with the income quintile groups dividing the 13-year-olds into five equally sized groups (from lowest to highest), based on family income (adjusted for household size and composition, i.e. ‘equivalised’).

<sup>21</sup> [Key Findings: Cohort '08 at 13 Years Old](#), Growing Up in Ireland, Cohort '08, July 2023, p.4,8,9

<sup>22</sup> [Ireland-and-the-Convention-on-the-Elimination-of-All-Forms-of-Discrimination-against-Women-LOIPR-web.pdf \(ihrec.ie\)](#), p.81

therefore related to social insurance contributions made as part of employment. As shorthand, most social assistance payments may be termed 'allowance', while most social insurance payments are termed 'benefit'. The text boxes below provide some further details of both social assistance payments and means tests respectively.<sup>23</sup>

#### **What are social assistance payments?**

Social assistance payments are for people who do not have enough [PRSI \(social insurance\) contributions](#) to qualify for the equivalent social insurance payments. An example would be where a person, who becomes unemployed, applies for Jobseeker's Benefit but fails to qualify because they have insufficient PRSI contributions.

They can instead apply for Jobseeker's Allowance, which is a similar payment but is not based on the number of PRSI contributions paid. Jobseeker's Benefit is a social insurance payment whilst Jobseeker's Allowance is a social assistance payment. In addition, to qualify for a social assistance payment, a person must meet the [habitual residence condition](#) and they must satisfy a [means test](#).<sup>24</sup>

#### **What is the means test?**

To qualify for any Social Assistance payment the applicant must satisfy a means test. A person's means (as calculated by the Department of Social Protection in accordance with the rules for the particular scheme) must be below a certain level to qualify for payment and their personal rate of payment will vary according to the level of their means.

Means includes all capital together with all earnings and other income, including maintenance payments (there is currently no distinction between child and spousal maintenance payments). Some income sources, such as Child Benefit, are disregarded in the means test. There is also a capital disregard and other disregards which vary across the schemes.<sup>25</sup>

The recent Report of the Child Maintenance Review Group ('the Report') (discussed in the next section) discussed the current treatment of child maintenance<sup>26</sup> in the assessment of means. It noted that applicants must satisfy a means test to qualify for any social assistance payment, with no distinction made between spousal and child maintenance<sup>27</sup>. The Report provided the following overview of the situation:

22. .. All maintenance, regardless of whether, it is spousal, child or unspecified is referred to as maintenance and treated as means ...

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<sup>23</sup> Oireachtas Library & Research Service, 2021, [L&RS Bill Digest: Social Welfare Bill 2021](#)

<sup>24</sup> Reproduced from: Oireachtas Library & Research Service, 2021, [L&RS Bill Digest: Social Welfare Bill 2021](#), p.15

<sup>25</sup> Reproduced from an unpublished *Information Note (December 2023)* from the Department of Social Protection re Social Welfare (Liable Relatives and Child Maintenance) Bill 2023.

<sup>26</sup> For an overview of maintenance orders and agreements, please see: [Maintenance orders and agreements \(citizensinformation.ie\)](#), whilst information from Courts Service is available at: [Maintenance \(courts.ie\)](#).

<sup>27</sup> As Citizens Information explains, there is a legal responsibility on parents, whether married or unmarried, to maintain dependent children (i.e. child maintenance) and on spouses/civil partners to maintain each other in accordance with their means (spousal maintenance). [Source: [Maintenance orders and agreements \(citizensinformation.ie\)](#)]



23. In the case of most schemes (Rent Supplement is different), 50% of maintenance received is disregarded and there is also a housing disregard of €95.23 per week which is applied if the claimant has housing costs.

24. Means assessments are calculated taking into account the amount of maintenance payable, either under a Maintenance Agreement or a Court Maintenance Order, and the rate of the social assistance payment is set accordingly. This rate is fixed and that amount of social assistance payment is paid whether or not the claimant actually receives the maintenance payment from the non-resident parent.<sup>28</sup>

The Report noted that a 2019 review<sup>29</sup> of the financial effects of maintenance payments in relation to means testing conducted by the Department of Social Protection ('the Department') found that 7% (30,760) out of 440,000 recipients of the social assistance schemes analysed received a maintenance payment, with recipients typically female aged between 20 and 40 years. Most of those receiving a maintenance payment were recipients of One-Parent Family Payment (OFP) or JST (Jobseeker's Transitional Payment), with approximately 50% of OFP and JST recipients receiving such a payment. Amongst those receiving maintenance, the average amount received was €58. In terms of net maintenance<sup>30</sup>, approximately 27% had net maintenance which could be included in a means test, with the average amount considered as means (i.e. net maintenance) being €13.<sup>31</sup> The 2019 review presented a number of scenarios showing the treatment of maintenance applicable at that time, as set out in the text box below.

**Scenario 1:** A single parent with one child aged 3 is receiving maintenance of €150. The maintenance order specifies €50 is for the parent and €100 is for the child. Rent is €100 per week.

Maintenance: €150

Minus allowable housing costs: €95.23

Balance: €54.77

(Only half assessed as means)

**Total maintenance assessed: €27.38**

This results in:

OFP Rate €183

Increase for a child €34

Maintenance: €150

**Total weekly income from OFP and maintenance: €367**

**Scenario 2:** A single parent in employment with two children aged 7 and 12 receiving maintenance of €140. Earnings from employment are €300. Rent is €120 per week.

Maintenance: €140

Minus allowable housing costs: €95.23

Balance €44.77

<sup>28</sup> Reproduced verbatim from the [Report of the Child Maintenance Review Group](#) (November 2022), p.xii-xiii

<sup>29</sup> This review can be found [here](#).

<sup>30</sup> According to the review, this can be understood as follows: "After the housing costs have been deducted, the remaining amount is then halved to get the figure which is included in the overall means formula – the 'net maintenance' (p.16). ([Review of the Financial Effects of Maintenance Payments in Means Testing](#), June 2019, p.16)

<sup>31</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.xiii; [Review of the Financial Effects of Maintenance Payments in Means Testing](#), June 2019, p.18,20

(Only half assessed as means)

**Total maintenance assessed: €22.39**

Earnings: €300

Amount assessed after €150 earnings disregard: €150

(Only half assessed as means)

Earnings assessed as means €75

**Total means (maintenance plus earnings): €97.39**

JST Rate: €176.60

Earnings: €300

Maintenance: €140

**Total weekly income from JST, employment and maintenance: €616.61<sup>32</sup>**

One of the qualifying criteria for entitlement to (and continued payment of) OFP and JST is the requirement to make efforts to seek maintenance, with the Report noting that:

A consequence of the requirements for claimants of OFP and JST to show evidence of having made efforts to seek maintenance can be an obligation to take out a maintenance summons and seek maintenance through the Courts. This includes Child Maintenance.<sup>33</sup>

A press release from the Department (August 2023) advised that the Minister had recently signed Regulations to remove the requirement for applicants for OPF and JST to make efforts to seek maintenance from their child's other parent. Announcing these changes, the Minister stated that:

"I have signed regulations which mean that applicants for One-Parent Family Payment and Jobseeker's Transitional Payment will no longer be required to make efforts to seek maintenance from their child's other parent.

"This requirement often involved lone parents having to go to Court to seek a maintenance order, so this change removes a potential additional stress for them, as well as helping to reduce the burden on our courts system."<sup>34</sup>

## Liable relatives

The Department of Social Protection's [Operational Guidelines: Liability to Maintain a Family](#) advise that: "Men and women are required, under the law, to pay maintenance to a dependent spouse, civil partner or former cohabitant and any dependent child(ren) who are not living with them. These people are called 'liable relatives'." The Guidelines further note that if the ex-spouse, ex-civil partner or former cohabitant of a liable relative have dependent child(ren) and are in receipt of OFP, the liable relative may be required to contribute to the cost of this payment.<sup>35</sup>

As explained by the Minister:

<sup>32</sup> Reproduced verbatim from the [Review of the Financial Effects of Maintenance Payments in Means Testing](#), June 2019, p.8-9

<sup>33</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.xiii

<sup>34</sup> [gov.ie - Minister Humphreys announces changes in respect of Child Maintenance Payments to support Lone Parents \(www.gov.ie\)](#)

<sup>35</sup> [gov.ie - Operational Guidelines: Liability to Maintain a Family \(www.gov.ie\)](#)



The 'liability to maintain family' provisions, contained in social welfare legislation, are separate to, and do not negate or supersede parents' obligations under Family Law. Where a person is in receipt of One Parent Family Payment (OFP), the liability to maintain family provisions provide my Department with a legislative basis to carry out an assessment of the other parent and to issue a Determination Order for them to pay a contribution either to the Department or to the OFP recipient directly.

The purpose of the liable relative provisions is to ensure that, where possible, the non-custodial parent makes a financial contribution to the State where there is an OFP payment in place, thereby reducing the overall cost to the Department and to the State. It is important to point out that my Department does not pursue maintenance payments on behalf of lone parents and it has no role regarding the enforcement of maintenance orders or any other maintenance arrangements.<sup>36</sup>

Minister Humphreys reported that, during 2021, approximately 1,500 liable relatives began making payments to either the One-Parent Family payment recipient or directly to the Department.<sup>37</sup> The breakdown of the 8,000 cases assessed in 2021 was as follows:

- approximately 1,000 cases were deemed to be paying the liability agreed by the Department;
- approximately 3,200 cases were still determined to have a remaining liability to the Department;
- approximately 3,800 cases were not in a position to contribute towards the cost of the OFP or have no liability due.<sup>38</sup>

As of end of October 2023, there were 41,880 families in receipt of the OFP.<sup>39</sup> Of note is that, according to the Department, the liable relative provisions have not been applied to new claims for OFP meaning that the Department "no longer seeks to recoup a portion of claim costs from the non-resident parent".<sup>40</sup>

## Policy and legislative context

The new policy framework for children and young people (0-24 years), [Young Ireland: the National Policy Framework for Children and Young People 2023-2028](#), contained the following action in respect of child maintenance, transferred from the implementation plan of its predecessor<sup>41</sup> ([First 5 Implementation Plan 2023-2025](#)):

| Strategic Action  | Action  | Action derived from First 5   | Lead                                 |
|---|---------|---|--------------------------------------|
| Building on the existing infrastructure of supports, review and develop | A.3.1.2 | The Report of the Child Maintenance Review Group was published in November 2022 and the Government accepted the Group's | Joint Leads:<br>Department of Social |

<sup>36</sup> [Social Welfare Payments – Tuesday, 26 Apr 2022 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>37</sup> [Social Welfare Payments – Tuesday, 26 Apr 2022 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>38</sup> [Social Welfare Schemes – Tuesday, 26 Apr 2022 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>39</sup> [Social Welfare Payments – Wednesday, 22 Nov 2023 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>40</sup> [gov.ie - Minister Humphreys announces changes in respect of Child Maintenance Payments to support Lone Parents \(www.gov.ie\)](#)

<sup>41</sup> For further information, please see: [First 5: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019-2028](#).

|  |  |  |                                      |
|--|--|--|--------------------------------------|
| initiatives to maximise the incomes of families with young children, with a particular focus on children at risk of poverty. |  | <p>recommendations in relation to the social welfare system.</p> <p>As a result:</p> <p>(i) The “efforts to seek maintenance” requirement no longer applies to One-Parent Family Payment and Jobseeker’s Transitional Payment.</p> <p>(ii) The liable relative provisions are being removed from the One-Parent Family Payment arrangements which means that the Department of Social Protection will no longer seek to recoup a portion of claim costs from the non-resident parent in these cases. Removing these provisions does not replace or supersede the primary responsibility of parents to maintain their children.</p> <p>(iii) Child maintenance payments will be disregarded in the means test for social welfare payments. This measure will mean that many lone parents currently on reduced rates of payment will see their payment increase and some additional lone parents will qualify for a payment.</p> <p>Social welfare means tests will no longer include an assessment of child maintenance payments and the liable relative provisions will no longer be applied to applicants for One-Parent Family Payment following the necessary changes to primary and secondary legislation as well as system and form changes.</p> <p>At the same time, the Minister for Justice published the first Family Justice Strategy, with a set of goals and actions which seek to put children at the centre of a reform family justice system. An action in that Strategy was to review the enforcement of child maintenance orders and identify proposals for reform.</p> | Protection and Department of Justice |
|--|--|--|--------------------------------------|

*Reproduced from Department of Children, Equality, Disability, Integration and Youth<sup>42</sup>*

### Child Maintenance Review Group

In 2020, the Government established<sup>43</sup> a Child Maintenance Review Group (‘the Group’) to examine issues regarding child maintenance in Ireland and to prepare a report for the Minister for Social Protection. The Group was requested to consider and make recommendations on the following Terms of Reference (TORs):

1. The current treatment within the Department of Social Protection of Child Maintenance payments (TOR 1);
2. The current provisions relating to liable relatives regarding Child Maintenance (TOR 2); and

<sup>42</sup> [Young Ireland: the National Policy Framework for Children and Young People 2023-2028](#), Department of Children, Equality, Disability, Integration and Youth (November 2023), p.118-119

<sup>43</sup> This was in line with a commitment in the [Programme for Government](#) to “reform our child maintenance system and address key issues such as calculation, facilitation, and enforcement” (p.75).

### 3. The establishment of a State Child Maintenance Agency (TOR 3).<sup>44</sup>

The Group, which was chaired by former Circuit Court Judge Catherine Murphy, held twenty-two meetings between November 2020 and April 2022. In addition, the Group conducted a consultative exercise with members of the public and with relevant Stakeholder Groups, as well as examining the international position.<sup>45</sup> Details of the Group's public consultation can be found [here](#) and [here](#), whilst submissions received can be found [here](#). A total of sixty-three submissions were received: forty-four from members of the public and nineteen from Stakeholders groups.<sup>46</sup>

### Report of the Child Maintenance Review Group

The Group summarised the current position in respect of child maintenance as follows:

#### The Current Position

5. Under existing Family Law legislation, parents, certain categories of guardian or those acting in the place of parents, who may be liable under the *Children and Family Relationships Act 2015* are obliged to maintain their children. In cases where the family unit has broken down these obligations continue to apply.
6. The One-Parent Family Payment (OFP) and the Jobseeker's Transition (JST) schemes were introduced by the Government in 1997 and 2015 respectively to provide support for parents bringing up a child alone. Income from all maintenance payments is assessed as means for the purposes of DSP's social assistance schemes (including OFP and JST) and as income for the purposes of the Working Family Payment (WFP). DSP does not distinguish between Spousal and Child Maintenance. It is a condition that a claimant for both these payments, (OFP and JST), must make efforts to seek maintenance from the other parent. Social Welfare legislation provides that where certain payments are in place (specifically, OFP, but not JST or JA) a 'liable relative' may be required to make a contribution in respect of the cost of this payment.
7. In recent years there has been a number of **calls for reform** to the current arrangements in relation to Child Maintenance in Ireland.<sup>47</sup>

The Report highlighted a number of issues in respect of the current processes and procedures related to child maintenance. In terms of TOR 1, for instance, the Report referenced a number of difficulties in respect of the treatment of maintenance of means. For example, in the context of child poverty, particularly within lone parent households, it asserted that:

.. it would appear to be wholly inappropriate to treat Child Maintenance, which is being paid specifically for the welfare of the child, as means or household income.<sup>48</sup>

Further, the Report noted that child maintenance (whether agreed voluntarily or determined by a Court) can be fluid: in other words, either paid late, paid partially, paid sporadically or not paid at all. Notwithstanding this, the Report highlighted that this child maintenance is treated as means for OFP or JST recipients, thereby potentially impacting the level of payment received, regardless of whether it has actually been received. Further, the Report advised that:

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<sup>44</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.x,5

<sup>45</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.x,xi

<sup>46</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.xii

<sup>47</sup> Reproduced verbatim from the [Report of the Child Maintenance Review Group](#) (November 2022), p.x

<sup>48</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.xv

Reevaluation/reassessment by DSP of an often fluid payment or non payment history takes time before an adjusted OFP or JST payment can come in effect thereby causing hardship to a recipient who may be in need.<sup>49</sup>

In respect of the requirement to seek maintenance<sup>50</sup>, the Report highlighted that:

In many instances, claimants go to Court to seek a Maintenance Order in circumstances where that is their only means of proof that they have made the required effort to seek maintenance and the Court experience for many claimants is one involving significant personal stress, expense, time and again, for many, an uncertain outcome.<sup>51</sup>

All told, the Report made a number of recommendations in respect of TOR 1 and TOR 2:

#### **Recommendations of the Child Maintenance Review Group<sup>52</sup>**

- **TOR 1 –The Current Treatment of Child Maintenance Payments within DSP as Means:** The Group recommends the following – Child maintenance should no longer be assessed as means or income for the purposes of any DSP/Social Assistance scheme. It should be disregarded in its entirety from all DSP means assessments and income tests.
- **The Requirement to make Efforts to Seek Maintenance for OFP and JST claimants:** The Group recommends the following – The Requirement to make efforts to seek maintenance as a condition for eligibility for OFP and JST schemes should be removed and should no longer apply to either scheme.
- **TOR 2 –The Current Provisions relating to the Liable Relatives<sup>53</sup>:** The Group recommends the following – The provisions relating to the Liable Relative should be discontinued and should no longer apply.<sup>54</sup>

In respect of TOR 3, which concerned the establishment of a State Child Maintenance Agency, the Group were unable to reach a consensus opinion. The recommendation of the majority of the Group (4 out of the 7 members) was the establishment of such an agency to deal with:

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<sup>49</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.xv

<sup>50</sup> The Report noted that an “anomaly” exists in respect of this requirement in that it is a condition that applies both to OFP and JST but not to any other means tested scheme (e.g. Jobseeker's Allowance).

<sup>51</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.xvi

<sup>52</sup> It should be noted that these recommendations reflect the conclusions and recommendations of six out of the seven members of the Group, with the conclusions and dissenting recommendations of the seventh member captured separately in the Report.

<sup>53</sup> The Group highlighted a range of issues with these provisions. For instance, the stated objective of the provisions is to “recoup for the State some or all of the cost of OFP from the Liable Relative”. However, the Group noted that the “success rate” in recovering the contributions from the Liable Relative is “relatively low” and that the expenses associated with the administration of the Liable Relatives Unit are “not cost effective” in the context of the amounts recovered. The Group also highlighted that an “anomaly” exists in that these provisions apply to OFP only and not to any other social assistance payment (including JST). In addition, the Group noted that if the Liable Relative opts to pay his/her contribution to the Department (as opposed to the OFP recipient), the payment is retained by the Department and thus “does not benefit the child or the other parent”. By contrast, the Group highlighted that if he/she chooses to make the payment directly to the OFP recipient, the State “recoups nothing, or very little, towards the OFP costs, despite the stated objective of the provisions”. [Source: [Report of the Child Maintenance Review Group](#) (November 2022), p.76,77].

<sup>54</sup> Reproduced from [Report of the Child Maintenance Review Group](#) (November 2022), p.xvii

.. standalone maintenance issues, (that is where maintenance is the only financial relief being sought) operating a formula in order to calculate child maintenance, facilitating the collection and onward transmission of Child Maintenance payments, if requested to do so, and empowered to take all necessary steps in relation to the enforcement of a Maintenance Agreement/Maintenance Order on behalf of a Maintenance Creditor in the Courts.<sup>55</sup>

By contrast, 3 out of the 7 members of the Group recommended that a State Child Maintenance Body not be established and instead recommended that:

.. the current Courts system continue to deal with the issues of Child Maintenance ... and enforcement and that the said Courts system would be reformed in order to address the difficulties that have been identified as currently existing therein.<sup>56</sup>

Further details in respect of the establishment of a State Child Maintenance Agency can be found in a later section.

### Commentary (stakeholder/academic)

A number of stakeholders commented on the publication of the Group's Report. For instance, the CEO of Treoir welcomed that (a) the majority of the Group recommended the establishment of an independent State agency to deal with child maintenance and (b) maintenance should not be counted as means in respect of qualifying for certain social protection payments.<sup>57</sup> Further, he advised that:

These two important measures align with Treoir's submission to the Review Group and will be significant in alleviating child poverty and supporting shared parenting.<sup>58</sup>

The CEO of One Family also welcomed the Report and asserted that:

We also welcome ... the measures to be introduced by the Department of Social Protection. It is good the Department has listened to the major problems and poverty parents have experienced due to their draconian rules. Unfortunately, the Government and review group have not fully understood the need to remove Child Maintenance from an adversarial court system and that will sadly continue.<sup>59</sup>

Recently, O'Sullivan (2023) considered the Report in an article in the *Irish Journal of Family Law*. She asserted that:

The immediate acceptance by the Irish Government of the social welfare reforms recommended by the Child Maintenance Review Group will go some way towards alleviating the hardship of separated or lone parents and is to be warmly welcomed.<sup>60</sup>

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<sup>55</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.xxvi

<sup>56</sup> [Report of the Child Maintenance Review Group](#) (November 2022), p.xxvi

<sup>57</sup> [Treoir Welcomes the Report from Child Maintenance Review Group and Look Forward to Examining Further - Treoir](#)

<sup>58</sup> [Treoir Welcomes the Report from Child Maintenance Review Group and Look Forward to Examining Further - Treoir](#)

<sup>59</sup> [Press Release: Lone parent and separating families cautiously optimistic following publication of the new Family Justice Strategy and child maintenance reforms – One Family Ireland](#)

<sup>60</sup> O'Sullivan, K. (2023) "Child Maintenance Review Group Report: A Critique and Call for Reform", *Irish Journal of Family Law*, 26(2), 37-44



In respect of the establishment of a State Child Maintenance Body (TOR 3), she indicated:

That the Government did not accept the recommendations of the majority of the group vis-à-vis the establishment of a state child maintenance agency or body for “maintenance only issues” is no surprise.<sup>61</sup>

In this context, she referenced the differing treatment of maintenance issues and contended that the recommendations would create a “two-tier system” whereby maintenance applications under the [Guardianship of Infants Act 1964](#) or [the Family Law \(Maintenance of Spouses and Children\) Act 1976](#) would be calculated via an agency, whilst child maintenance sought as part of a “provision case” (e.g. a judicial separation or divorce, dissolution of civil partnership) would not have such recourse and, instead, would be dealt with exclusively by the courts where maintenance would continue to be calculated at the discretion of the presiding judge.

Whatever the constitutional viability of making a distinction in the way in which maintenance would be calculated for children depending on the context of the parental relationship or breakdown of same, the adoption of a two-tier system was never going “to fly” at a political level. Outcomes would invariably be compared between the agency and the courts, with payors or payees equally likely to feel frustrated where the outcome for them was less beneficial than would have been achieved in the alternative arena.<sup>62</sup>

Notwithstanding this, O’Sullivan (2023) asserted that it is “disappointing that the establishment of a state child maintenance agency appears to have been shelved prematurely” and advocated for the consideration of the potential for formula-based guidelines (whilst acknowledging that this was something that was “doubted” by a majority of the Group). Further, she described Ireland as an “outlier in the common law world<sup>63</sup> in continuing to determine child maintenance on a case-by-case basis”.<sup>64</sup>

### Commentary re establishment of a State Child Maintenance Body

Whilst not addressed in this Bill, a key policy issue in respect of child maintenance has concerned calls for the establishment of a State Child Maintenance Body. In June 2017, the previous [Joint Committee on Social Protection](#) (32<sup>nd</sup> Dáil, 25<sup>th</sup> Seanad) noted that Ireland has no state agency with responsibility for child maintenance payment and asserted that “[p]arents are forced to seek payments through an adversarial and costly court system”.<sup>65</sup> It recommended the following:

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<sup>61</sup> O’Sullivan, K. (2023) “Child Maintenance Review Group Report: A Critique and Call for Reform”, *Irish Journal of Family Law*, 26(2), 37-44

<sup>62</sup> O’Sullivan, K. (2023) “Child Maintenance Review Group Report: A Critique and Call for Reform”, *Irish Journal of Family Law*, 26(2), 37-44

<sup>63</sup> O’Sullivan (2023, p.1, 6-7) noted that: “Formula-based guidelines for the calculation of child maintenance have been introduced in almost every common law jurisdiction around the world over the past 40 years..”. She outlined this policy change as follows: “While judicial discretion was originally used in all common law jurisdictions to determine issues pertaining to child maintenance, this approach created many well-documented problems. Seeking to address these challenges, “[n]ew child support policies have increasingly emphasized standardization and transparency, including the development of formulas and guidelines for determining the amount of child support”.

<sup>64</sup> O’Sullivan, K. (2023) “Child Maintenance Review Group Report: A Critique and Call for Reform”, *Irish Journal of Family Law*, 26(2), 37-44

<sup>65</sup> Joint Committee on Social Protection, [Report on the Position of Lone Parents in Ireland](#), June 2017, No. JCSP02/2017, p.27



**Recommendation of the Joint Committee on Social Protection (June 2017)**

(7.19) A state body, similar to that in other countries, should be put in place to appropriately seek and pursue maintenance payments <sup>66</sup>

In addition, the UN Committee on the Elimination of Discrimination against Women (CEDAW) raised this matter in its [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#) (March 2017). Specifically, CEDAW had raised concerns about, amongst other things, the absence of a statutory maintenance authority and recommended that Ireland:

57(b) Consider establishing a statutory maintenance authority and prescribing amounts for child maintenance in order to reduce the burden on women of having to litigate to seek child maintenance orders.<sup>67</sup>

In the latest [list of issues](#) raised relating to the current reporting cycle, CEDAW sought an update from Ireland in respect of its recommendation to consider the establishment of such an authority (as set out in the text box below). Of note is that IHREC referenced this matter in its [parallel report](#) to inform CEDAW's [list of issues](#) advising that CEDAW should ask the State for an update on the reform of the child maintenance system, including the implementation of its 2017 recommendation. Further, IHREC also referenced the "the financial, logistical and emotional burden of adversarial litigation" associated with seeking maintenance.<sup>68</sup>

**Marriage and family relations (Issues raised prior to reporting, UN Committee on the Elimination of Discrimination against Women, November 2023)**

23. In the light of the Committee's previous recommendations (para. 57), please inform the Committee of:

(a) Measures taken to establish a statutory maintenance authority and the prescription of amounts for child maintenance, which would reduce the burden on women of having to litigate to obtain child maintenance orders<sup>69</sup>

As referenced above, the Child Maintenance Review Group ('the Group') was tasked with considering and making recommendations in respect of the establishment of a State Child Maintenance Agency (TOR3). However, the Group was not able to make a consensus conclusion or recommendation and the Report stated that:

12.7.1 It is reiterated that the Group is individually and collectively regretful that it was not found to be possible to reach a consensus conclusion/recommendation in relation to the establishment of a State Child Maintenance Body, despite considerable efforts to do so.

Referencing that there was "no consensus" amongst the Group regarding the establishment of a State Child Maintenance Agency, the Minister advised in July 2023 that "there are no plans to establish such a body". Further, noting that the Minister for Justice is planning "significant reforms in the family justice area", she indicated that she was "particularly pleased that the Family Justice

<sup>66</sup> Joint Committee on Social Protection, [Report on the Position of Lone Parents in Ireland](#), June 2017, No. JCSP02/2017, p.41

<sup>67</sup> [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#), UN Committee on the Elimination of Discrimination against Women, March 2017, p.15

<sup>68</sup> [Ireland-and-the-Convention-on-the-Elimination-of-All-Forms-of-Discrimination-against-Women-LOIPR-web.pdf \(ihrec.ie\)](#), p.82

<sup>69</sup> [List of issues and questions prior to the submission of the eighth periodic report of Ireland](#), UN Committee on the Elimination of Discrimination against Women, November 2023, p.8

Strategy includes a commitment to undertake a review of the enforcement of maintenance orders<sup>70</sup>.<sup>71</sup> Subsequently, an Assistant Secretary from the Department of Social Protection appeared before the Joint Committee on Social Protection, Community and Rural Development and the Islands during its Pre-Legislative Scrutiny (PLS) of the Bill and reiterated that there was a lack of consensus amongst the Group and advised that this matter falls under the remit of the Department of Justice and continued that the matter:

.. is not within the scope of the draft legislation before the committee today. Since the publication of the report, however, several measures have been brought forward by the Minister for Justice to reform the family law system.<sup>72</sup>

Nonetheless, the Committee recommended the establishment of such an agency in its PLS Report in respect of this Bill:

**PLS Recommendation (Joint Committee on Social Protection, Community and Rural Development and the Islands) (October 2023)**

1. The Committee recommends that a Statutory Child Maintenance Agency be set up as a first step before progression to family courts.<sup>73</sup>

This reflected concerns raised by the National One Parent Family Alliance<sup>74</sup> ('the Alliance') in its submission to the Committee as part of the PLS process. Whilst welcoming "certain provisions", particularly those aimed at excluding child maintenance from means assessment and no longer requiring people to seek child maintenance, the Alliance stated that it was "deeply concerned" about a range of matters<sup>75</sup>, including the absence of a statutory maintenance agency.<sup>76</sup>

This matter has also arisen before the Joint Committee on Justice. When it appeared before that Committee in October 2022, the Law Society of Ireland ('the Society') recommended the establishment of a new State Child Maintenance Agency. In its opening statement, the Society asserted that such an agency could:

1. Provide guidance in relation to the calculation of appropriate levels of maintenance;
2. Assist parents in reaching agreed arrangements in relation to maintenance;
3. Assist in (or, where appropriate, bring) Court applications to determine maintenance when in dispute;

<sup>70</sup> Specifically, this Strategy sets out the following actions in respect of child maintenance:

9. Review the enforcement of child maintenance orders:

9.1. Review the enforcement of child maintenance orders.

9.2. If required, identify proposals for reform. [Source: [Family Justice Strategy 2022-2025](#), p.21]

<sup>71</sup> [Family Law Cases – Wednesday, 5 Jul 2023 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>72</sup> [Joint Committee on Social Protection, Community and Rural Development and the Islands debate - Wednesday, 20 Sep 2023 \(oireachtas.ie\)](#)

<sup>73</sup> [Report on the pre-legislative scrutiny of the General Scheme of the Social Welfare \(Child Maintenance and Liable Relatives Provisions\) Bill \(oireachtas.ie\)](#), p.5

<sup>74</sup> The Alliance is comprised of Barnardos, Children's Rights Alliance, Family Resource Centre – National Forum, Free Legal Advice Centres (FLAC), Focus Ireland, National Women's Council, One Family, Society of St Vincent de Paul, Single Parents Acting for the Rights of our Kids (SPARK) and Treoir.

<sup>75</sup> Other concerns raised included the "consequences of abolishing the Liable Relatives Unit, the need for effective communication with liable relatives, and the withdrawal of state support for maintenance order enforcement".

<sup>76</sup> [National One Parent Family Alliance: Pre-Legislative Scrutiny of the Social Welfare \(Child Maintenance and Liable Relatives Provisions Bill\)](#), p.5

4. Act as the collecting agent for maintenance payments in appropriate cases; and
5. Engage in the enforcement of maintenance and the collection of arrears (whether directly or in concert with other State agencies).<sup>77</sup>

In July 2023, the Joint Committee on Justice published its [Report on Enforcement of Court Orders relating to Child Maintenance, Access and Custody](#), which recommended the following:

**Recommendation (Joint Committee on Justice)**

1. The Committee recommends that a statutory child maintenance agency be established, with responsibility for assessing and enforcing issues pertaining to court orders and child maintenance.<sup>78</sup>

On 7<sup>th</sup> January 2024, the Minister for Justice published a [Review of the Enforcement of Child Maintenance Orders](#)<sup>79</sup>. The Review, compiled by the Department of Justice's Civil Policy Unit, contains a total of twenty-six recommendations - aimed at consensus, compliance and deterrence. Recommendations include:

- Strengthening attachment of earnings orders and exploring the possibility of attaching an order to a PPS number rather than employing entities, so that orders do not lapse when there is a change in employer.
- Introduction of a single enforcement procedure when the receiving parent makes an enforcement application, allowing the judge to choose the most appropriate enforcement option based on the circumstances of the case.
- Simplification of the bench warrant process.
- Placing the onus on paying parents to pay costs associated with enforcement proceedings.
- Allowing deductions from the paying parent's bank accounts, from government grants and subsidies and the recovery of arrears from tax refunds.<sup>80</sup>

Amongst the media coverage/commentary<sup>81</sup> of the publication of this Review was an editorial from the Irish Times which stated that:

Enforcement, however, comes at the end of a long road that requires a parent who has not received a maintenance payment to take court proceedings ... The burden imposed on parents by the court process was one of the reasons that a majority of the 2022 [Child Maintenance Review Group](#) recommended the establishment of a State Child Maintenance Body that would collect and transmit maintenance payments and when necessary, take enforcement action, similar to the UK.

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<sup>77</sup> [2022-submission-enforcement-court-orders-maintenance-access-custody.pdf \(lawsociety.ie\)](#), p.8

<sup>78</sup> [2023-07-05\\_report-on-enforcement-of-court-orders-relating-to-child-maintenance-access-and-custody\\_en.pdf \(oireachtas.ie\)](#), p.6

<sup>79</sup> [gov.ie - Minister McEntee Publishes Review of the Enforcement of Child Maintenance Orders \(www.gov.ie\)](#)

<sup>80</sup> [gov.ie - Minister McEntee Publishes Review of the Enforcement of Child Maintenance Orders \(www.gov.ie\)](#)

<sup>81</sup> Examples of these include: [Child maintenance could be deducted from social welfare \(rte.ie\)](#); [Child maintenance payments could be collected by Revenue as part of shake-up – The Irish Times](#); [Child support could be collected by Revenue or social welfare deductions under system overhaul \(thejournal.ie\)](#); [Plans for crackdown on non-payment of child maintenance | Irish Legal News](#); and [Replace current child-maintenance law – review \(lawsociety.ie\)](#).

The Government sided with the view of a minority of the review group (three out of the seven) that the court system should continue to deal with the child maintenance issues, subject to some reforms. Those reforms are to be addressed via the Family Courts Bill 2022, the Judicial Planning Working Group, the Courts Service Modernisation Programme and the Civil Legal Aid Review, according to the Government.<sup>82</sup>

In response to the Review, One Family asserted that:

“.. the only adequate response to the need to reform how child maintenance is administered in Ireland is the establishment of an independent child maintenance agency or analogous system. Given that courts instead will need to shoulder the work of maintenance assessment and enforcement; we believe that urgent priority must be given to the development of new Family Law courts with specialist trained judiciary, shorter waiting times and an emphasis on out of court solutions.

“It is of particular concern to us that separated parents will continue to be forced into adversarial legal systems that are often slow and expensive in order to deal with basics such as child maintenance. We see constantly in our services that unpaid maintenance means the family must cut back on essentials, bills cannot be paid, and families can go into arrears or debt.

“Unfortunately, whilst this report recommends some positive changes, it falls short of providing families with an independent, non-adversarial process through which to assess and enforce child maintenance orders.”<sup>83</sup>

## Pre-legislative scrutiny of the General Scheme of the Bill

The Heads of Bill were referred to the Joint Committee on Social Protection, Community and Rural Development and the Islands (‘the Committee’) for PLS on 13 July 2023, with the General Scheme published on 28 August 2023.<sup>84</sup> The Committee undertook PLS of the General Scheme of the Bill, holding a meeting with officials from the Department on [20 September 2023](#). In addition, the Committee invited submissions from interested parties and two submissions were published, from [National One Parent Family Alliance](#) and [Focus Ireland](#) respectively.<sup>85</sup>

The Committee published its [PLS Report](#) on 11 October 2023. The Committee noted that it “supports the implementation of the recommendations of the Report of the Child Maintenance Review Group in relation to the social welfare system and welcomes these changes through this proposed legislation”.<sup>86</sup> The Committee identified 4 key issues, making 6 recommendations.<sup>87</sup>

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<sup>82</sup> [The Irish Times view on new proposals on child maintenance payments: just one part of the reforms that are needed – The Irish Times](#)

<sup>83</sup> [The Department of Justice’s Review of the Enforcement of Child Maintenance Orders – One Family Ireland](#)

<sup>84</sup> [Proposed Legislation – Wednesday, 4 Oct 2023 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>85</sup> [Report on the pre-legislative scrutiny of the General Scheme of the Social Welfare \(Child Maintenance and Liable Relatives Provisions\) Bill \(oireachtas.ie\)](#), p.2,4

<sup>86</sup> [Social Protection Committee publishes report on the Social Welfare \(Child Maintenance and Liable Relatives Provisions\) Bill 2023 – 11 Oct 2023, 11:12 – Houses of the Oireachtas](#)

<sup>87</sup> [Report on the pre-legislative scrutiny of the General Scheme of the Social Welfare \(Child Maintenance and Liable Relatives Provisions\) Bill \(oireachtas.ie\)](#), p.3,5

### L&RS traffic light analysis of PLS recommendations versus published Bill

This section seeks to assess the extent to which the Committee's recommendations have been addressed in the Bill, as presented for Second Stage. To do this, a traffic light system is used by the L&RS, indicating whether a key issue is accepted and reflected in the Bill, whether a consistent or unclear approach is used, and whether the recommendation has not been accepted or is not reflected in the Bill. This traffic light approach represents the L&RS's own, independent analysis of the Bill, with a key to this dashboard shown in Table 4 below.

The L&RS is grateful to the Departmental officials for providing their assessment of the actions taken and comments in relation to the PLS recommendations. These are replicated in the right-hand column of the table (see Table 5).

Table 4 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.







| L&RS categorisation of the Department's response in the Bill to the Committee's key issue   | Traffic light dashboard used in Table 5 to highlight impact of the Committee's PLS conclusion |
|---|---|
| Key issue has clearly been accepted and is reflected in the Bill.   |            |
| The Bill may be described as adopting an approach consistent with the key issue <b>or</b> the impact of the key issue is unclear. |          |
| Key issue has not been accepted or implemented in the Bill.   |          |




Table 5 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

| Commentary/recommendation as per Committee report  | Whether addressed (either in whole or in part) in the Bill<br>L&RS Traffic Light Assessment (centre) and Commentary from the Department (right) |   |
|--|---|---|
| 1. The Committee recommends that a Statutory Child Maintenance Agency be set up as a first step before progression to family courts. |    | The Bill implements two of the recommendations of the Child Maintenance Review Group in relation to the social welfare system, which were accepted by Government. There was no consensus among the Child Maintenance Review Group regarding the establishment of an Agency. Even among the members of the Group who supported an agency, there were differing views about its role and remit, as well as important Constitutional concerns. The Group examined the international position and after significant research found that different countries |

| Commentary/recommendation as per Committee report | Whether addressed (either in whole or in part) in the Bill<br>L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)   |
|---|---|
|   | <p>operate different arrangements. There is no one perfect solution.</p> <p>Even if an agency were established, there would still be a significant role for the Courts in terms of the difficult issues of enforcement and payment of arrears.</p> <p>The Government has not decided to set up a Child Maintenance Agency and therefore provision for such is not included in this Bill.</p> <p>There are a number of reforms being brought forward in relation to family law which is under the remit of the Department of Justice. The first Family Justice Strategy was approved by Government in November 2022. Its vision is of a modern, streamlined and user-friendly family justice system that supports simple, early, fair and, where possible, non-adversarial outcomes. A central action in the Strategy is the Family Court Bill which provides for the establishment of a Family Court as divisions within existing court structures. It provides, amongst other things, a set of guiding principles to help ensure that the new Family Court system will operate in an efficient manner, encourage active case management and make the best interests of the child a primary consideration in all family law proceedings.</p> <p>The Family Justice Strategy also includes a commitment to undertake a review of the enforcement of child maintenance orders and the report of that review was published on 8 January 2024. The review examined how the current enforcement system works and how it can be improved. The review sets out 26 recommendations, grouped under three approaches: consensus; compliance; and deterrence. The recommendations across these three approaches, taken together, seek to ensure security and stability for children and enforce their legal entitlement to maintenance support from their parents,</p> |



| Commentary/recommendation as per Committee report  | Whether addressed (either in whole or in part) in the Bill<br>L&RS Traffic Light Assessment (centre) and Commentary from the Department (right) |   |
|--|---|---|
|  |   | support poverty reduction and generate maximum compliance with enforcement orders.  |
| 2. The Committee recommends that measures be put in place to ensure custodial parents do not lose out financially when the liable relatives unit is dissolved.       |    | <p>Removing the liable relative provisions does not replace or supersede the primary responsibility of parents to maintain their children.</p> <p>Under the current arrangements, a liable relative may pay their contribution either directly to the Department of Social Protection in which case there is no benefit to the lone parent or directly to the lone parent. Where the contribution is paid to the lone parent directly it is currently assessed as means (subject to the appropriate disregards). Following enactment of this legislation, any child maintenance payment which the lone parent receives from the other parent will not be assessed in the means test thereby resulting in them potentially receiving a higher payment.</p>   |
| 3. The Committee recommends that a system of separating child maintenance from other maintenance payments be facilitated within the regulations of this legislation. |    | <p>The enactment of this legislation will require the Department of Social Protection to distinguish between child maintenance payments and other maintenance payments (effectively spousal maintenance) which a person might be receiving. There is no necessity to make such a distinction at present.</p> <p>Section 6(1) of the Bill provides for a new definition of “maintenance payment” to be inserted into the Social Welfare (Consolidation) Act 2005 (as amended). It allows for the Minister to prescribe what constitutes a “maintenance payment made to or in respect of a qualified child”. The purpose of this provision is to provide the Minister with the necessary powers to distinguish between child maintenance and other maintenance payments. It is intended that the necessary Regulations will be brought into effect alongside the provisions of this Bill.</p> |

| Commentary/recommendation as per Committee report  |  | Whether addressed (either in whole or in part) in the Bill<br>L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)  |
|--|--|--|
| 4. The Committee recommends that any thresholds set out by the Department should be index linked.  |   | This is beyond the scope of this Bill. The introduction or amendment of any thresholds are considered in an overall Budgetary context.   |
| 5. The Committee recommends the exclusion of indirect payments made towards housing from any assessment of means.                                      |   | Regulations set out what sources of income are assessed for the purposes of the means test for social assistance/income assessed schemes and the treatment of maintenance payments in these Regulations is under review in the context of the need to amend these Regulations to provide for a distinction between child maintenance and other maintenance payments. |
| 6. The Committee recommends that going forward the payments be backdated to the enactment of this legislation rather than the commencement of the law. |  | It is intended that this legislation will be commenced at or very close to the date of enactment.  |

Source: The L&RS is grateful to the Department of Social Protection for providing their analysis of how it has responded to the Committee's recommendations. The traffic light analysis represents the analysis of the L&RS.

## Principal provisions of the Bill

This section of the Bill Digest examines the principal provisions of the Bill, which is 8 pages long and contains 7 Sections. A synopsis of each Section of the Bill is given below.

### Section 1

Section 1 is a short provision which sets out that, within the Act, references to the "Act of 2015" mean the [Social Welfare \(Miscellaneous Provisions\) Act 2015](#), whilst the "Principal Act" is referring to the [Social Welfare Consolidation Act 2005](#)<sup>88</sup>.

### Section 2

Section 2 concerns amendments to Section 2 of the Principal Act, which sets out the relevant interpretations within that Act. Section 2(a) of the Bill amends the Principal Act in respect of "social welfare inspector". Section (2)(1) of the Principal Act currently reads as follows:

<sup>88</sup> The following is the link to the revised Act, which is an administrative consolidation of the Principal Act prepared and maintained by the Department of Social Protection to reflect the latest and ongoing amendments to the Social Welfare Consolidation Act 2005:  
<https://assets.gov.ie/49740/195a2faa4b5a47f5b6ffc7a5c687a752.pdf>

“social welfare inspector” means a person appointed by the Minister under section 250 to be a social welfare inspector for the purposes of Parts 2, 3, 4, 5, 6, 7, 7A, 8, 9 and 12;

whereas the Bill proposes to change this by substituting “8 and 9” for “8, 9 and 12”. This reflects the removal of its application to Part 12 of the Principal Act (‘Liability to Maintain Family’). Section 2(b) of the Bill amends Section 2(7) of the Principal Act, which establishes the meaning of ‘liable relative’, by the deletion of “Subject to Part 12” in the preamble to this subsection and the insertion of “In Part 4 of Schedule 3” (which concerns the Supplementary Welfare Allowance). According to the Explanatory Memorandum for the Bill, these amendments provide for:

.. the deletion of references to Part 12 of the Principal Act (Liability to Maintain Family) from the definition of “social welfare inspector” in section 2(1) and from the interpretation of “liable relative” in section 2(7). As a result, a social welfare inspector will no longer have any role under Part 12 of the Act which is being repealed (as provided for in Section 5 of the Bill).<sup>89</sup>

### Section 3

Section 3 of the Bill is a technical provision and removes four references to Part 12 (‘Liability to Maintain Family’) of the Principal Act in Section 250 (‘Appointment and Duties of Social Welfare Inspectors’) of the Principal Act. Specifically, it removes reference to Part 12 of the Principal Act from:

- (a) Section 250(1) which establishes that social welfare inspectors may be appointed for the purposes of various sections, including Part 12;
- (b) Section 250(2) through the deletion of Section 250(2)(d) which establishes, amongst other things, that a person liable to contribute under a subsection of Part 12 (‘Liability to Maintain Family’) is required to give to a social welfare officer certain information or documents;
- (c) Section 250(7) which concerns the certification arrangements for social welfare inspectors for the purposes of various sections, including Part 12;
- (d) Section 250(7A) which concerns the certification of seconded members of An Garda Síochána (appointed for the purpose provided for in Section 250(1)) for the purposes of various sections, including Part 12.

According to the Explanatory Memorandum for the Bill, these amendments will result in social welfare inspectors having no role under Part 12, which is being repealed (as provided for in Section 5 of the Bill).<sup>90</sup>

### Section 4

Section 4 of the Bill is also a technical provision and seeks to amend Section 300(2) of the Principal Act, which concerns decisions by deciding officers. Sections 4(a), (b) and (c) remove reference to Part 12 in respect of questions to be decided by a deciding officer.

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<sup>89</sup> [Explanatory Memorandum](#), p.1

<sup>90</sup> [Explanatory Memorandum](#), p.1

According to the Explanatory Memorandum for the Bill, these amendments will result in Deciding Officers in the Department of Social Protection having no role under Part 12, which is being repealed (as provided for in Section 5 of the Bill).<sup>91</sup>

## Section 5

As referenced above, Section 5 of the Bill provides that Part 12 of the Principal Act, which concerns liability to maintain family, will be repealed in its entirety. Part 12 contains 15 sections (Sections 344 to 358 inclusively), as outlined in the text box below.

- 344. Interpretation.
- 345. Liability to maintain family.
- 346. Contribution towards benefit or allowance.
- 347. Attachment of earnings order.
- 348. Employer's obligations in relation to attachment of earnings order.
- 349. Payments under attachment of earnings order.
- 350. Powers of District Court.
- 351. Changes in employment.
- 352. Determinations by District Court.
- 353. Liable relative in service of State.
- 354. Discharge, variation or lapse of attachment of earnings order.
- 355. Cesser.
- 356. Offences.
- 357. Payments under order of court to offset contributions.
- 358. Recipient of benefit or allowance to transfer to competent authority payments under order of court.

According to the Explanatory Memorandum, the result of the repeal of Part 12 of the Principal Act (which refers to the obligations of the liable parent to maintain the family and contains provisions in respect of the District Court and attachment orders) will be that:

.. the liable relative provisions will no longer apply to claims for One-Parent Family Payment. This means that the Department of Social Protection will no longer seek to recoup a portion of claim costs from the non-resident parent in these cases. Removing these provisions does not replace or supersede the primary responsibility of parents to maintain their children.<sup>92</sup>

## Section 6

Section 6 amends Schedule 3 of the Principal Act ('Rules as to Calculation of Means'), in Part 1 ('Definitions'). Section 6(1)(a) inserts a new term into Part 1 (Definitions) of Schedule 3, namely the following definition in respect of maintenance payments:

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<sup>91</sup> [Explanatory Memorandum](#), p.1

<sup>92</sup> [Explanatory Memorandum](#), p.1

‘maintenance payment made to or in respect of a qualified child’ means any maintenance payment made to or in respect of a qualified child that may be prescribed;

Sections 6(1)(b-f) of the Bill amend various rules as to the calculation of means to provide that child maintenance payments will not be assessed in the means test for various payments, as set out below.

| Section of the Bill | Rule Amended          | Relevant payment(s)   |
|---------------------|-----------------------|---|
| Section 6(b)        | Rule1(2)(b) of Part 2 | Jobseeker’s allowance<br>Pre-retirement allowance<br>Disability allowance<br>Farm assist  |
| Section 6(c)        | Rule1(2)(b) of Part 3 | State pension (non-contributory)  |
| Section 6(d)        | Rule1(2)(b) of Part 4 | Supplementary welfare allowance   |
| Section 6(e)        | Rule 2(1) of Part 4   | Rent supplement.  |
| Section 6(f)        | Rule1(2)(b) of Part 5 | Blind pension<br>Widow’s (non-contributory) pension<br>Widower’s (non-contributory) pension<br>Surviving civil partner’s (non-contributory) pension<br>Guardian’s payment (non-contributory)<br>One-parent family payment<br>Carer’s allowance. |

## Section 7

Section 7 provides for the short title, construction (i.e. that this Bill and the Social Welfare Acts will be construed together as one Act) and commencement of the Bill (including that different provisions may be commenced on different days).

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