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Child maintenance: new steps to improve compliance and to allow arrears to be written off (UK excluding NI)

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Summary

This House of Commons Library briefing paper considers new measures confirmed in July 2018 to improve compliance and allow arrears to be written off for the statutory child maintenance scheme.

Shortly before the "Child Maintenance Arrears and Compliance Strategy 2012 to 2017" expired, the Department of Work and Pensions (DWP) launched a consultation on a new strategy. In July 2018, the Government published its response to the consultation which took forward the proposals it had set out, but with some modifications.

The key measures announced in the July 2018 Government response are:

- new processes and messaging to ensure clients are requesting variations for unearned income as early as possible in the life of a case;
- notional income to be calculated from non-income generating assets;
- permit deductions for ongoing maintenance at the flat rate from those Universal Credit claimants who have earnings;
- allow deductions from welfare benefits where arrears have accrued but ongoing child maintenance is no longer paid;
- deductions from unlimited partnership bank accounts;
- disqualify non-resident parents from holding or obtaining a passport where all other enforcement action is ineffective;
- allow more legacy Child Support Agency (CSA) cases where debt is owed to the person with care to be written off, subject to certain safeguards;
- write off all CSA debt owed to the Government by non-resident parents.

The Government has said that these changes, along with the power to write off sequestrated debt in Scotland and previously announced proposals to allow deductions from joint bank accounts, will be introduced during autumn 2018. Changes relating to welfare benefits which will be implemented at an (unspecified) later date.

These measures will complement the existing spectrum of collection and enforcement powers, more details of which can be found in a separate Library paper.

This note applies to Great Britain only (i.e. United Kingdom excluding Northern Ireland).

1. Background information

1.1 The different statutory child maintenance schemes

There are currently three statutory child support schemes operating in Great Britain under the *Child Support Act 1991*. The 1993 and 2003 schemes are both legacy schemes closed to new applicants and administered by the Child Support Agency (CSA).

The 2012 scheme is open to new applicants while those with existing CSA cases are being asked if they wish to transfer to it. This scheme is administered by the Child Maintenance Service (CMS).

The Department for Work and Pensions (DWP) is the responsible Government department.

1.2 Quick introduction to child maintenance terminology used in this note

- "Non-resident parent" – also referred to as the "paying parent" in CMS literature, is a parent of the child. A non-resident parent does not live with the child for the majority of the time, if at all;
- "person with care" – also referred to as the "receiving parent" in CMS literature, is the person who "actually and usually" provides day-to-day care of the child. The person with care does not have to be a parent of the child or someone with legal "parental responsibility" for the child. It could, for example, be an older sibling or a friend of the child that the child is living with. It cannot be a local authority or someone with whom a local authority has placed a child (e.g. a local authority foster carer);
- the "qualifying child" – the child for whom child maintenance is payable. For child maintenance purposes the child has to be either aged:
  - under 16 years, or
  - 16 to 19 years inclusive and either Child Benefit is payable in respect of them, or they are receiving full-time, non-advanced education (e.g. A-levels).

  A young person does not count as being a qualifying child if they are or have been married or in a civil partnership.[1]

1.3 The consultation and Government response

In December 2017, the DWP published Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, in order to replace the Child Maintenance Arrears and Compliance Strategy 2012 to 2017. The consultation document set out the objectives of the new strategy and the policy changes that would help achieve them, and sought feedback and views.

In July 2018, the Government's response to the consultation was published which confirmed the proposals set out in the original consultation document, albeit with some modifications relating to the details of the proposals.

[1] Child Poverty Action Group, *Child Support Handbook 2018/19*, 2018, pp8–15

2. Where the non-resident parent has complex income or substantial assets

2.1 Inclusion of unearned income in the initial calculation

One of, if not perhaps the, key change of moving from the 2003 statutory scheme to the 2012 scheme was the linkage of the CMS's IT systems to those of HM Revenue and Customs (HMRC), so allowing data on the non-resident parent's income to be more easily and accurately provided in many cases. As the DWP explained in its White Paper that set out the new 2012 statutory child support scheme:

> We propose that the child maintenance liability of a non-resident parent who is in employment or self-employment be based on historical information from the latest tax year for which HM Revenue & Customs has full details. This would replace the existing arrangements whereby the non-resident parent is approached for their financial information, which they are often unable or unwilling to provide.
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> […]
>
> Using information from a single known source could significantly reduce the time it takes to make a maintenance calculation. For parents, this increases the prospect that they will receive child maintenance shortly after the initial application. For the body responsible for administering child maintenance, it offers the prospects of clearing initial applications much more swiftly, so that a backlog of applications does not build up.[2]

When an application for child maintenance is first considered by the CMS, it is only the non-resident parent's *earned* income that is taken into account as a matter of course – the DWP explained that "this is because the system has been designed for the majority of people who only have one stream of income".[3]

People with care are able to ask the CMS to consider unearned income – i.e. annual *unearned taxable* income of over £2,500 – by applying for a variation, but only after the initial calculation of child maintenance had been made.

In the consultation, the DWP proposed that it should "allow for the paying parents unearned as well as earned income to be included in the initial CMS calculation, when we are advised about possible unearned income at the point of application".[4]

In the consultation response, the DWP confirmed this approach and provided more details:

> we have begun to explore with HMRC how to enhance our existing client communications and case worker training to raise awareness across the two departments about unearned income. Our aim is to ensure clients understand what constitutes unearned income, the affect it can have on a child maintenance liability, and the importance of raising the issue at the start of the case. We believe this, along with enhancing our procedures, will help factor unearned income into the initial calculation in more cases.[5]

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[2] Department for Work and Pensions, A new system of child maintenance, Cm6979, December 2006, p63, para 4.9 and 4.10

[3] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p12, para 41

[4] As above, p12, para 41

[5] Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, p19, para 73

Continued onus on the person with care to inform the CMS of the NRP's unearned income

It should be noted that unearned taxable income is not automatically considered by the CMS – either in the initial calculation (as proposed) or through a subsequent variation – even though HMRC collects this information.

Instead, even under the proposed changes, the person with care has to inform the CMS that they believe that the non-resident parent has such income. [6] Without access to the non-resident parent's financial affairs and where a significant amount of time may have elapsed since their separation, this may not always be straightforward.

Further, as the CMS notes, it is not sufficient for a person with care to simply contend that the non-resident parent's declared income does not appear to match their lifestyle:[7]

> Example of a satisfactory statement:
>
> 'My ex-partner is the Director of his company and has been for the past ten years. He has a known history of drawing dividends.'
>
> Example of an unsatisfactory statement:
>
> 'I know my ex-partner has other income coming in because he lives a luxury lifestyle'.[8]

CMS decision makers are given a checklist of a valid grounds for an unearned income variation application:

> For the ground to be identified, the applicant must confirm:
>
> - The type of unearned income that the non-resident parent receives (e.g. is it dividend income or income from properties?)
> - The period the application relates to (e.g. past, present or future). This will be helpful if you take an application forward where there is no HMRC data.
>
> If the parent with care has applied:
>
> - How they know about the non-resident parent's unearned income. This information must be provided, so you can be satisfied that the application is not spurious / speculative.
>
> However, remember that unearned income applications are based on the non-resident parent's income. A parent with care therefore cannot be expected to have all the evidence needed to support their application.[9]

The DWP confirmed in the consultation response that in order to "automatically request information about unearned income from HMRC, in the same way as we currently do for historic income … would require both a change to primary legislation and changes to our current IT system, which are unlikely to be possible in the near future".[10]

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[6] Unless the non-resident parent declares their unearned income to the CMS.

[7] Under the 2003 statutory child maintenance scheme, there was a ground for variation that the non-resident parent's lifestyle was inconsistent with their income. However, in the December 2017 consultation document the DWP (again) refused to allow such a ground to be included in the 2012 scheme "as it proved ineffective in the past", in particular because "in many cases the lifestyle of the paying parent was supported by debt rather than income and many other such applications were unsuccessful due to insufficient information" [Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p12, para 41]. Also see section 7 of the Library briefing paper, Child maintenance: variations, including "unearned income" rules (UK excluding NI).

[8] Child Maintenance Service, Policy, Law and Decision Making Guidance – Unearned Income Variation, 9 March 2017, p4 [hosted on The Voice of the Child website]

[9] As above, pp3–4 [hosted on The Voice of the Child website]

[10] Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, p18, para 72

2.2 Calculating notional income from assets that do not generate income

The new approach

Under the 2012 statutory scheme, only taxable income from assets that is in excess of £2,500 per annum can be considered, but some assets, such as gold, may not produce an income.

To address this, the DWP proposed the introduction of a rate of interest of eight per cent to calculate a notional income for assets above a certain threshold, explaining that it would "bring into the assessment notional income from assets like coins and gold, income derived from capital and any foreign income".[11]

In the consultation response, the DWP confirmed that it would introduce an eight per cent rate to calculate notional income. This was the same rate as used in the 2003 statutory scheme to calculate notional income from all assets (see box 1), but higher than the rates proposed by those who responded to the consultation. The Government argued that there was "no clear consensus" on an alternative to its proposed rate, and that the eight per cent rate "strikes the best balance between allowing the new power to have a meaningful impact on child maintenance liabilities without being overly punitive", adding:

> This variation will be useful in a range of scenarios including where we believe paying parents have made an effort to use complex financial arrangements to evade their responsibility. We believe across such a range of circumstances the 8% figure is justifiable. It could also act as a nudge to encourage paying parents to consider how best to arrange their financial circumstances, in their interest and that of their children.

However, the DWP did acknowledge that "the National Association for Child Support Action (NACSA) stated that they felt the rate had created financial hardship for paying parents in the past". In its defence, the DWP noted that when the CSA had a similar power and used a notional rate of eight per cent (see Box 1), "the use of the figure for this purpose was also subject to scrutiny by tribunal and upheld".[12]

The DWP also rejected the idea of using a tracker rate.[13]

Box 1: Variations under the 2003 scheme for assets over £65,000

The introduction of the concept of notional income from non-income producing assets as a ground for variation in the current child maintenance scheme is similar to the provision in the legacy 2003 scheme under which if a non-resident parent had assets (such as savings, land or shares) in excess of £65,000 (less any mortgage or charge on them and excluding e.g. the value of their home), then, irrespective of the actual return, for the purposes of calculating child maintenance the CSA assumed a notional return of 8 per cent per annum on the full value of those assets.[14]

The single parent charity Gingerbread described the measures announced in the Government consultation response for the 2012 scheme as "reintroducing the 'assets variation'".[15]

In terms of the level of assets to which the eight per cent notional rate would apply, the DWP set the minimum level at £31,250 after mortgages or charges on the assets had

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[11] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, pp12–13, para 41

[12] The 8 per cent figure is derived from the *Judgment Debts (Rate of Interest) Order 1993* (SI 1993/564.

[13] Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, p9, paras 24, 25 and 27

[14] Child Poverty Action Group, *Child Support Handbook 2017/18*, pp161–162

[15] Gingerbread, Government U-turn on child maintenance avoidance is "welcome but not enough", webpage, 12 July 2018

been taken into account, noting that "this means we will only vary a calculation where can calculate a notional income of £2,500 or more", thereby aligning it with the existing rule that only if there is unearned taxable income over £2,500 can a variation be made and so, as the DWP put it, "creating a consistent approach to variations across a range of case circumstances".

The DWP also said that it would introduce a number of safeguards in regard to the new rules, including so as to "not require the paying parent to pay more maintenance where this would mean that assets would have to be sold and this would cause hardship to the paying parent or any child of the paying parent".[16]

2.3 Enhanced role of the Financial Investigations Unit

The DWP also announced in the December 2017 consultation that in order to "deal with potential evasion more effectively" it would "increase the number of staff in the Financial Investigations Unit (FIU) so we have increased capacity to look into complex cases and ensure that maintenance is not being evaded".[17]

In the response to consultation it added:

> We have also been working with HMRC to see what more we can do together to tackle child maintenance cases with complex earners. We are currently jointly exploring:
>
> - The additional information HMRC can make available to our FIU to help assess a paying parent's income, such as self-assessment tax data for multiple tax years.
> - Improved channels of communication between the FIU and HMRC's Fraud Investigation Service (FIS), including a formal process for referring cases investigated by the FIU to FIS where there may be tax irregularities that require investigation.[18]

[16] Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, p10, paras 29 and 30, and p11, paras 32–33

[17] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p12, para 41

[18] Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, p19, para 74

3. Deductions for ongoing maintenance and arrears from welfare benefits

3.1 Deductions for ongoing maintenance for Universal Credit claimants with earnings

To qualify for the flat rate of child maintenance of £7 per week, a non-resident parent has to have gross weekly income of £100 per week or less, or be in receipt of a specified benefit.

For Universal Credit (UC), as the DWP notes, this "can be calculated on the basis that a claimant has earnings, or on the basis that they do not have earnings". Where there is ongoing maintenance and a case is on the Collect and Pay scheme – meaning that the non-resident parent's child maintenance is collected by the CMS and passed on to the person with care – then currently the CMS/CSA can only deduct the flat rate plus the collection fee (of £1.40) direct from UC where the non-resident parent's household has no earnings.[19]

Where the non-resident parent is in receipt of UC and has earnings, the DWP proposed similarly allowing a deduction direct from UC and that it would introduce this change "when UC is fully rolled out" (due to occur in March 2023),[20] explaining:

> we believe that a deduction directly from UC is likely to be more effective for people who are liable to pay flat rate maintenance and fail to maintain their financial commitment to their children voluntarily.
>
> This change would make UC consistent with other benefits paid alongside earnings, where we can already deduct if they are liable to pay flat rate maintenance. It should also encourage personal responsibility amongst paying parents as they can avoid collection fees by paying their maintenance voluntarily direct to the receiving parent.[21]

In the Government response to the consultation, the DWP noted that "responses were generally in favour of introducing this change". In response to calls to introduce it before UC was fully rolled-out, the Government said it was "investigating the possibility" of doing this.[22]

3.2 Deductions for arrears from welfare benefits when there is no ongoing child maintenance liability

At present, while child maintenance is deducted at the rate of £7 per week (plus the £1.40 collection fee) where the non-resident parent is on a prescribed welfare benefit, once the qualifying child stops being eligible for child maintenance under the statutory scheme then no further payments can be taken even if there are arrears outstanding.

The DWP proposed that in such cases it would "continue deducting at the flat rate amount when liability ends where there are arrears on a case. We would also impose a deduction at the flat rate for arrears if a benefit award starts after liability has ended",

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[19] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p13, para 46

[20] For more information on the roll-out of Universal Credit, see the Library briefing paper, Universal Credit roll-out: 2018-19.

[21] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p14, paras 48–49

[22] Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, pp11 and 12, paras 35 and 37

measures which would “increase our overall ability to recover arrears”. It contended that “this would send a clear message to paying parents that failing to pay for their children is not an option. We will recover the arrears eventually, even if we have to wait until they claim State Pension”.[23]

The DWP added that “we know that around 20% of paying parents currently claim one of these benefits so anticipate that this would be successful in maintaining on-going compliance and helping collect outstanding arrears”.[24]

After the consultation period, the DWP confirmed that it “plan[ned] to change regulations to allow us to continue deducting at the flat rate amount of £8.40 per week when liability ends and there are arrears on a case”, and to “impose a deduction at the flat rate for arrears if a benefit award starts after liability has ended”. Arrears will be payable if the non-resident parent was in receipt of certain welfare benefits,[25] or if they or their partner were in receipt of certain income-related benefits.[26, 27]

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23 Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, pp14 and 15, paras 50, 51 and 56

24 As above, p14, para 55

25 Namely: Carer’s Allowance, State Pension, contribution-based Employment and Support Allowance, contribution-based Jobseeker’s Allowance, Industrial Injuries Disablement Benefit, Widowed Parent’s Allowance, Widow’s pension, War Widow’s payments, Maternity Allowance, Severe Disablement Allowance.

26 Namely: income-related Employment and Support Allowance (ESA), income-based Jobseeker’s Allowance (JSA IB), Income Support (IS), Pension Credit (PC) or Universal Credit (UC).

27 Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, pp12–13, paras 40–43

4. Deductions from bank accounts

4.1 Current powers

At present, where there are child maintenance arrears the CMS/CSA can collect these from certain bank or building society accounts of the non-resident parent through a deduction order (either as a lump-sum or regular payments). The CMS/CSA does not first need a liability order from the courts to use such collection methods, and notes that "deduction orders are particularly effective against parents who are self-employed, who work cash in hand or who have an income but no employment".[28]

However, these powers have been limited to those bank accounts solely in the name of the non-resident parent.

Recently, the DWP announced that the CMS/CSA's powers would be extended to joint bank accounts,[29] although to date these powers have yet to be brought into force.[30]

4.2 Proposal to allow deductions from business accounts

The December 2017 consultation included proposals to further broaden the CMS/CSA's powers to certain other types of accounts in order to "improve compliance amongst the small group of paying parents who try to avoid paying maintenance by moving income into accounts that we are unable to deduct from".[31]

Box 2: How deductions can be made by the CMS/CSA from bank accounts

Deductions from bank or building society accounts can be made through a:

- regular deduction order (RDO), so as to take money from an account either monthly or weekly;
- lump sum deduction order (LSDO), which means that the bank or building society must deduct a certain amount of money from the non-resident parent's account as a single amount.[32]

The consultation document stated that the DWP proposed to allow deduction orders on sole trader and partnership accounts where liability is not limited.

In terms of safeguards, the DWP explained:

> All necessary steps would be taken to ensure that the process for making deduction orders against partnership business accounts operates fairly and has adequate safeguards to protect the rights of all parties to the account. We propose that a deduction would not be performed if the account balance is less than £2000. This is to help ensure the business has enough cash flow to continue to run effectively.
>
> All partners to the account would have the opportunity to make representations in relation to the order. We propose that they would be able to do this either prior to the order being made, where it is a regular deduction order, or at the stage that the funds are frozen in the case of a lump sum deduction order. These representations may include information such as the amount contributed to the account by the various account holders, or the requirements of the business serviced by the account. The aim is to resolve any issues before any funds are removed.

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[28] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p15, para 58

[29] Department for Work and Pensions, Clampdown on child maintenance cheats, press release, 29 October 2017

[30] Child Poverty Action Group, *Child Support Handbook 2018/19*, p167

[31] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p7, para 14

[32] The Voice of the Child, CMS, arrears, and Lump Sum Deduction Orders, webpage accessed on 8 August 2018

> Where it is not possible to establish what funds in the account belong to the paying parent, we propose to assume that a proportionate share of the funds in the account belong to the paying parent. The share would be based on the number of account holders. This means if there are two partnership business account holders then each would be considered to own an equal share of the funds held. Accordingly, only the paying parents deemed 50% share of the funds would be subject to the deduction order.
>
> All parties to a partnership business account would have the right of appeal against the making of a regular or lump sum deduction order. There is a right of appeal against the making of a regular deduction order; a decision made by the Secretary of State on an application for a review of a regular deduction order and the making of a final lump sum deduction order.[33]

For an RDO, the DWP proposed that account holders would be issued with a notice detailing proposals to impose an RDO and invited to make any representations about this.

For LSDOs, the full or partial sum of the arrears for which the LSDO had been made would be frozen *before* notice had been served upon the partnership business account holders advising of the LSDO action taken (and inviting representations). This was necessary "in order to prevent the possibility of funds being withdrawn before they can be secured".[34]

The DWP proposed that where a non-resident parent had different types of bank account, the following sequencing would apply in terms of applying an RDO or LSDO:

- solely held accounts first;
- then any jointly-held private accounts; and
- finally business accounts, for instance if there are insufficient funds in the above.[35]

In the consultation response, the DWP confirmed its proposals and that, as noted above, RDOs and LSDOs for sole trader and unlimited partnership business accounts would be "a last resort" if there were insufficient funds in the non-resident parent's private accounts.

In the consultation, the DWP sought opinion on the following elements of its proposals:

- time limits for representations of 14 days in regard to RDOs and 28 days for LSDOs;
- ensuring that a minimum of £2,000 is left in business accounts.

In the response to the consultation, the DWP confirmed the two time limits for representations but added that "since we cannot freeze the funds for RDOs we will hold the funds for a period of time before paying them out to the receiving parent" in order to "give the other account holders extra time to provide evidence that the funds do not belong to the paying parent".[36]

The DWP also confirmed the £2,000 minimum amount left after RDOs and LSDOs, but said that this limit would not be written into legislation – therefore allowing it to be amended more easily – and that it would "monitor how the process is working as we roll out the change" in this respect. It would also "review our policy relating to deductions from unlimited partnership business accounts every five years as is required by the Small Business, Enterprise and Employment Act 2015".[37]

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33 Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p16, paras 64–67
34 As above, pp16–17, paras 68–70
35 As above, p16, paras 63
36 Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, p14, paras 50 and 52
37 As above, p15, paras 56–57

5. Enhanced enforcement methods – removal of passport

As part of its spectrum of powers to collect and enforce arrears,[38] the CMS/CSA can already seek through the courts the removal of a driving licence or imprisonment of a non-resident parent who does not pay child maintenance. Another power legislated for – but not yet brought into force – is for the removal of a non-resident parent's passport.

The consultation proposed that section 27 of the *Child Maintenance and Other Payments Act 2008* should be brought into force.[39] This would allow an application to be made by the CMS/CSA to the court to disqualify a non-resident parents from "holding or obtaining a travel authorisation" – a passport – where, despite having taken specified enforcement action,[40] arrears (in part or full) remained outstanding and the CMS/CSA was "of the opinion that there has been wilful refusal or culpable neglect on the part of the person".

The DWP explained that "we propose to bring into force existing powers to disqualify non-compliant paying parents from holding or obtaining a UK passport for a maximum period of 2 years. This power would only apply to paying parents living in England, Scotland or Wales". Only if arrears of more than £1,000 remained outstanding would the CMS/CSA consider using this power.

It would be possible that, if a court made such an order, the non-resident parent's passport would have to be surrendered on the spot or within 48 hours. The DWP added:

> We propose the court would have powers to suspend an order if the paying parent agrees to pay the amount specified in the order or it thinks there are exceptional circumstances. Where the paying parent pays the amount in full we propose the court would also have the power to revoke the order. Where partial payment has been made, we propose the court have the power to reduce or revoke the order. We also propose the paying parent would have the right to appeal against the court's decision.

Although the DWP estimated that only a handful of cases (around 20 per year) would result in a non-resident parent's passport being removed, it said: "we believe publicity around this power would be an effective deterrent to encourage the payment of maintenance as early in the case as possible".[41]

In the consultation response, the Government noted its proposal to introduce the power "was well received", and confirmed that passports would have be surrendered within 48 hours but noted that "this is at the discretion of the court", and that it would monitor the process. The DWP also confirmed that "we plan to commence powers in legislation to revoke the ban if full payment is made of the arrears covered by the disqualification order. If part payment of arrears are made then the ban could be reduced".[42]

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[38] For more information, see the Library briefing paper Child maintenance: enforcing payment of arrears (UK excluding NI).

[39] If brought into force, section 27 of the 2008 Act would insert new sections 39B to 39G into the *Child Support Act 1991*.

[40] Namely, under either the following provisions of the Child Support Act 1991 as amended: section 35 (enforcement of liability orders by taking control of goods); section 36 (enforcement in county courts through a third party debt order or a charging order if it were payable under a county court order) or section 38 (enforcement of liability orders by diligence; Scotland).

[41] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p7, para 15 and p18, paras 74–78

[42] As above, pp10–11, para 31 and p19, paras 81 and 83

6. New arrears strategy

The DWP noted under the legacy statutory schemes – both of which are operated by the Child Support Agency (CSA) – that:

> Significant policy, operational and IT issues beset the 1993 and 2003 schemes which contributed to the build-up of considerable arrears of unpaid maintenance – currently £3.7bn of this debt is outstanding. Of this, a minimum of £2.5bn is owed to parents (approximately 970,000 cases) and £1.2bn is classed as owed to government (approximately 320,000 cases) … The published CSA Client Fund Accounts for 2015/16 make clear that £3.1bn of CSA debt is deemed uncollectable.

The DWP added that "currently 30% of the debt is in relation to a case where the 'child' is now over 25 years old, with a further 27% where the 'child' is aged between 20 and 25 years old".

Although of the £3.7 billion debt only £0.6 billion is deemed collectable, even achieving this considered to be "highly unlikely" by the DWP given it is "based on achieving 100% compliance in the cases where we can recover". Further, the DWP noted that the cost of seeking to collect the £600 million of collectable debt would be "around £1.5bn".[43]

Box 3: Child maintenance and offsetting of welfare benefits pre-2008

Until 2008, for people with care who were also in receipt of welfare benefits, child maintenance was offset against those welfare benefits. This meant that they were no better off if the non-resident parent paid child maintenance as every pound of maintenance reduced their benefits by a pound, but it did mean that the Government's welfare benefit bill was reduced.

In such cases, if the non-resident parent did not meet their child maintenance obligations, welfare benefits were paid to the person with care to prevent hardship, and the non-resident parent accumulated arrears payable to the Government.

From 2008, this position was changed so that child maintenance was paid in addition to welfare benefits, meaning that arrears were only payable to the person with care in all cases.

In terms of current powers to write off arrears, the DWP noted that since 2012:

> Arrears on all schemes can be written off if one of the following criteria applies and the caseworker is satisfied that it would be unfair or otherwise inappropriate to enforce collection of the arrears:
>
> - The receiving parent (or child in Scotland, who can apply for maintenance in their own right) has requested that they no longer wish the arrears to be collected.
> - The receiving parent (or child in Scotland) has died.
> - The paying parent died before 25 January 2010, or there is no further action that can be taken to recover arrears from their estate.
> - We have previously advised the paying parent that we would never take any further action to collect the arrears, for example we have written to the paying parent and told them their debt no longer exists.
> - The arrears relate to liability for child support maintenance for any period in respect of which an interim maintenance assessment was in force between 5 April 1993 and 18 April 1995.[44]

[43] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, pp10–11, para 31 and p19, paras 81, 83 and 84

[44] As above, pp20–21, para 91

Nevertheless, the DWP noted that "in 2015/16 we only wrote off around £30m of arrears" and contended that "these powers alone are not sufficient to enable us to effectively tackle the historic debt".[45]

The DWP also noted the ongoing costs of managing the arrears:

- around £30 million per annum to maintain the arrears on the existing CSA computer system – "an annual cost potentially lasting for decades"; or
- around £230 million to transfer the cases to the current CMS IT systems.

The DWP added that "we have explored over a number of years our options for dealing with CSA arrears. This has included exhausting enforcement action on a number of cases, testing innovative ways to address the debt such as the part payment trial and using private sector debt collection agencies".

Given the above, and with the final closure of legacy CSA cases with ongoing maintenance liabilities approaching, the DWP proposed the following:

- for debt owed to people with care which is an arrears-only case and meets the other criteria,[46] the person with care will be asked if they wish the debt to be collected (i.e. "to make representations"); the debt will be written off if:
  - they do not wish it to be collected;
  - they do not respond within 60 days of the first letter;
  - the person with care does wish the debt to be collected but the case is deemed as having little chance of successful collection;
  - the debt owed is under £500 (if the case if under ten years old) or under £1,000 (if the case if over ten or more years old), given that "it costs on average between £500 and £1000 to investigate and take action on these cases";
- for debt owed to the Government, this will all be written off in full.[47]

The DWP proposed that where the person with care did wish for the debt to be collected and that this was "deemed feasible", the case would transfer to the CMS IT system. However, in terms of enforcement measures, only the lower end of the spectrum would be employed in all but "exceptional cases":

> If, after all of the checks have been completed, the case is determined to have a reasonable chance of collection, the arrears balance would be checked, and the case moved to the CMS system where collection activity would commence. Potential collection activities may include:
>
> - Deduction from benefit (including extended powers proposed in this consultation);
> - Deduction from earnings;

[45] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p21, para 92

[46] The criteria in full are that the case must be: an arrears-only case (no on-going liability); non-paying (have had no payment received within the previous three months at the time of selection); and the debt must have accumulated under the CSA (although the information about the debt may have been moved to the CMS system as part of the closure of a CSA case). [Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p22, para 99]

[47] Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p8, paras 19–24, p25, para 117

- Regular or lump sum deduction order [from bank and building society accounts] (including extended powers proposed in this consultation); and
- In exceptional cases, we may use court based enforcement powers such as liability order. Decisions would take into account value for money for the taxpayer.[48]

The DWP said that this would not be an indefinite process: "where we exhaust these collection activities, remaining debt would be written off and the clients notified of this".[49]

In the consultation response, the DWP sought to clarify what the "exceptional cases" – where court-based action would be taken to recover debt – would look like:

> Some of the factors that caseworkers will consider when deciding whether to progress cases through our court based enforcement powers is the amount of debt and the likelihood of recovery. Decisions would also take into account value for money for the taxpayer. For example if we have evidence that suggests the paying parent owns a property on which we can get a charging order or take order for sale action on, the likelihood is that the case will be progressed through our court based enforcement powers.[50]

In terms of the likely success of this approach, while "a minimum of £2.5bn is owed to parents (approximately 970,000 cases)", the DWP estimated that "there are an estimated 475,000 cases (worth £2.2bn of debt) where we would offer the receiving parent the chance to make representations". Of these, "work would be done to attempt to collect on around 90,000 cases that have around £415 million debt on them" – the DWP did not estimate the likely success rate of collecting these arrears – while "around £1.9bn of debt would be written off for clients who do not progress to the collection stage".[51]

In the consultation response, the DWP confirmed that it would adopt the approach set out in the consultation document, albeit changing the point at which reminder letters are sent to people with care about making representations from 30 days after the first letter to 21 days.[52]

While letters to people with care informing them that the debt owed to them had been written off would include "a statement of sincere regret", the DWP said that: "we do not however think it is appropriate to offer compensation for uncollected maintenance. Responsibility for unpaid maintenance sits with paying parents who have failed to meet their responsibilities for their children".[53]

48 Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, p23, para 111
49 As above, p23, para 112
50 Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, p23, para 105
51 Department for Work and Pensions, Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation, December 2017, pp10–11, para 31, pp23–24, paras 113 and 115
52 Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, p24, para 108
53 As above, p24, para 111

7. Implementation dates

The DWP stated in the consultation response that it would bring the proposed changes into force through secondary legislation (e.g. regulations, commencement orders as appropriate):

- "during autumn 2018" for:
  - notional income from assets held by a paying parent;
  - deductions from joint and business accounts;
  - removal of passports;
  - extension of write-off powers;
- "a later date" for:
  - deduction from benefits.[54]

On the same day that the Government response to the consultation was published, the Parliamentary Under Secretary of State for Family Support, Housing and Child Maintenance, Justin Tomlinson, told the House in a written ministerial statement that he would "lay the draft Child Support (Miscellaneous amendment) Regulations 2018 detailed in The Child Maintenance Compliance and Arrears Strategy consultation response" later that day for those measures to be introduced during autumn 2018.

The Minister confirmed that the draft regulations would be subject to the affirmative procedure, meaning that they would be debated in both Houses before being made.[55]

The draft regulations are available at:

http://www.legislation.gov.uk/ukdsi/2018/9780111171264/contents

[54] Department for Work and Pensions, The Child Maintenance Compliance and Arrears Strategy – Government response to the consultation, 12 July 2018, p25, para 118
[55] HCWS846 12 July 2018

8. Commentary on the new measures

Gingerbread, a single parent charity which has produced substantial analysis on various elements of the statutory child maintenance scheme, said following the publication of the Government's response in July 2018 that it was "pleased to see the government listen to the concerns raised by Gingerbread and start to tackle the longstanding problems of child maintenance avoidance and non-payment", adding:

> For too long, the CMS has stuck rigidly to a 'one size fits all' approach that failed to recognise more complex finances, leaving loopholes that allow parents to avoid paying what they can afford and mean many children go without the maintenance they deserve. The U-turn announced today shows the concerns raised by the many parents who campaigned with Gingerbread are finally being heard.

However, Gingerbread had a number of criticisms of the Government's plans:

> "Disappointingly, when it comes to unpaid maintenance, there still seems little that is strategic in the DWP's plans. Today's announcement sets out some tough new powers, but we know these are unlikely to be used. The government also fails to outline how it will ensure prompt enforcement through its more commonly used existing powers. In the meantime, the government continues to add insult to injury by charging parents to use the CMS's collection service when their child's other parent doesn't comply.
>
> "Buried in the consultation, the DWP confirms it expects to write off nearly £2 billion in CSA arrears owed to parents. Apart from the injustice this represents for parents, it is a sober reminder that the DWP must up its game to avoid history repeating itself in the CMS – particularly when arrears are already rising in the new service.
>
> "The DWP's new strategy for compliance and arrears management was an opportunity to show how it intends to learn from the huge failings under the CSA. There are welcome steps forward, but not enough – offering no real fresh start for parents already struggling to get the maintenance owed to their children."[56]

[56] Gingerbread, Government U-turn on child maintenance avoidance is "welcome but not enough", webpage, 12 July 2018

Other Library briefings on child maintenance

- Child maintenance: how it is calculated under the 2012 CMS scheme (UK excluding NI)
- Child maintenance: inclusion of earnings from "special occupations" in the 2012 CMS scheme
- Child maintenance: variations, including "unearned income" rules (UK excluding NI)
- Child maintenance: enforcing payment of arrears (UK excluding NI)
- Child maintenance: cases when someone lives overseas (England & Wales)
- Child maintenance: fees (UK excluding NI)

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