Annex B

Individual Responses Received to Consultation on Maintenance Calculation Regulations 2012

1. Andrew Williams
Email address redacted

To whom it may concern,

Firstly I would like to say that the consultation period was announced on 1st December 2011. To whom was it announced? I am a customer of the CSA and nobody wrote to inform me about it so how do you expect me to comment on it. I have only heard about this through my local MP who has been outstanding in her assistance with my case. I feel that should you want an accurate response then there should have been the common decency to send out a letter to everyone who pays child support.

It strikes me that the whole process is about a cost cutting exercise at the CSA. The proposal that the agency will make an assessment and unless your income changes by 25% it will remain in place for a whole year is unworkable. To me it is about the fact that the CSA is so incompetent that it can allow itself a plus or minus 25% differential in salary so that it does not have to reassess you again thus saving time and money. How can a department be so incompetent to propose such a large range before it will look at your case again. All that will achieve is that if I was to apply for a new job that had a 20% differential in my current salary,(lower paid) then I would have to claim jobseekers allowance between the time I finished my old job and started the new one. That would then trigger the 25% difference from being paid jobseekers allowance and when I start my new employment with my new salary.

It also appears to me that it has not been taken into account that most people especially in these difficult times are working many hours overtime to make ends meet and this reflects in their salary. What would happen if that overtime opportunity was to be removed. My salary may drop by 20% or more and yet the proposal is saying that you will still pay your assessment at the “snap shot in time” when you were assessed. I do not think that this is a fair proposal at all. I am like most fathers and more than happy to pay for my sons upkeep but am not happy with the system. I am not happy that assessments are based on gross salary and not net salary. For every £100 I earn, I pay a minimum 25% tax and national insurance and then a further 15% CSA contributions leaving me with only 60% of my gross salary. In the current circumstances peoples salaries are dropping as companies try not to make their employees redundant. If my salary drops by any amount at all and I continue to pay my initial assessment amount, then I no longer pay 15% of my salary as it would

have increased to possibly 20% or more. For example, If I earn £1000 a month then I would have to pay £150 CSA contributions based on having one child. If my salary dropped to £800 a month (20%), by the current proposals I would still pay £150 a month. This equates to 18.75% of salary when I should be paying £120 a month (15%). This means that if I lose a proportion of my income then I will be punished for it by the CSA as well as they cannot be bothered to re-assess me. If I had three children or more then that would significantly increase the percentage of maintenance to 31.25% based on the example above when I should pay 25%.

A fairer proposal would be to take the amount from PAYE employees from source and calculate what is owed each month in the same way that tax is calculated. That way you only pay based on what you have earned, where is the problem with that ?

I would appreciate a response from you with regards to my input so that I can be made aware of your thoughts.

Many thanks

Andrew Williams

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2. Anna Rowe
Email address redacted

I have a question with regards to the table relating to the relevant other children and the proposed change to reduce the percentage to bring them in line with the children that the non-resident parent is ACTUALLY responsible for in contrast to them living in the same house and having their own non-resident parent paying for them already.

The table states that 2003 act gave 15% reduction
The table states that 2008 act gives 12% reduction
The table states that the 2012 act will reduce this to 11%

I currently have this 'circumstance' attached to my claim, and the 2008 act gives 15% for 1, 20% for 2 and 25% for three-exactly the same as the amount paid to the parent with care.

Why does it state differently?

Much thanks

Anna Rowe

Anna Rowe

To: caxtonhouse.consultation@childmaintenance.gsi.gov.uk
Subject: Consultation on maintenance
Date: Mon, 9 Jan 2012 13:33:43 +0000

I have a question regarding the unearned income section.

Please will you advise if it will still be the case as is now.

Ex partner jointly owns another property with his new partner. As the non-resident he now has an invesment/asset/beneficial interest (in my case a second property) which is the house I live in with our children and I pay all the mortgage.

He has a joint interest in this property (the house I live in) which gives him assets from equity of £66k.

At the current rate of 8% this gives him unearned income of in excess of £5k per year on his share.

Will this still be the case? And if not why not?

Thank you

Anna Rowe

Do you agree with the proposal to remove students from the nil rate cases and calculate liability on their gross weekly income?

Yes

Is making an assumption about shared care the right approach to avoid some of the current practical difficulties regarding shared care calculations?

Assumptions should never be made on something of this nature.

Do you think the periodic income check adds value to the review process?

Yes

What do you think of the proposal to remove assets and lifestyle inconsistent with declared income grounds given the new approach to unearned income?

This is a poor proposal as many NRP will attempt to cover finances this way as a means to withhold monies from their children mainly out of spite to the P

with Care, as a fair distribution of finances will not have been found as there is NO legal support through the courts for unmarried parents.

What are your views on the new grounds which aim to make the scheme easier to navigate, understand and administer and to ensure that where the non-resident parent has significant unearned income that this can be taken into account?

Q4 and Q5, should run alongside for evidence collection to ensure that the NRP is declaring all income, earned or otherwise. PAYE Wages often differ (with the new Profit Related Pay incentives) that for the purpose of CSA calculations can get lost and the children miss out, also lost is income from savings and investments which the Parent with care has no way of knowing about. So all evidence to support claims should be investigated. In a court of law, this would be done as routine, but the government is refusing to allow support for unmarried parents in the legal system. Therefore, the NRP with help of a financial adviser can disperse or hide capital to get out of paying. If the government refuses to legally help through court to ensure that unmarried parents are treated fairly, then the CSA is the only 'authority' in place to assist. So, money and time must be put aside to thoroughly without let up, investigate every avenue of finances to make this happen out of court. If the Government legislates that legal support is available for cohabiting parents, then less emphasis can be put on the CSA, who can deal with more simple cases.

Do you agree that the percentage rates applied for relevant other children should be reduced to produce a more equal treatment of children in first and second families?

This is a **SMALL** step in the right direction; however it does not go far enough to ensure that ALL children are treated fairly. It **MUST** be part of the process to ascertain if the children in household are already in receipt of maintenance from their own 'responsible' NRP.
If they are not then this Change of circumstance is a way of ensuring that all children have an 'allocation' of maintenance. **BUT** in cases where they are already in receipt of maintenance, this gives a disproportionate allowance to those children against the qualifying children.
In a system which in the main is in place to protect children from unmarried parents, and as they have had to come to the CSA as a last resort to implement a regular maintenance for their children, would ultimately suggest that there is discord between the separated parents already. So, to allow the NRP to then use this change of circumstance to reduce the payments they make to their own children will only add fuel to the fire and in a proposal which claims that it wants to support broken families to have private agreements in a more amicable fashion, is doing nothing here that is fair or party to this way of thinking. Most mothers would not want to see ANY children go without, **BUT** in instances where the children in household are already getting maintenance,

this shows that the NRP is abusing this current legislation as a way to 'hurt, punish, make things difficult for' the P with Care.
A more fair way of solving this would be to ascertain if the children in household are receiving Maintenance payments already. If they are, this could be balanced against the percentage that could be allocated to them from the 'non-responsible' NRP, to give a fair amount for ALL children.
EG- As in my case, the 2 children in household are already in receipt of £600 per month under a private agreement from their own NRP. My children's father is allowed to allocate 20% of his wage to them at £925 per month. My children then receive 20% of his reduced wage-at £770 per month. There fore 'despite your term of this being a 'notional payment', those 2 children in household are allocated £1525 against my 2 children's £770. The 'difference' here if BOTH sets of children were allocated the Same 20% is £925-£600, so £325. This amount could be subtracted from the 'non-responsible NRP' wages, not a full 20%. Of course this may work the other way where the Children in household are in receipt of more that the 'notional' amount from the non-responsible NRP. So they should then not get any allocation from the CSA.
The current system can under NO circumstance be written as FAIR to all children.

Do you agree with the proposal to increase the flat rate?
£5 and £7 seems a very small amount to show responsibility for your child.

Do you agree with the proposal to compel non-resident parents who have a maintenance liability based on current income to report further upward changes?

Absolutely.

What do you think of the proposal only to make this compulsion apply to employed non-resident parents (i.e. not parents who are self-employed or who have an element of unearned income)?

It should apply to ALL earning NRP's. They are all responsible for their children.

Do you think that the amounts a Default Maintenance Decision awards should be increased with inflation?

Yes.

Statistics

46. Of the 2003 scheme, 95 per cent of parents with care are female and equally 95 per cent of non-resident parents are male.

Table 2: Gender of client by client role

Customer Role	Female	Male
non-resident parent	**5%**	**95%**
parent with care	**95%**	**5%**

Source: Child Support Agency, Quarterly summary of statistics (Dec. 2010)

Point 35: Reductions for shared care.
This should be reviewed for shared care of less than 2 days per week. It is very unlikely that parents who have their children for 1 or even 2 days a week will supply those children with anything other than food for the period of time they are there. This means that the parent with care will suffer extra financial burden of supplying those children with all other day to day costs that are incurred, at a reduced rate of maintenance. As this is 95% of the time the mother who is parent with care, the women are discriminated against and will suffer financially.

Point 37.3: To add a second level within the basic rate for those non-resident parents with weekly income in excess of £800.

I am led to believe that you intent to have a **reduced** rate for wages over £800 per week?

12%, 15% and 19% for the first £800… with lower percentages of 9 % for one child; 12% for two, and 15% for three or more children applied to the remainder.

The rate should be increased not decreased for income over £800 per week! People who have an income that generates on a monthly basis over £800 per week are on a VERY good package for their employment. They may be paying 40% tax on PART of their income, but this level of employment means they will also be inline for bonuses, larger employer pension contributions, health benefits inclusive, company cars or allowances and generally a lot of repaid expenses which the normal wage earner has to support themselves.

The benefits of having the kind of employment that does this (against paying a small amount of higher level tax and still getting this amount of wage) far outweighs the fairness of having a decrease for income above that amount. This is ludicrous, and again, is discriminating against woman who are the main carers and not in the position to seek this kind of employment.

Point 45: The only adjustment that will be made to historic or current income (in addition to converting it to a weekly amount) will be to deduct amounts paid as contributions to an approved occupational or personal pension scheme. We considered whether to have a limit on the level of contributions that should be offset but a single limit may not fairly reflect the range of circumstances that parents may be in. For example, it may be more reasonable for non-resident parents with fewer remaining working years in

which to add to their pension pot to pay more contributions than someone who is much younger. Also, on a practical note, where the contributions have been offset against earnings by an employer, the information the Commission receives from HMRC will not include any details of those contributions. Our preference is to retain the provision within the variations scheme for a parent with care who considers the non-resident parent's contributions to be excessive-how would they know?

Again you are showing discrimination against women.
Your statistics show 95% of women are the parents with care.
Also, no legislative support for unmarried parents means that there is no court process to divide assets such as pensions which will likely have been accrued on the fathers employment, possibly a small pension on part time work of the mother. Married couples would have a judge adjudicate and divide the assets to ensure that the mother and her children are not left unsupported or unfairly treated in the separation. You are now here, favoring the father (95% of the time) to let them continue to accrue large pensions and possibly use this to disperse income to a certain degree. This will long term leave the country with 95% of women (mothers) at a pensionable age in a precarious position. You are not allowing the women to do the same as the men.

Also look at purchasing capital cost items.
Parents with amicable private arrangements are likely to be happy to discuss the extra costs incurred from growing children. Child maintenance (from CSA) is in place for day to day costs. The commission is being used because there is discord between the parents. Therefore it is very unlikely that the NRP will be willing to 'donate' extra finances to help with costs of larger and unexpected expenses such as bikes, school trips, secondary school uniforms, birthday parties etc…..again 95% of the time it is the mothers who are left to burden the cost.

Pregnancy and maternity

Point 74: This particular characteristic would not be impacted by our proposed changes since their involvement with the child maintenance scheme would only occur when the child is born and is deemed a qualifying child. Likewise, we do not believe any disproportionate impact on parents who are pregnant and have a qualifying child for whom a maintenance arrangement is in place.

I would like to ask how this **cannot** have an impact on pregnant women or those on maternity.
Those who are working will take maternity leave usually before the baby is born (dependant on circumstance) on reduced pay. Therefore they have increased burden on their finances. The same throughout maternity leave for day to day costs and this is not inclusive of the extra financial costs incurred for Capital items when a baby is born!

The CSA should have an increased percentage for pregnant mothers and those with children under the age of 1, so that the NRP is fully responsible for the financial burden before and after the baby is born.

Point 74 is a disgrace written in black and white.

ANNA ROWE

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3. Ben Sutcliffe
Email address and Telephone number redacted

Good afternoon,

My Name is Ben Sutcliffe and I've had a terrible time trying to protect my children and provide for them on a limited income, but, it has been suggested that I write to you about the revisions of the CSA. I am possibly one of a few that are having a total nightmare trying to provide for my children with one arm tied behind my back by the way the legistration is written.

I have now written twice to Mrs Miller in hope and the letters are re-forward to Kip Collins in Scotland to sort. The problem is not with the staff at the CSA but within the policy enforcement wording of considering awarding where children sleep and not taking into consideration where they have a good evening meal and bath!.

Because my ex wife is and has been seeing a registered Pedifile (court proven 2011 brought by social services) I have done everything I can to have the children awarded to me, but currently they come to me 5 nights a week for meals and two nights a week for sleeping. Social services visit them the 2 days a week they are with their mother! This means despite I spend over £50 per week feeding, bathing and paying many of the school and the local club actitives like football and rugby subs etc, the policy considers I don't contribute to my children's welfare. My step daughter stays with me three weekends out of four. Every weekend she manages to find some way of needing £15! She often comes home from school with shoes with holes in!

Please, many of the assessment officers I have spoken to say the policy is not fair and does not take into account a small proportion of parents who are like myself. Is there a way this could be addressed urgently.

I have attached the letter that I sent to Mrs Miller below.

Thankyou
Ben Sutcliffe

Dear Mrs Miller

Good morning,

Please could you look at how the csa measure me! I'm not a bad father in fact I have them loads and feed them 5 nights a week but they don't look at that!.....

Since 2008 after what can only be described as the most horrific discovery of my now ex-wife's deceptions including claiming disability, mobility, cares allowance, and having an affair with her uncle… I was forced out of the matrimonial home by knife point at 3am in the morning. I had known for some time my ex-wife was up to no good but over the coming months the reality and magnitude of her actions is quite unbelievable.

Firstly she had been seeing someone for some time, it turned out to be her uncle, but worse than that he is a convicted Pedifile. (I'll come to that later) I didn't stop having my two boys then 5 and 7 and my step daughter then 12 most days, friends sorted me out with a small flat where we crammed ourselves in every weekend and a couple of nights a week too! I slept on the floor! Thankfully within a few months able to get better and more suitable accommodation that provided for my 3 children on a very regular basis. Keeping up all their after school and weekend activities including swimming , rugby, football etc..

I tried to protect my children right from the outset from the constant contact my ex wife was allowing and despite numerous telephone calls and letters to social services who replied with letters stating they would not get involved with matrimonial disputes.

In early January I had a letter asking me to repay cares allowance? I had very long discussions with them and the department found the moneys I was alleged to receive were infact paid directly into her bank account!

I then had letters from the CSA... I explained how I had my children 3 day a week from school took them to their rugby , football or swimming, paid all the subs for each activity bought the suitable kit, and provide a good meal prior to retuning them showered to their mother. I also had them every weekend at the start too. The current assessment is where children stay overnight and my ex wife is very aware of this , in fact when we went to court she insisted on an order where over the year I have them for 150-155 nights a year (I wanted them more!) , this just means I fall short of the measurement in place not to pay.

In April 2009 a social worker had to call to the house after an incident where the children were presented to me with no shoes and just the cloths they stood in for a week's Easter holiday! By chance the social worker was a chap called Gareth Lock, if only all social workers were like this guy! He was an agency worker who recognised the uncle for who he was….. and insisted on removal of the children unstill my Ex-wife signed paper work to confirm the children would not be incompact with this uncle… It took her 4 days !

Thankfully, Neath Port Talbot social services are now protection my children by visits 5 day a week, to my ex –wife's home. The whole case is currently in front of a District judge brought by Neath Port Talbot social services.

Why am I telling you this?

Well I'm still getting letters from the csa, at one point they transferred my case and lost all the paperwork! I've had extremely polite case workers and some very rude ones too! The last worker who made my assessment could wait and made an assessment without all the facts or paperwork that he also confirmed they must have been lost in transferring the paperwork!! According to CAB and my solicitor I really don't fit your boxes and most case workers have said there are several people like myself who feed, wash , cloth, replace shoes , pay club subs etc and provide directly to the children constantly and because of the way the system is set up there are plenty of partner who play the system like this. I fully understand that there needs to be a fair system in place and no matter what is laid down it will always be played by someone. By could there not be a way of getting some common sense supplied where in clear cases like mine that its waived.? Please.

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4. Bianca Tobin
Email address and Telephone number redacted

To whom it may concern

I am emailing you with the regards to the proposed changes of the child support agency. Attached are letters I have written to Mr Ian Duncan Smith. They will provide an outline of my individual case and hopefully show you what dire support and poor service i have recieved. I am currently awaiting responses from my local mp, Maria Miller and Julian Parnell (Manager of the complaints resolution team in Plymouth) but would like to vent my opinions to yourselves for the proposed alterations.

The proposed regulations include:

- *On line self service to enable users to see a history and schedule of their payments, to make payments and to view the progress of their application*
- *Annual review of maintenance assessments, but only if either parent can show that an assessment would be 25% different than a historic figure*
- *Payments to be based on the non resident parent's latest tax year gross income, sourced directly from HM Revenue & Customs*
- *New rules in relation to "second families" to reduce the gap between financial support for children living apart from non-resident parents, and for children of "second families" living with non-resident parents*

- *Increases in the "flat rate" of child maintenance deductions from state benefits*
- *For those who share the care of their children exactly equally, parents will no longer be required to pay child maintenance through the scheme*
- *Lower percentage rates to reflect the move to use gross income, rather than net income. The rates proposed are 12% for one child, 16% for two children and 19% for three of more children (currently 15%, 20% and 25%)*

None of these consider non compliant parents, what about the 400,000 live cases within the agency that do not recieve payments? How will this help the children? Why are there no plans to strengthen the criminal compliance team? How about stricter, sturdier punishment to boost the sincerity and reputation of the Child Support Agency? Why not involve other government agencies, for example the police, in the enforcement of maintenance? Why is the Child Support Agency not enshrined law? Who chooses the protocol that CSA adhere too? How many of them have raised children through the agency? Why is there staffing cutbacks for the past two years yet the agencies demand is higher than ever? What about if the Child Benifit and Maintenance Agencys united? Families recieve Child Benifit, Seperated familes recieve child maintenace, surely that would ease the pressure and funds from the average taxpayer?

I ask many of these questions in my previous letter but to no prevail. i sincerly hope you can find some answers for me.

Many Thanks

Miss Bianca Tobin

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5. Charles Adams
Email address redacted

Dear Team

Thanks loads for the prompt response.

I am sorry to hear current legislation is biased against parents who believe they have a duty at all times to their children no matter what age. Please regard this as a complaint/comment within the consultation if I am allowed to comment.

This affects a parent of either gender. If a NRP cares for their older children by housing them that parent will be liable to pay a PWC of another (relevant child) a sum of money based on the capital value of the home provided to the (older) child of his/hers/theirs at a capital value times an unrealistic 8%.

However a return to the old scheme of income basing is best I agree.

Please can you tell me a date the return to rental income basing takes effect?

Yours sincerely
Charles Adams

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6. Daryl Dickson
Email address redacted

Dear Sir/Madam,

I am writing in response to the above consultation.

I am a non resident parent, currently making payments through the CSA.

After reading the consultation document I would like to make the following comments:

1. I am broadly in favour of the changes proposed.

2. I have grave concerns regarding the % calculations used however, to derive payment liability from Gross Salary.

I am a higher rate taxpayer, and my current weekly CSA payment calculates to be £95 per week.
Under the proposed new scheme, my payment would be £129 per week.
That is an increase of 35.8%.
I consider myself typical, and I find it totally unreasonable to be expected to pay such a substantial increase.

I would ask that the calculations for % deduction from Gross income be reviewed to provide parity with current NRP payments.

Yours sincerely,

Daryl Dickson

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7. David Burrows

David Burrows
Solicitor advocate
Response to

CONSULTATION ON CHILD SUPPORT AMMENDMENT REGULATIONS: December 2011

Introduction: a plea for simplification

1 Paragraph 30 of the consultation paper unwittingly summarises the absurdity of the child support scheme and of yet another consultation exercise upon it. It is part only of a series of amendments (after the 2008 Act) which themselves contribute to part of the fourth major adjustment to this scheme in its twenty-year life. (The massive legislation for divorce reform and distribution of finance on family breakdown in 1971/3, has had only two sets of relatively major amendment: in 1984 and with pension adjustment around 2000 in a forty year life; and the 1969/70 scheme remains intact.)

2 Para 30 says it is 'committed to improving the child maintenance system… whilst delivering value (*sic*) for money to the tax-payer'. It is assumed that it still costs around £2 (or thereabouts) to raise £1 of child support, so the cost of this massively unpopular piece of legislation – now set afloat from the demands of welfare benefits (Child Support Act 1991 s 6 is now repealed) – is still substantial.

3 And here is a consultation paper with 125 paragraphs of text to deal with only a part of the scheme: assessment of a person's income. Presumably its unfortunate draftsperson cannot see the futility of the detail which must then be reduced into another two sets of regulations. I mention clarity of drafting below.

A 'value for money' scheme

4 Hall-marks of an effective scheme would include:

- Assessment based on HMRC figures (as is now proposed): the present percentages are adequate, given that the previous simpler figures do not entirely work. Adjustment, as now, would be made for lower and nil income earners
- An appeal to a judge (can be a First-tier Tribunal judge or a county court district judge) who exercises more or less unrestricted discretion as to the final award (with guide-lines similar to those in Children Act 1989 Sch 1 para 2)
- This would apply for children whether in the jurisdiction or not; and whilst in tertiary education

- The judge would have discretion to define the date from which payment ran (ie back-dating: more or less impossible now)

5 By this means a vast array of secondary (and some primary) legislation dealing with calculation, supersession and review decision-making, and appeals would go. Much of the content of this consultation paper (and the expense to the tax-payer of its drafting and production) would disappear.

6 Introduction of a scheme of this simplicity would improve the lives of many children and of their parents. It would take administrative and political courage, which are not qualities which have been conspicuous amongst politicians who have dealt with the scheme up to now.

7 Since such manifest simplicity and fairness based on a measure of judicial discretion (confined by formula rates: a feature missing from the pre-1993 legislation), is not likely to commend itself to anyone, a brief response to the consultation paper follows.

Plea for clarity

8 The drafting of CSA 1991, and especially the legislation under it, is weighted down with obscure references, extensive amendment and needless complexity. It must be only a matter of time before it is said that a fair trial – where only the tribunal judge, just, understands the legislation – is impossible. Few lay people know what the basic terminology means ('supersession', effective dates, referral and calculation appeals etc): where is the fairness in such a scheme?

9 A plea is therefore entered here for a new approach to drafting. All legislation – primary and delegated – should, please, be capable of being readily understood by any averagely intelligent layperson.

Children concerned

10 The consultation paper defines three sets of children:

(1) Qualifying children
(2) Relevant other children
(3) Children part of a family-based arrangement (which I take to be separate from the NRP, but not QCs)

11 In fact there are two other categories of children who remain dependant and should not be ignored, please:

(1) Those (whether qualifying children or part of a family-based arrangement) who are outside the jurisdiction; and

(2) Children who are still in further education, though passed their 20th birthday.

12 I am afraid that, as abundant anecdotal evidence will show, parents who split residence/care of their children equally (see para 69) may succeed in that; but they may well remain at odds over financial provision. There is no reason why the amount of child support maintenance should not be apportioned according to what their respective incomes bear to each other and the balance be paid by the greater to the lesser earner. If relevant other children are involved then the incomes come down in the same way as with a relevant other child calculation.

Variation directions

13 The life-style inconsistent figure can go; and assets – if to stay – should have a fairer basis for calculation of income, and assets owned (or their value) at the time of a clean-break settlement be ignored. A wholly discretionary award in this aspect (perhaps an amendment around the area of CSA 1991 s 8(6)-(8)) would cover this in a much simpler and a cost-effective way (spare a though for value to the tax-payer).

Effective dates of revisions and supersessions

14 The complex and unfair provisions of the regulations in relation to effective dates (staring dates) of revisions and supersessions must be altered, so that the decision maker can fix a date which takes account of all circumstances not just the pages of formulaic regulations. I appreciate that this is in part due to the primary legislation; but that was designed for a welfare benefits system. Family law and a child support scheme is altogether not the same.

15 The effective date defined by the decision maker would be subject to appeal.

Arrears decisions

16 The only way to challenge a decision on arrears, and (I think) on voluntary payments is by judicial review. (It may be possible to challenge arrears if a liability order is applied for; but if it is not applied for even this glimmer of challenge to CMEC figures goes). This is wasteful. The challenge could go to the appeal judge, with the appeal process simplified as much as possible for the purpose.

Comment

17 Subject to these points I have no comment on the consultation paper. I have sought to keep my remarks to areas more or less covered by delegated legislation, with one or two asides (I accept).

18 I stress the need for clarity in drafting if a challenge to the legitimacy of the new and amendment regulations is to be avoided.

David Burrows
20 February 2012
dbfamilylaw@gmail.com

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8. David White
Email Address redacted

Dear CSA,

This is to register my personal feedback on the CSA consultation document.

I am a non-resident parent, paying regular amounts following a CSA judgment. I used to share care, having my 2 children to stay for 2 nights every other weekend. Since I ex moved away with the children I am more limited by the distances involved and can only see them in the holidays, and have to pay more for that limitation. I travel a lot, necessitating a company car, but my employer doesn't give me a company car, rather pays a taxable car allowance.

To answer your formal questions:
Q1 – NO. I don't think that students should be made to work in order to support themselves and their children whilst studying – it's usually to mitigate tuition fees, etc., and to increase earnings prospects in the future. An assumption on earnings would dis-incent people from studying as parents: what is already a struggle on limited income would become worse.
Q2 – YES – it's sometimes the only practical way. Many parents struggle to agree contact arrangements, so you can only go on the information available.
I would also contend that if a parent changes their circumstances, they should bear the consequences. That means if the main carer decides to move away, and so limits the ability to share care, the non-resident parent should not be penalised with a removal of the shared care discount.
Q3 – YES – Especially for those like me who are on variable income – My recommendation would be an annual check would be sufficient.
Q4 – Agree – it's a contentious issue, with the rider that if the resident parents circumstances substantially change the new way seems simpler.
Q5 – Using HMRC data seems a sensible approach, but gross taxable income is still a very blunt instrument which seems to be designed to wrestle income with least effort from the CSA from the non-resident parent. There should also be room for mitigation going the other way. (ie reduce non-

resident's contribution if they can prove a substantial lifestyle of the resident carer), otherwise it's a one-way street, and the tax-paying non-resident is disadvantaged. I think the rates are also disproportionate. That calculation from my own circumstances would result in a net increase of over 50%.
Q6 – No.
Q7 – Yes
Q8 – Yes
Q9 – Sensible, since incomes which vary will be hard to track and enforce. 25% gives a "reasonable" stability & ability to plan.
Q10 – Yes, if income information is not available.

Other issues:
Company cars – if you receive a company car, it doesn't show up on the net take-home pay calculations, whereas receiving a car allowance does. So a non-resident employee receives, say, £400 a month gross towards the costs of running a car. The HMRC takes 40% of that for a top-rate taxpayer, leaving £240 net. The CSA then takes an additional 20% leaving £192.
A non-resident employee receives a company car worth, say £19,200 gross. This is amortised over the period of the lease (say 4 years typically), so is treated as taxable income on £400 per month gross, which is typically put into the tax code, so it doesn't show up as take-home pay in the current calculations. So the effective take-home pay is calculated less that taxable amount, and therefore the difference between the two is effectively doubled, ie £480 per month. This is wholly iniquitous – where a worker has a legitimate business need to run a decent car ("decent" is mandated by many companies to mean relatively new, well-maintained, capable of long journeys without risk of breakdown), rather than something much cheaper, then they are doubly penalised when on an allowance, compared to someone with a paid-for company car.
My suggestion would be to include a cut-off for business travel, beyond which the car allowance is discounted from the maintenance calculations. Say, an average of 500 business miles per month.

Best Regards,
David White

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9. Edmund O'Kelly
Email address and Telephone number redacted

Dear Sirs

Consultation

Child Support [Maintenance Calculation] Regulations 2012

I wish to submit some views for your consideration as part of the consultation into the Child Maintenance proposals. I am writing as an individual.

The suggestions covered in the 2008 CSA proposals are very discriminatory against the non resident parent (NRP), usually the father.

- Why is the mothers' income not taken into account in the support of the child? Some will immediately reply it is the parent with care (usually the mother) who has to pay for the day to day costs of providing for that child; but that is precisely why the non resident makes the CSA payments to the mother, ie to spend on the upkeep of the child. I understand the welfare of the child is paramount. If the mother is earning £100k and the father is on £50k why is only the father paying for the child's upkeep. I understand the mother (PWC) has to pay for the child's upkeep, but that is why the Father pays maintenance, that's what the money is for. Likewise, if the mothers earns £100k and the Fathers earns £50k, it is wrong that only the father has to pay and the mother keeps all her money to herself. Fairness would suggest that the child is provided for by both parents and a formula should be based on both incomes. Pure discrimination. White v White should apply to these cases as well. Worse still if mother earns £150k and Father earns £150k. The maintenance paid for by the father is more than enough to meet the child's needs, but the mother keeps all her earnings to herself.

Examples: Nil staying nights in all examples

1. Assume 3 children, Mother earns £50k, Father (NRP) earns £50k

<u>Current CSA calculation</u> 25% of NRP net income = £8892

Mother keeps £50k gross, Father has £41.1k less tax, less pension

<u>New CSA calculation</u>: 19% (15% above £800/w) of NRP gross = £9164 NRP pays mother

Mother keeps £50k gross, Father has £40.8k less tax, less pension

2. Assume 3 children, Mother earns £100k, Father (NRP) earns £50k

Current CSA calculation 25% of NRP net income = £8892

Mother keeps £100k gross, Father has £41.1k less tax, less pension

New CSA calculation: 19% (15% above £800/w) of NRP gross = £9164 NRP pays mother

Mother keeps £100k gross, Father has £40.8k less, tax, less pension

3. Assume 3 children, Mother earns £150k, Father (NRP) earns £150k

Current CSA calculation 25% of NRP net income = £22.65k

Mother keeps £150k gross, Father has £127.35k less tax, less pension

New CSA calculation: 19% (15% above £800/w) of NRP gross = £24.2k NRP pays mother

Mother keeps £150k gross, Father has £125.8k less tax, less pension

The above seems grossly unfair to fathers (especially example 2), particularly when mothers are high earning mothers. This is also discriminatory against fathers if he has assets greater than £65k whilst no account of the mother's assets above £65k is taken into account.

 Why should the calculations be based on gross salary, taking no account of tax or pension (pension is another problem for the State as we are been asked to make our own pension provision) Allowances should be made for changes in tax rates eg the increase from 40% to 50% The 2008 formula was formulated before the tax rises came in and thus no allowances were made for the tax increases. It cannot be fair for the NRP to have a CSA assessment with no allowances made for increases in the tax rates. NRP cannot

pay money twice out of earnings the same money going to tax as well as CSA

- Furthermore allowances should be made for a normal pension provision. We are constantly being directed by the Government to make our own pension provision. How can it be fair that no allowance is made for pension provision when an older father may have to build up pension to be able to pay for the well being of the child

- Why should the age of a qualifying child be increased to 20. Many children of this age are earning an income, or on unemployment benefit – ie they have their own funding. I agree child support to continue if child is at approved tertiary education and is not earning an income.

- The judgment debt rate of 8% is wholly unrealistic for calculating child benefit on assets greater than £65000. An interest rate in line with the market should be used and variable according to market changes.

Would you please be so kind as to bring these matters up in Government discussions and consider making changes to the proposals to reflect the inclusion of the mothers income and assets.

Yours sincerely,

Edmund O'Kelly

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10. Graham Parry

Email address, home address and Telephone number redacted

Dear Sirs,
I am writing in response to the consultation on child maintenance calculations, as per the url : http://www.childmaintenance.org/en/pdf/Maintenance-Calculation-Regulations-2012-Technical-Consultation.pdf
I am writing as a father of three children and as a non-resident parent. I am writing as I am appalled and frightened of what this proposal will do to the children and families of this country. Rather than promoting families it does, via the law of unintended consequences, undermine them. Effectively what you would be doing is marrying people against their consent and making divorce available upon demand and effectively relegating the role of the father to that as a non-resident wallet. Is that what you want, because that is what

will happen? The London riots and reduction in marriage and increase in single households is a result of policies such as this. By taking conduct out of the equation you are promoting the problem and making a perpetuating circle. A better solution would be to scrap the formula and the CSA and put the matter back to the courts, therefore providing the Judiciary with the ability to award based on fairness to all concerned and if the parents were married and promoting responsibility by both partners, not just the men. Of course the proposed legislation will reduce health and well-being. NRPs will hate the system, be disenfranchised and will abandon work and the country. They would rather live in the gutter than pay. Government intervention into the family and tax on children and men is crazy. Asking men to pay for having their children removed from them with no rights to see them or anything is completely out of order. It is very bad that all family law and maintenance proposals and legislation of the last 70 years have been anti-male and resulted in a society of single people who do not trust each other and the every sperm is sacred and potentially liable for maintenance is crazy. The result is that the children born in this country donâ?Tt understand or believe in it anymore as their fathers who were born here do not and will perpetuate and result in this countries decline yet further. At the same time, there will be a rise in Sharia law and immigration communities with their alternative forms of dispute resolution and ignorance of these crazy progressive taxes on normality (men having sex) that you propose. Prostitution will rise and violence and feral youths. Also, you pay no heed to the circumstances. Men wonâ?Tt be able to live with women as the women will be better off without them. What happened to the Conservatives pledge that families will no longer be penalised for living together. While at the same time a mother will be encouraged to chuck her man out and move a boyfriend in and get free babysitting from dad and maintenance from both plus the state. Is that what you want, because thatâ?Ts what will happen (is happening). Taxation on ejaculation is against natural law and completely crazy. Men are not the problem here, the problem is women who advise that they are on the pill when they are not, and then you make the man pay for 20 years, crazy. Also, if you make this happen you will cause bad relationships between parents who will be unable to do any deals as the man has no bargaining position. He doesnâ?Tt have right to see children or trade anything for maintenance, he just has to pay, that is evil and will cause hatred and violence from the men to their exes, their children, their government and any authoritarian, Orwellian, scumbag 1984 that introduces such evil, fascist policy. For that is what this is Fascist intervention into the family by people not knowing what harm they are doing and I resent it with every atom of my being. The intentions may be laudable, but the result will be what has happened since the introduction of the CSA and the disintegration of the state and rule of law and order as this undermines the family and makes the state Daddy and as such is an absolute disgrace and disgusting and rubbish proposal. There is no good answer. I have proposed the least worse here (promoting marriage and court and pre-nups) and you have proposed the worse, taxing men for single parents, thus self-perpetuating more single parents. An absolute disgrace. Also you undermine the trust and faith in the taxation system by effectively taking menâ?Ts right to sell their labour and spend their own money away from

them, making them impotent and castrating them. Homosexuality and foreign society will flourish and my children will suffer.

A disgrace and from a Conservative party against taxation. This is taxation of the most unsavoury and welfare state and positive discrimination making things worse type. If you do this, this country will go completely down the toilet and the last person out can turn out the lights, for the government will have lost all credibility and will be like Greece with taxation being completely discredited. Sperm taxation is not the way the future should or can be. Effectively this would be turkeys voting for Xmas and a fascist state in the fashion of Iran. We lost the war in Afghanistan because they don't want this hedonistic feminist rubbish either. I move please don't do this for the sake of the children and my children and the future of us all. Spend the money on infrastructure in the North instead, much more worthwhile. IT system wouldn't come in for anywhere near that amount either and the Inland Revenue won't want and wouldn't do this with the custs abound at the moment anyway.

Yours faithfully,

Graham Parry,

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11. Julia Eastmond

Dear Sirs

I am writing with reference to the recent consultation on proposed changes to the child maintenance calculations.

I believe there is a group which has not been taken into consideration and that further consideration needs to be provided. I will use my specific case as an illustration but I know I am not in a unique situation.

In brief

1) I have two "Qualifying Children" aged 12 and 8 (Assessed maintenance ce I currently pay is £384 per month)

2) I have one "Relevant other child" aged 3 (Assessed maintenance I currently due to receive is £10 per month)

3) I am a single full time employed parent with no partner

4) I have a court order for contact with my qualifying children which states "every other weekend and half the school holiday and that I am to collect and return my qualifying children to their home"

At present I am better off on benefits than being in full time employment. There is no incentive for me to continue in full time employment. I am certain that this situation is not intended by Government but is one that exists where a single non resident parent has a pre school age child.

As my relevant other child is of pre school age there are childcare costs(£1221 per month) in order that I can work full time, which are currently not taken into consideration within the child maintence assessment. This has a detrimental impact on my "relevant other child" and is not treating all my children fairly.

At present, after CSA payment and childcare costs I am only left with 12% of my net income to actually live on - this does not currently include housing costs.

At present the child maintenance calculation deducts 20% of the childcare element of my child tax credit. I find this extremely unfair on my relevant other child as the only reason I receive childcare element of child tax credit is to help towards the costs of registered childcare. If my relevant other child was not receiving this childcare I would not be receiving this benefit. Apparently the current Child Support agency have received many complaints in this connection, it is not a unique situation. This has a detrimental impact on my "relevant other child" as it reduces the available living costs and is not treating all my children fairly. The child tax credit, child benefit and childcare element of child tax credit should all be excluded as part of "income" on the non resident parent.

There is an assumption that the non resident parent is earning more than the parent with care - this is not always the case.

Only being left with 12% of my income to actually live on has had a detrimental impact on my ability to maintain contact with my "qualifying children" - Expenses are incurred not only in travel costs to collect and return them to their home but also the cost of feeding them when they stay, together with entertainment. The present system does not make allowance for this and I am effectively paying for my "qualifying children" twice. Once as part of the CSA payment (which is not reduced when they are with me) and once for when they are actually with me.

For non resident parents with a pre school child and in accordance with Government incentives to get people back to work - I feel the assessment should be based as a percentage of income after childcare costs, this will obviously then increase as the "relevant other child" attains school age and childcare costs reduce accordingly. This would be a much fairer system to all the children involved. Obviously non resident parents would need to prove registered childcare and childcare being undertaken by friends/family would be excluded as being non fee producing unless they were a registered childminder.

Julie Eastmond

12. Philip Lamb
Email address redacted

Sir,

Please find feedback regarding the proposals in the above referenced document.

My commentary's focus is naturally on the elements which is most applicable to my own circumstances. In particular I must concentrate on the issue of exactly equal shared care.

My concerns are of primarily the consideration for the child but also for fairness for both parents, regardless of gender.

Critically in the case of equal shared care I cannot rationalise the current situation which allows the parent who receives government assistance by way of Child Benefit to the also claim CSA maintenance from the other parent. Neither parent should be able to claim maintenance in these circumstances and furthermore, although out of scope for this proposal, the child maintenance should be split equally too. If the situation, as it currently stands, continues, then the non claiming parent is doubly disadvantaged by non receipt of government help and being required to pay maintenance despite having broadly identical overheads regarding the care of the child. it is therefore welcome that the proposals include a clause to eliminate this inequity. This clause must not be excluded or diluted.

Some guidelines as to what is acceptable evidence of shared care should also be provided which would allow parents who enter into such an agreement to ensure that the setup includes such evidence.

I must also comment that in general government policy favours the mother of the child. Whilst I accept that in most situations the mother is the primary carer, where evidence exists of shared care then this bias must be able to be challenged. For example the awarding of child benefit defaults in favour of the mother.

It must also be the case that the CSA defines certain elements of expenditure which is regarded as singularly essential to each child (eg. school uniform). This would remove some areas of potential conflict by being clearer as to what any maintenance being paid covers.

Overall I feel that this proposal is a positive step, especially in respect of shared care.

Yours faithfully
Philip Lamb

13. Rachel Haston
Email address redacted

Dear Sir/ Madam,

I write as an individual in response to the technical consultation to the above draft regulations due to close today.

Please see my responses to the questions within the document:-

Q1. Yes, absolutely; some students who are non-resident parent may earn a substantial amount out of term and indeed also be working and earning in term-term.
Q2. Yes, where there is insufficient evidence.
Q3. Yes I would say they do add value. Income can vary considerably over a year for some people.
Q4. I agree with the new approach which is more realistic and accurate way of obtaining income from unearned income.
Q5. Yes, agree. The grounds seem reasonable and cover most scenarios.
Q6. Yes.
Q7. Yes, absolutely.
Q8. Yes, strongly agree.
Q9. No, strongly disagree. Why should self-employed non-resident parents or those with increasing unearned income be treated any different to those under the employed status. They are all parents!
Q10. Yes, agree.

I am a resident parent with an ex-partner who is a retained fire-fighter contracted to work 24-7, 7 days per week. He can book off sometimes and do other casual work, however his work as a fire-fighter is his main, and currently only job to mine and CSA's knowledge. He does not uphold any of his parental responsibilities either morally or legally. He is a bitter, malicious individual who has been as difficult as possible and is not putting our daughter first. I have not received any payments from him for going on 2 years.

The current law which includes certain occupations as exempt from paying child maintenance for their children is absolutely outrageous and allows certain unworthy non-resident payments to avoid their legal duty to support their child.

I am very pleased to note that the proposed regulations indicate at pg 13, pt 50 that the existing exempted occupations will be removed, and that they will liable for payments.

I am very concerned to note that there seems to be no indication that existing claims with the CSA will be backdated accordingly to the date of the original application. I strongly believe that this is just and right for the applicable resident parents and their disadvantaged children who have been adversely affected by ill-form previous regulations that essentially

discriminated against them.

I have some queries I'd like to raise:

1. pg 10, pt 34 "..nil rate for those.....or in certain special categories..." What categories, and why are these special categories not defined?
2. pg 4, pt 5 indicates existing regulations for current cases will apply until those cases are closed and parents invited to choose whether to apply to the new scheme under the new arrangements. Arrangements set out under separate regs" - Why aren't they just specified here? Why do further new regs; it all gets very confusing.

3. regarding my Q2, in my situation, what does that mean. I get no recourse from my current claim that calculates my ex-partner with a nil rate as a "part-time fire-fighter", even though essentially can sometimes do more hours than a whole-time firefighter?
4. What's the criteria for being "invited" to choose whether to apply to the new scheme?
5. Therefore do existing cases no automatically transfer and get recalculated under the new scheme, such as mine?

For information, I have an appeal against the calculation currently awaiting an Appeal date to go to Tribunal later this year. It would have a great effect both emotionally and financially on myself and my daughter if I did not have to go through with this! Plus of course it would cost the British tax payer much less, myself of course being one of them.

Finally my feedback in response to pt 20 in the paper is that had I not been endeavouring to do research on my case on the internet I would have never been aware of this consultation. I do not know exactly what has been done to publisise it to the general public i.e. so that individual parents affected or who may like to input to this. However I am appalled that even given my recent correspondence with the CSA and my utter frustrations and disbelief that my ex-partner does not have to pay ANY child maintenance, the CSA failed to even inform me either of the said consultation.

For your information, please see attached my personal letter to Jim Edwards, Client Service Director of the CSA dated 4th February 2012. To date I have received no response. Whilst I am happy for some wording to be used within your responses, I would emphasise that I would not like my name, my ex-partner's or my daughter's used for privacy reasons and to protect myself and my daughter. My ex-partner does not currently know where we live due ongoing, unpleasant circumstances. I am endeavouring to sort out a formal and legal ruling for my daughter's access and maintenance so that she sees him regularly with an mutually agreed pattern, and he fairly pays what he should in child maintenance.

If there are any queries on my response, and / or anyone wishes to speak to me about it I am happy to be contacted on 07733 010980.

Kind regards

Rachelle Haston

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14. Richard Le Fevre
Home address Redacted

I would particularly like to comment on question 2

Is making an assumption about shared care the right approach to avoid some of the current practical difficulties regarding shared care calculations?

This is a practical approach however the assumption proposed is overly simplistic, inequitable and does not support the other objectives of the draft changes. The assumption still heavily favours the parent who has, by any means, achieved the status of parent with care and continues to facilitate exploitation of the system for financial gain by that parent, encouraging that parent to deny their child contact with their other parent to maximise that gain even where this is against the child's wishes.

The assumption is intended to cater for the situations where shared care is at issue and there is:

- No agreement between the parents
- No existing court Order
- Insufficient evidence of established pattern

Where the above situation exists the assumption should be that the care is equal and as described in paragraph 69 the default position should be that no maintenance liability should apply until one of the conditions is satisfied. This assumption treats each parent equally and fairly. If both parents express the wish to care for their child full time what other assumption other than a fair division can be appropriate whilst these conditions prevail.

This approach supports the concept of encouraging family agreements and places the onus on the parties to reach an agreement or to conclude family court proceedings to impose a solution. Court proceedings would usefully and appropriately include an assessment and recognition of the child's wishes regarding the division of their care where appropriate, a factor which is not considered at all in the current calculation.

As per my earlier comments to Maria Miller the Agency's intervention should be to pursue parents who have genuinely abandoned their responsibility to their children, not to preside over a situation which encourages those with a financial motivation to stop their child's contact with their other parent. I believe altering this assumption in this way would support removing that possibility.

I make this comment as a private individual and father presently involved with the CSA as a result of my wife's application for divorce and based on my own experience.

Richard Le Fèvre

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15. Stephen Stonell
Email address and Company address redacted

Dear Sirs,

I am replying to your consultation paper.

I am 54 year senior marketing manager and the non resident father of two children aged 11 and 14. I see the children every other weekend from Saturday morning, returning them Sunday night at 6pm. I am also a 40% tax payer.

Comments:

I have considerable experience of Market research and soliciting opinion, have lectured marketing research, and have degrees and a Masters to prove. I found your consultation paper overly complicated and complex and therefore will alienate vast amounts of the non-resident population. Even I was losing the will to live after reading this paper and I work in a highly complex industry. Goodness know what someone who works in a basic manual work environment will make of it. Because you have not organised sample control, I therefore strongly believe that any results or opinions you receive will not be reflective of popular opinion. Certainly, I would question publicly any stats that you publish or announce post analysis. I would also state that I believe that was the intention of this paper. to confuse, and that the CSA will plough forward regardless with a statement that " we threw it open to consultation and here are the results". I will be forwarding my comments to Ian Duncan Smith.

However, addressing issues that affect my circumstances:

1. Having re-calculated my obligation at 16% (two children) of gross, I am now over £300 per month worse off. So, your statement that of there is little difference between the old method and the new method is a falsehood and deeply misleading. Different of levels of tax will affect NRP's in different ways.
2. Throughout the document you use the term, "the collection of maintenance". You do not define what maintenance is or what is used for. Whilst I understand the intention, as it is not policed by the CSA, it cannot be called maintenance if there is no visibility that it is being used for that purpose and not to support an unreasonable personal lifestyle of the resident parent which often happens.
3. I find it deeply objectionable that the CSA believes it can flout privacy laws to squirrel into my Tax records as the Police might do if pursuing a criminal. I am not a criminal, have no police record whatsoever, and have paid my 20% willingly to the mother. Whilst this may be seen as cost efficient method to reduce over heads, I also see the long term privacy repercussions. Just where will it stop?
4. In my case I was quite happy to pay 20% of my net to the mother and did so from my first months pay. Its was the mother who involved the CSA purely through spite and gain no benefit. The CSA should not be used as a personal weapon for vindictive ex partners, otherwise the CSA'a overheads go up again. This needs to be policed. I am speaking as taxpayer and NRP
5. Finally, I receive a car allowance that my company calculate is sufficient for me to lease a suitable car to execute my role and earn my salary. One supports the other. The CSA take 20% (I'm already taxed on this at 40% remember) purely because it is taxable. Its is not Income !! it is a business enabling allowance. By taking 20% away from me, in effect I now have to subsidise this shortfall from my remaining salary and thus I am paying to work !! Contrast this situation with a NRP receiving a car from their company. It is not possible to take 20% from this parent. Therefore the CSA is operating illegally and in a discriminating manner, purely because I others who receive a car allowance are soft targets.
6. I agree with the re-adjustment of travel costs to £10.
7. This proposed change is yet another blunt instrument and brushes all NRP's with same brush. We are not all the same .
8. Not only do I and others pay the statutory 20%, but we also pay again through our taxes that pay for the resident parents benefits!! How bananas is that?
9. There also needs to be a change with regards to variations based on the number of days as opposed to nights that a NRP's as their children. I have my children for two days but only one night. There are no costs involved whilst they are asleep.

Stephen Stonell

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16. Steven Lilleyman
Email address and Telephone number redacted

Dear Sir/Madam

I would like to express my views on an aspect of your proposals for the Child Support [Maintenance Calculation] Regulations 2012.

I currently have a open case with CMEC for payment of maintenance for my two children to my former wife. I live in Bristol and my children live near Elgin in north-east Scotland with my ex-wife in the house I gave her in the divorce settlement.

In order to exercise contact in accordance with a court order granting me contact for two nights every alternate weekend, I have to travel a considerable distance and rent a property near to where my children live, a round trip via Luton airport of nearly 1400 miles.

My children spend over 52 nights a year with me, and I am therefore entitled to a reduction of one-seventh in the maintenance payment, to account for the time spent with me when I incur care costs.

I have successfully applied for a special variation on the grounds of the travel and accommodation costs incurred in maintaining contact.

However, I have been told that the current law does not allow both the overnight allowance and the variation for costs incurred in maintaining contact to be applied.

I do not understand why this should be the case, since by having overnight care of my children I am incurring the costs of care which maintenance is intended to address, and my ex-wife is not incurring those costs for the period that my children are staying overnight with me, and I cannot exercise my right to overnight contact without incurring considerable travel costs, which currently exceed the one-seventh reduction for overnight allowance.

I support any change in the law which allows both these allowances to be applied concurrently, as described in paragraph 86.2 of your proposals, since I am being penalised by approximately £100 per week by the current regulations.

Full details of my case can be supplied on request, and I will cooperate in any way necessary with the consultation process to explain my position.

Please do not hesitate to contact me by email or on my mobile phone number xxxxxxx if you would like any more information.

Yours faithfully

Steven Lilleyman

17. Stuart Raeside
Email address and Home address redacted

Dear Sir/Madam

I am wanting to contribute towards the CSA Calculation Regulations 2012.

The interest rate calculation of 8% on assets that are included in the variation calculation are nothing like that can be got from banks at the present day. I think this rate is unfair. Between 2% and 3% is more realistic and that is before Tax.

Also when I contacted the CSA 2 days ago saying I wanted to contribute. The CSA said there was no consultation. Only when I said my MP said there was one they supplied the relevant information. Clearly the public do not know about this consultation.

Stuart Raeside

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18. Name redacted at request of individual

Email address redacted

Dear Sir / Madam,

I would like to apologise for my response being one day late and hope that my views will still be taken into account during this consultation.

Please note that I strongly believe that all children should be supported financially by both parents.

Please note that I am the wife of a NRP. My husband has 2 children from his first marriage and we have one child together. My husband is a responsible NRP who has regular access to his children and has also paid monthly maintenance via a family based agreement since his divorce in 2004. The amount of maintenance he has paid has been based on the CSA calculator on the CSA website. In addition to this my husband has frequently made additional payments for child care fees, holidays and clothing. My husband's ex-wife, however, has recently made an application for child maintenance from us through the CSA.

Please note that I find both the proposed child maintenance regulations very confusing in their entirety.

I would like to point out that I strongly disagree with the following:

• The fact that a PWC can make an application for maintenance despite a maintenance arrangement being in place and when a NRP is already paying the correct amount, monthly by standing order to the PWC. This is a waste of tax payer money
• The fact that under the new proposals wages have to decrease by 25% or more before maintenance can be recalculated. On a £40k salary this equates to a drop of £10,000 or more before maintenance will be reduced. How can a NRP be expected to pay maintenance based on a salary of £40k if for example in reality his salary has dropped to only £31k.
• The fact that the CSA currently refuse to send out letters confirming telephone conversations
• The lack of transparency regarding CSA rules

Question One: Do you agree with the proposal to remove students from the nil rate cases and calculate liability on their gross weekly income?

No, I do not agree with this. I believe that removing a student from a nil rate band should be dependent on the circumstances of that individual.

For example in the current economic climate high percentages of people are being made redundant and are unable to find work. As a parent it is essential to be able to find employment in order to support both yourself and your family. If the parent is unable to find work he/she becomes reliant on the welfare state and may risk losing their home. Many people are forced to retrain in order to obtain employment which may involve becoming a student and completing a degree which in some cases may be a full time degree therefore reducing the NRP income significantly. In this situation the NRP should be nil rate.

If the student is completing their studies alongside their NORMAL job and is receiving the same income as prior to commencing their studies then they should not be classed as nil rate.

Question Two: Is making an assumption about shared care the right approach to avoid some of the current practical difficulties regarding shared care calculations?

Yes I do believe an assumption should be made regarding shared care in the absence of firm evidence.

My husband is the NRP of 2 children from his first marriage. We have one child together. From our personal experience of the current child maintenance system we believe the system to be very flawed. My husband has paid child maintenance every month since his divorce eight years ago via a family based arrangement. The maintenance was calculated according to the CSA's post 2003 formula.

My husband's ex wife however is aware that she can obtain more child maintenance through the CSA if she reduces the number of nights per week that the children stay overnight with us and has made several attempts over the years to do this. As you can imagine this is very stressful for both us and the children who wish to remain in contact with their father.

My husband has been told by the CSA that if a PWC disputes the number of nights that the children stay over with the NRP they will usually believe and side with the PWC even if the NRP can supply evidence of the overnight stays. I believe this current system is totally unfair as it can be so easily manipulated in favour of the PWC.

I believe that the proposal to assume shared care of 52 nights in this situation is progress but the proposals do not go far enough. For example if a child stays overnight 182 nights per year with the NRP but the PWC disputes this and shared care of only 52 nights per year therefore is assumed by the CSA, the NRP is likely to face financial hardship. The NRP still has to pay transport costs, feed and clothe the child on those 182 nights per year but does not receive the appropriate reduction in maintenance costs to offset this.

The definition of shared care as being the number of overnight stays the child has with the NRP creates problems in itself. For example from our experience the PWC can restrict overnight stays but still allow day time contact. This means the NRP remains having to pay transport costs as well as meal costs (breakfast, lunch, evening meal) for the child but is unable to claim a reduction in maintenance as the child has not been allowed to stay overnight by the PWC.

Question Three: Do you think the periodic income check adds value to the review process?

No. If at the annual review maintenance is set using the historic figure, a further periodic check would only change the maintenance calculation if income has gone down by 25%. Unless a person is made redundant most peoples income would not decrease by as much as 25% so I feel that the periodic review would be a waste of tax payer's money as it would make little difference to the calculation.

Question Four: What do you think of the proposal to remove assets and lifestyle inconsistent with declared income grounds given the new approach to unearned
income?
Unsure, I don't fully understand the proposals in relation to this.

Question Five: What are your views on the new grounds which aim to make the scheme easier to navigate, understand and administer and to ensure that where the non-resident parent has significant unearned income that this can be taken into account?

Agree.

Please note that I believe in order for the scheme to be easier to navigate it is essential that the CSA has transparency.

For example it is essential that the CSA publishes the specific rules that they follow with regards to how income is calculated, what specific income is taken into account and what specific income is disregarded eg non taxable child care vouchers when making the calculations.

It is also essential that the NRP receives written documentation from the CSA detailing any telephone conversations that they have individually had with the CSA regarding their case. From experience we have been told by CSA advisors that they have been unable to put the outcome of any telephone conversation we have had with them in a letter to me because the “computer system does not allow it”. This has caused us significant stress and makes us very untrusting of the CSA. For example we have been told by the CSA by telephone that certain deductions have been made from my husbands wage in order to calculate his net pay and then found out, when we received the calculation through the post, that this has actually not been done. When contacting the CSA by telephone to clarify this the advisor had denied telling us that deductions had been made. As you can see because the “computer system does not allow letters to be written” we are unable to prove that we had been verbally told certain information. We therefore feel at the mercy of the CSA.

No other business or professional organisation would run in this manner.

I also feel that there should be greater consistency between information given by different advisors. For example we were told by our first advisor that the advanced maintenance payment made by my husband the day before the PWC opened the application would be taken into account when making the maintenance calculation. The second advisor however told us this would not be done and we have now had to pay child maintenance twice for the same month! This has therefore placed our son (the second family) in financial hardship and means we are struggling to put food on the table this month.

Question Six: Do you agree that the percentage rates applied for relevant other children should be reduced to produce a more equal treatment of children in first and second families?

No.

From our personal experience we have found it is the children of the second family who are treated less favourably financially than the children of the first family.

When my husband got divorced eight years ago the marital home was given in its entirety by my husband to his ex-wife. We were told by our solicitor that

she was not entitled to receive this however my husband did this as both he and his ex- wife wanted the children to remain in the family home for their emotional well being. On the completion of the divorce however his ex- wife downsized, sold the marital home and made £120,000 profit from the house sale. My husband received nothing from this.

Following the divorce my husband had to start again from nothing. I met my husband and we later married and had a baby together. We now live in a 3 bed home with a large mortgage of £120,000. We were unable to buy a 2 bedroom property due to needing bedrooms for both our baby and his other 2 children. Due to the large profit made by the ex-wife on the sale of the marital home my husband's ex-wife now has a minimal mortgage. She has recently told us that her total monthly outgoings are £1000 however our total monthly outgoings in order to support both my husband's first and second family are £2500. Despite my husband and I both working within the public sector we struggle to meet our mortgage costs and would also struggle to meet rental costs if we were to rent a home. We claim no benefits other than Child Benefit for our child.

The children from my husband's first family go on several holidays per year, have all the latest fashions and toys. Our child (the child from my husband's second family) is unable to be treated equally and receive the same as we can not afford to do so due to our housing costs/ child maintenance. Please note our housing costs are high due to my husband's allowing his ex-wife to receive the entire marital home for the children of the first families' emotional well being.

If the percentage applied for other relevant children were to be reduced this would reduce further the already limited cash that we have available to provide for our child (the child of my husbands second family). This would then place our child under even more financial hardship and be treated even more unfavourably in comparison to the children of the first family.

Question Seven: Do you agree with the proposal to increase the flat rate?

Yes.
However, please could you explain why the maintenance calculator on the Child Maintenance Options website states that my husband should pay £72 per week maintenance if he earns £496 per week net but no maintenance per week if his net income is £496 per week but this is from benefits? This surely is not fair and encourages NRP's who do not wish to pay child maintenance to live off the state rather than work?

Question Eight: Do you agree with the proposal to compel non-resident parents who have a maintenance liability based on current income to report further upward changes?

No. It has been stated that it is too expensive for the CSA to keep recalculating maintenance changes based on small changes in income and that this is why it has been proposed to only allow maintenance to be recalculated if there is a change in income of more than 25%. It seems very unfair therefore to the NRP and also poor use of tax payer's money to insist that the NRP reports any upward change in income and to have the maintenance recalculated when for example income may have increased by 6%. Please note under your proposals if the situation were that the NRP reported a downward change in income of 6%, the maintenance would not be recalculated as there has not been a greater that 25% reduction in income. It would seem fairer and more cost efficient to only compel the NRP to inform the CSA of any upward change in income if that upward change was 25% or more.

Please not that both my husband and I TOTALLY DISAGREE with the proposal for maintenance to be recalculated only if there is a 25% or more change in income.

Please note that, as a public sector worker, my husband's pension contributions will increase over the next 3 years and take home pay will therefore decrease by over £150 per month. Under the new system this reduction in pay will not be taken into account as it will not be a 25% reduction in his pay. The children of the first family will therefore continue to receive the same amount of maintenance despite this wage drop but the child from the second family will have to shoulder the full drop in salary. Please could you explain why this is deemed fair?

Question Nine: What do you think of the proposal only to make this compulsion apply to employed non-resident parents (i.e. not parents who are self-employed or who have an element of unearned income)?

Don't know.

Question Ten: Do you think that the amounts a Default Maintenance Decision awards should be increased with inflation?

Yes.

Yours Sincerely,

Name redacted at request of individual

Robin Weare
Email address redacted

The Child Support Maintenance Calculation Regulations 2012

Response to the technical consultation on the draft regulations

I sat as a financially qualified member of Child Support Appeal Tribunals from 1999 until 2010 and as a lay member from 1993 to 1999. I am Chairman of the Association of Financially Qualified Panel Members and was a member of the DWP's variations working group. I currently work pro bono as an adviser on Child Support matters to single parent charities and with individual parents in the conduct of their appeals.

Except where specifically requested I have commented only on those areas where I have expertise. Broadly that is the assessment of income.

In my view the new scheme as drafted includes many good points:

1. That the asset variation has been replaced by the actual income earned by the asset.

2. Annual reviews.

3. The specific inclusion of partnership income.

4. The inclusion of taxable benefits as earnings.

5. The removal of the variation exemption for those in receipt of WTC.

6. That the diversion variation has been retained.

7. That the variation for excessive pension contributions has been retained.

8. The obligation to notify changes in income.

The proposal that a variation application on one ground may be treated as on another ground if more appropriate is another. It recognises that the variation regime is complex and that it will be a rare parent with care who fully understands it. There is, however, an option implied by the use of "may" and if it were to be removed, effectively making an application on one ground an application on all grounds, I believe that the scheme would be more effective and user friendly.

There are areas where I believe that the new legislation as drafted has missed an opportunity to improve the scheme; these are discussed below:

Default Maintenance Decisions (DMD)

a. Whilst I am delighted that receipt of WTC will no longer bar a variation I am extremely disappointed that a DMD will continue to do so. I say this whilst noting that the proposed regime for setting the initial assessment should have the effect of seriously reducing the number of DMDs. The fact remains though that there will be occasions where there is no HMRC information on which to base an initial calculation. That will always apply to individuals whose only income comes from trusts, rents or other investments. Why should rich people who fail to co-operate be rewarded in this way?

b. I am also disappointed to find that the other DMD rules remain unchanged ie if the NRP eventually co-operates the calculation replaces the DMD from the date of inception.

This effectively invalidates the penalty aspect and could and does lead to a lengthly period of financial hardship for the children concerned if the calculated liability is less than the Default liability.

I've seen cases where the effect of this is that the PWC has to repay everything (or much of what) he/she received, then have a higher liability reinstated 18 months later on appeal and then have to recover the payments originally made at £2 per week.

I strongly recommend that the DMD stand as the minimum amount payable up to the date of compliance.

Duty to notify changes

This has to be seen as a good point but the decision to make it apply only to an employee leaves a huge loophole for the self employed and the wealthy.

I accept that it is unrealistic to expect notification from these groups within the time scale appropriate to employees but with the requirement to submit tax returns by 31st January after the year end it would not be unreasonable to require notification with 7 days of 31st January.

In my view the scheme would be strengthened by such a regulation.

Exemption of unearned income if less than £2,500

This is unfair to those NRPs who only have employed income and to the Child. Frankly, once the income details have been obtained, as they would have to be to establish the amount, it wouldn't take a lot of effort to bring them in. Why should the scheme benefit the wealthy?

Omission of ISA and Savings Certificate interest from unearned income

The definition automatically excludes non taxable income. I accept that this would be difficult to ascertain independently but a duty to notify would put the onus on the recipient. It is perfectly feasible for an individual to have accumulated substantial tax exempt savings which produce a serious income. Once again the scheme includes an inbuilt benefit for the wealthy.

Exclusion of NI Pension income

The amount is readily available from within the DWP and if it were the only income there would be no liability so the exclusion cannot be aimed at the low income group.

The exclusion must, therefore, represent yet another exemption for the wealthy. Why should an individual with a large private pension have his NI Pension exempted?

The allowance of losses of other years as a current year deduction

This is a complete change of principle which applies only to landlords and the self employed. As losses may be carried back from the future as well as brought forward from the past it is likely to result in complex calculations and revisions of assessments in arrear. Any such revisions will only be downwards and especially if made in arrear have negative effects upon the children who will not only be deprived of support they have become used to receiving but also deprived of the money which will be recovered in order to repay amounts overpaid.

I can understand that administrative benefits would arise if it was only possible to obtain the amount of profit after losses from the tax return but that is not the case. The profit of the year is readily available.

Employees are assessed on the basis of actual earnings – why should landlords and the self employed be treated more favourably?

The failure to include a provision to bring income foregone into the calculation

In the departure scheme there was a category of “assets capable of producing income” which caught assets which failed to produce a reasonable income. The failure to resurrect this may prove to be a major loophole as many investments are made with capital appreciation in mind.

It might be reasonable to deal with this aspect by bring Capital Gains into account – after all they also appear in a tax return. Otherwise it would be necessary to retain some kind of asset variation.

Once again there appears to be a deliberate policy to benefit the well off.

My response to the specific questions raised, which to some extent duplicates the matters mentioned above is:

Question One: *Do you agree with the proposal to remove students from the nil rate cases and calculate the liability on their gross weekly income?*

Yes

Question Two: *Is making an assumption about shared care the right approach to avoid some of the current practical difficulties regarding shared care calculations?*

Yes

Question Three: *Do you think the periodic income check adds value to the review process?*

Yes

Question Four: *What do you think of the proposal to remove assets and lifestyle inconsistent with declared income grounds given the new approach to unearned income?*

I am pleased that the new approach to income producing assets is to bring the income they produce into the calculation. This approach, however, fails to allow for assets which fail to produce income or produce income which is at less than the arms length rate. An example would be a property deliberately left empty or rented at a peppercorn to a relative.

The approach also fails to take into account assets which produce income in a form which is not taxable. The obvious example is money invested in an ISA.

The lifestyle variation, although often used in practice, is rarely necessarily used. In most circumstances here are grounds to more properly use the current regulations 18 and 19 or to correct the underlying calculation.

In the circumstances of the new proposals, where there is no real scope to correct the underlying calculation, the decision to remove the lifestyle variation also removes the only anti avoidance provision.

Question Five: *What are your views on the new grounds which aim to make the scheme easier to navigate, understand and administer and to ensure that where the non-resident parent has significant unearned income that this can be taken into account?*

I fail to see why a parent with unearned income of £48 a week should not have it taken into account. With the amount established it cannot require much in the way of administrative effort to bring it into the calculation and the amount will have to be established in order to reach a decision to ignore it.

This approach fails to achieve consistency of treatment between the moderately wealthy and those less so and deprives the children of an element of financial support to which they should be entitled.

Question Six: *Do you agree that the percentage rates applied for relevant other children should be reduced to produce a more equal treatment of children in first and second families?*

This is a political point. I have no view on this.

Question Seven: *Do you agree with the proposal to increase the flat rate?*

Yes

Question Eight: *Do you agree with the Commission's proposal to compel non-resident parents who have a maintenance liability based on current income to report further upward changes?*

Yes

Question Nine: *What do you think of the proposal only to make this compulsion apply to employed non-resident parents (i.e. not parents who are self-employed or who have an element of unearned income)?*

I am hugely disappointed by the exceptions to this otherwise very positive proposal. Whilst I accept that to require the reporting of changes to self employed or unearned income within the normal timescale would be unrealistic it would certainly be reasonable to require changes to be notified by this group within a short period of 31st January, the date by which they are required to submit their tax returns.

Question Ten: *Do you think that the amounts a Default Maintenance Decision awards should be increased with inflation?*

Yes. However I am disappointed that the opportunity has not been taken to rethink the concept behind the Default Maintenance Decision.

Such a decision establishes a liability which runs until the decision is replaced by a proper calculation. The calculated liability then runs from the outset. That is fine if the liability is higher but can create untold hardship for the children if it is lower.

At the moment a lower calculated liability results in any DMD payments made over and above that liability being treated as an overpayment and that “overpayment” is then deducted from future amounts payable.

Surely, the DMD is intended to provide some degree of disincentive to the unco-operative parent. As it currently operates it is often no more than a savings scheme which could and does result in considerable financial difficulties for the parent with care and the children.

That the existence of a DMD serves to bar a Variation is just wrong.

CMEC & THE TAXMAN
Response on the Draft Regulations

Anne Redston

LLB, Barrister, MA (Oxon), FCA, CTA (Fellow)

Visiting Professor in Tax Law, King's College, London

22 February 2012

CMEC & THE TAXMAN
RESPONSE TO CONSULTATION ON DRAFT REGULATIONS

EXECUTIVE SUMMARY

This is a response to the Consultation on the Child Support Maintenance Calculation Regulations 2012. It covers only Question 4, and with it the interface between HM Revenue & Customs (HMRC) and the Child Maintenance and Enforcement Commission (the Commission).

This Submission is made by Anne Redston, Barrister and Professor of Tax Law at King's College London. Anne also sits on the First-tier Social Entitlement Tribunal as a Financial Member, mostly on Child Support cases, as well as on the First-tier Tax Tribunal as a Presiding Member. The views in this Submission are her own; in particular, she is not empowered to speak for the Tribunals Service or the judiciary.

This Submission makes the following points:

- Significant amounts of income are not recorded in an individual's self-assessment (SA) and/or PAYE records, because of evasion, error, direct settlement by employers and avoidance.
- The annual income of individuals which is not included in HMRC's SA and/or PAYE records exceeds £66bn pa. This number is significantly under-estimated, for the reasons given in part 2 of this Submission.
- Current legislation and regulations allow income shortfalls to be identified by taking into account alternative evidence or reviewing expenditure (lifestyle).
- The draft regulations, in their almost complete reliance on HMRC data for the maintenance assessment calculation, will allow many NRPs to understate their income and so reduce the contribution to their children's welfare.
- The draft regulations also rely on the last filed tax returns to provide the income of the self-employed. These figures are likely to be two years old, and susceptible to manipulation by the NRP as explained in Part 4 below.
- The current regulations allow non-income bearing assets to be treated as income-bearing in some circumstances. The draft regulations do not include the assets ground for variation. As a result inheritances, winnings or gifts invested in non-income producing assets such as holiday homes, will not be included for child support purposes.

These outcomes are surely contrary to the aim of the reform, which is to produce "more accurate" calculations which will "benefit families who live apart". The over-reliance on HMRC data is, paradoxically, also likely to incentivise tax evasion and avoidance, as under-reporting will reduce both tax and child support liabilities.

It is the thesis of this Submission that the variation and assets grounds should be retained and that flexibility be retained by the Commission, and the Tribunal, to consider other evidence relating to the underlying income of the NRP.

If it would be helpful to discuss further, please get in touch directly with Anne at anne.redston@kcl.ac.uk .

CONTENTS OF THE SUBMISSION

1. AIMS OF THE REFORM & SCOPE OF SUBMISSION

The Forward to the Consultation Document states that the aim of this reform is to "deliver a simpler, more efficient and transparent service" which will "better support families who live apart"

At §24, the Document states that "The focus of the scheme is to produce a faster, more accurate and transparent process for assessing child maintenance payments."

At §30, it says "The Government is committed to improving the child maintenance system to benefit families and children, while delivering value for money for the taxpayer."

There are many elements to the reform which are not discussed in this Submission. These include a move towards encouraging mediation, and collaborative family-based support arrangements after separation.

The Submission also does not discuss the proposal to charge parents for using the service, or many elements within the new calculation mechanism, such as the 25% threshold for recalculation, or the automatic annul review process.

The elements of the reform which form the background to this Submission are that:

- The Commission will obtain details from HMRC of the NRP's employment and self-employment income. These details will be the most recent figures filed with HMRC.

- The Commission can request details of property, investment and savings income from HMRC if the Parent with Care (PWC) asks for a variation on the grounds that income has not been taken into account.[1]

- Information will not be requested by the Commission from employers or other third parties.

- Variations on the grounds of assets and lifestyle will no longer be possible.

The thesis of this Submission is that, by over-reliance on HMRC data, these clearly stated aims will be undermined.

[1] Draft regulations, Reg 71

2. LIMITATIONS OF HMRC DATA

Under the new regulations, extensive reliance and trust will be placed on the NRP's income details provided by HMRC.

HMRC data is, of course, a good starting point, and it is efficient for the Commission to obtain this directly from HMRC, especially after the introduction of Real Time Information (RTI).

The difficulty, however, is that the HMRC data will often not be sufficient fully to assess the NRP's liability. It is only in the simplest and most straightforward cases that using only HMRC data provides an accurate basis for assessing income.

Specifically, the HMRC data will not include income:

- which is taxable, but has not been reported to HMRC;
- which has been reported, but in a form which does not appear on the individual's tax return
- which has been converted into capital.

There are also significant timing issues, where by accident or design, income may escape assessment for child support purposes.

This Part of the Submission covers these gaps in the HMRC data under the following headings; each of them is then discussed in more detail below

a) Shadow economy
b) Errors in submitted returns
c) Tax avoidance
d) Salary sacrifice
e) PAYE Settlement Arrangements (PSA)
f) Other enquiry settlements
g) Capital magic
h) Timing issues

The total income omitted from the data captured by HMRC under the first three headings above is estimated to be £66bn, see Table A. There are no publically available figures on the amounts involved in items (d) to (g), but in the author's experience they are substantial.

TABLE A: ESTIMATE OF TOTAL INCOME OMITTED FROM TAX RETURNS

	Reference	Tax £bn	Income £bn
Evasion through moonlighting, undeclared work	Table B	3.4	13.6
Errors in PAYE and self-assessment returns	Table C	9.6	38.4
Avoidance	Para 2(c)	3.5	14.0
Amounts omitted		16.5	**66.0**

(a) THE SHADOW ECONOMY

The shadow economy can broadly be divided into:

- *undeclared work*, where workers have a job for which they are paid gross (in cash, or under the counter) and so do not declare income to HMRC. Common examples are second and third jobs involving bar work, construction, household services and tutoring.

- *suppression*, where businesses and individuals only declare some of their income, but pocket the rest. This can occur in any type of work, but is most common where payments are made in cash, as collusion with the payer is not necessary.

The shadow economy has been the subject of academic study, particularly by Professor Friedrich Shneider[2].

Although there are self-evident measurement difficulties, the UK's shadow economy is estimated to be around 11% of total GDP[3]. This puts its value at £162bn per annum. Although low by European standards, it is nevertheless significant.

Since this figure is for GDP, it is a gross figure, and does not represent the net income or profit accruing to the individual. This will vary from around 90% (gross income less travel costs and limited equipment) to perhaps 20% (where goods are purchased, perhaps on the black market and resold).

In order to establish the amount of income which is earned by those operating in the shadow economy, it is necessary to look at data compiled by HMRC

Their estimate of the tax lost from the shadow economy is £3.4bn per annum[4]. The make-up of this figure is shown in Table B. The major part of the sum derives from ghosts and moonlighters.

> "Ghosts" are defined as "individuals who have earnings from employment or self-employment and fail to declare any of this income"
>
> "Moonlighters" are individuals who pay tax on their main job through PAYE but have a second job or additional income from self-employment.

HMRC's background analysis says that this figure is taken from a possible range which may go as low as £1.2n but may be as high as £3.5bn.[5]

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[2] Professor of Economics and Chair of the Department of Economics at Johannes Kepler University, Linz, Austria.

[3] *Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2011.* Friedrich Schneider www.econ.jku.at/members/Schneider/files/publications/2011/ShadEcon31.pdf

[4] *Measuring Tax Gaps 2011: An Official Statistics Release* 21 September 2011; and *The Methodological Analysis for measuring tax gaps 2011 - An Official Statistics Release* 21 September 2011

TABLE B: Estimate of earned income from shadow economy

	2008-09	2009-10
	£bn	£bn
Non-declaration of income and capital gains[6] by those who do not receive returns	0.3	0.3
Ghosts	1.3	1.3
Moonlighters	1.8	1.8
Total	3.4	**3.4**
Using a tax rate of 25%[7] this equates to income of	13.6	**13.6**

(b) ERROR IN SELF-ASSESSMENT AND PAYE RETURNS

The material submitted to HMRC contains errors. The HMRC estimate of the tax lost through error in SA and PAYE returns is set out in Table C.[8]

TABLE C: Error in self-assessment & PAYE returns

	2008-09	2009-10
	£bn	£bn
Inaccurate self-assessment returns from individuals (excluding large partnerships)	5.6	5.8
Inaccurate self-assessment returns from large partnerships	0.8	0.9
Inaccurate PAYE returns from small and medium-sized employers	0.6	0.9
Inaccurate PAYE returns from large employers	2.0	2.0
TOTAL	**9.0**	**9.6**
Using a tax rate of 25% this equates to income of	**36**	**38.4**

This may be an under-estimate. HMRC's compliance work has established that about half of the returns submitted by business taxpayers under-declared the true tax liability. The proportion of returns where the annualised under-declared liability

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[5] *Measuring Tax Gaps 2011* page 46

[6] Although the HMRC data includes capital gains, as there is an annual exemption for CGT of £10,100, it is likely that the vast majority of those with capital gains receive returns. This figure is thus taken as being preponderantly related to income taxes.

[7] This is an approximate compound rate allowing for the first £8,105 to be tax-free, but also for the cost of National Insurance Contributions at 8% for the self-employed, and recognising that average earnings in the UK are well below the 40% tax threshold, at £465 per week or £24,180 pa, see ONS Labour market Statistics Bulletin February 2012 at http://www.ons.gov.uk/ons/dcp171778_254579.pdf

[8] *Measuring Tax Gaps 2011* page 6

was under £500 was between 15% and 25%, whilst a further 17% to 24% had annualised understated liabilities over £1,000[9].

(c) TAX AVOIDANCE

HMRC estimate that avoidance of Income Tax, National Insurance Contributions and Capital Gains Tax avoidance for taxpayers excluding large business is £3.5 billion. They expect to detect and recapture around £1.9bn, leaving a gap of £1.5bn[10].
The relevant figure for Child Support purposes is likely to be the gross figure (ie before the counter-action measures), because avoidance is commonly resolved by settlement rather than by amendment to an individual's tax returns, as discussed at paragraph 2(f) below.

A figure of £3.5bn of tax under-declared because of avoidance schemes equates **to £14bn** of income which does not form part of HMRC's records.

(d) SALARY SACRIFICE

Employees commonly "sacrifice" taxable salary in exchange for other, more tax efficient benefits[11]. Most commonly, salary is sacrificed in exchange for an increased employer contribution into a pension scheme[12].

Other common "sacrifices" are to exchange salary for a larger car, employer-provided healthcare, or the right to stay in an employer-provided holiday flat. For a worked example, see Example 4 below.

To the extent that tax is due on these benefits, the tax is often picked up by a PAYE settlement agreement, see the next section.

(e) PAYE SETTLEMENT AGREEMENTS

Not all of an employee's taxable income is included on his tax return. Many employers settle some of the liabilities directly with HMRC, under PAYE settlement agreements (PSA)[13]. These are widespread and commonplace

They cover irregular benefits, such as "a holiday given under an incentive award scheme or the occasional use of a company holiday flat"[14], or benefits which it is difficult for the employer accurately to calculate the amount per employee, such as employee entertaining where more than one individual has participated.

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[9] *Measuring Tax Gaps 2011* page 40 and Table 8.5

[10] *Measuring Tax Gaps 2011* pages 43-44

[11] See HMRC's Employment Income Manual at EIM42700: Waivers of Income and salary sacrifice at www.hmrc.gov.uk/manuals/eimanual/eim42700.htm

[12] For a discussion of pension schemes as a diversion of income, see Part 7 below

[13] www.hmrc.gov.uk/guidance/paye-settlements.htm

[14] www.hmrc.gov.uk/guidance/paye-settlements.htm

These are rewards of employment, but they will not appear on the individual's tax return or on the PAYE return for any individual.

(f) EMPLOYER SETTLEMENTS OF AVOIDANCE ARRANGEMENTS AND/OR ERRORS

Where HMRC identifies an avoidance scheme and successfully challenges its effectiveness, it is uncommon for HMRC to pursue the individuals.

Primary liability for deducting PAYE (which is the main mechanism for collecting tax from employees) rests with the employer.

The employer can only ask HMRC to collect the amount directly from the employee if the under-deduction is an error made in good faith or if he received it knowing that the employer had "wilfully" failed to deduct the correct tax[15].

Otherwise, HMRC will collect the underpayment from the employer: it will thus not be included in the individual's tax information stored by HMRC.

(g) CONVERSION OF INCOME INTO CAPITAL

If income can be converted into capital, it will not be captured by the HMRC return process until the underlying asset is sold, when it may give rise to a capital gain. There is no provision in the draft regulations for capital gains to be taken into account.

A commonplace tax planning arrangement is for a self-employed business to incorporate and be paid, not by salary or dividends, but by way of loan repayments out of the company for several years. It operates as follows:

- The self-employed business is first valued. The valuation will include "goodwill" or the existing reputation of the business.
- The business is then sold to a shell company, which has no assets of its own so cannot pay for the business.
- The value of the business is left outstanding as a debt owed to the former proprietor, and the company then uses future profits to pay back the loan.
- Each year he also takes a small salary, around the personal allowance threshold.

As a result, this planning mechanism would save the NRP both tax and child support payments – unless, of course, the regulations are amended to provide flexibility to consider other evidence.

[15] PAYE Regulations 2003, Reg 72 and Regs 80-81

(h) TIMING ISSUES

Correction of errors

Where there is an error in a return, the individual may have to pay the tax. But many tax investigations are settled without making changes to the individual's SA records[16]; the taxpayer simply pays a sum of money to HMRC and the enquiry is closed.

Thus, even to the extent that there is an obligation on the individual to correct the information provided to the Commission, and/or a requirement on HMRC to notify changes to earlier years' SA returns, these obligations would not capture the majority of such amendments.

The self-employed

The self-employed are taxed on the profits arising in the accounting period ending in the tax year[17]. A very common accounting year end is 30 April.

A self-employed person whose accounting year ends on 30 April 2009, do not have to be provided to HMRC until 31 January 2011. For the implications of this, see Part 4 below

PAYE amendments

There have been significant problems with inaccurate PAYE returns. While HMRC do endeavour to amend these, there is a massive backlog.

The National Audit Office report for 2010-11[18] says :

> The Department plans to complete the stabilisation of PAYE by 2013. This includes completing by March 2012, the identification and manual clearance of a forecast 6.7 million records relating to the 2008-09 and 2009-10 tax years where it has not yet received all the information it needs to reconcile automatically. It then plans to accelerate the identification and manual clearance of similar records for the 2010-11 and 2011-12 tax years, and complete this by March 2013. Under NPS, the Department expects it will need to manually review 3 to 4 million of these records to complete the annual end of year reconciliation

[16] http://www.hmrc.gov.uk/manuals/sammanual/SAM31090.htm which makes clear that SA records are only amended if *future* payments will vary dependent on the sum paid to settle the earlier years.

[17] Income Tax (Trading and Other Income Act) 2005, s 198

[18] HM Revenue & Customs Accounts 2010-11 National Audit Office Report of the Comptroller and Auditor General www.nao.org.uk/publications/1012/hmrc_accounts_2010-11.aspx

As a result, even the PAYE-related element of these revised regulations may need some intervention by the Commission on occasion in order to establish the correct figures: currently this would be done by asking the employer.

3. THE INCOME ASSESSMENT & HMRC FIGURES: EVASION/AVOIDANCE

Under the current statutory provisions, the Commission can obtain third party data to establish the NRP's earnings. A common source is the employer, and questions asked can extend beyond asking for the salary reported to HMRC, see Examples 1 and 2[19].

Under the draft regulations, reliance is place almost exclusively on the HMRC data.

Example 1: Evasion by self-employed individual

Mr A told his former partner and the Commission that he had no earnings, and was living off his wife's income. No tax returns were being submitted.

The Commission was provided with information by the PWC that the NRP was, in fact, working for a company on a full-time basis but was being paid as a self-employed person.

The Commission wrote to the company and asked for details of all payments made to the NRP. This disclosed an annual income of over £80,000 pa.

Example 2: Evasion by contractor

Mr B worked as self-employed contractor via an agency providing construction services. His accounts and tax returns were provided. However the Commission asked the agency for a summary of payments made in the year. This disclosed that the total amount paid was twice that shown in the accounts and tax returns.

Company accounts can disclose important information about avoidance and planning arrangements which may not have been identified by HMRC, see examples 3 and 4.

Example 3: Avoidance using an Employee Benefit Trust

Mr C had worked for many years through his own company. He paid himself dividends and a small salary. However, in 2010 the amount paid as a dividend dropped sharply. Examination of the company accounts showed that £100,000 had been paid into an Employee Benefit Trust for his benefit, and then lent back to him.

This sort of arrangement is under challenge by HMRC and specific anti-avoidance legislation now exists, but it is an example of the sort of planning which will not be identified by relying only on HMRC data relating to the individual.

[19] All examples in this Submission (other than the lottery in example 9) are based on the facts of actual cases in the personal knowledge of the author, suitably anonymised to avoid disclosure of personal information.

If it is discovered by HMRC, their first approach will be to the company, as employer, and if a settlement is made it is most unlikely to be recorded on the individual's SA returns.

Example 4: Salary sacrifice

Mr D had a salary of £60,000 in 2009. In 2010 his P60 showed that his salary had fallen to £40,000. Further investigation by the Commission established that he had "sacrificed" the £20,000 for an employer contribution into his pension scheme.

These are only some of the many tax planning arrangements which the author has seen operated in practice. If the regulations are unamended, they will now also be used to reduce the NRP's liability for Child support.

4. THE INCOME ASSESSMENT & HMRC FIGURES: TIMING

A systemic issue arises from the use of the profits of the self-employed. As stated above at Part 2(h), the self-employed are taxed on the profits arising in the accounting period ending in the tax year[20].

A self-employed person whose accounting year ends on 30 April 2009, is not required to include those profits in his tax return until 31 January 2011.

This means that the figures are around two years old by the time they form the basis for a child support calculation[21]. They will remain the basis for that calculation for a further twelve months, by which time they will be around three years old. This is in contrast to the figures used for employees on PAYE, where the figures are received by HMRC on a monthly basis.

If the profits of the self-employed have reduced since the accounting period used as a basis for the child support calculation, the draft regulations allow the NRP to apply to have current figures used instead[22], whereas under the current regulations, the Commission could consider the current position for both years – now the default situation is that the current year is only used if it benefits the NRP.

Example 5: Timing and manipulation

Ms E is the NRP. She runs her own business a painter and decorator and makes up her accounts to 30 April each year.

In the year to 30 April 2011 she makes a profit of £75,000. She will report this to HMRC on 31 January 2013. She knows this will be used as the basis for her child support calculation around May 2013.

In March 2013 she purchases a van at a cost of £25,000. She claims 100% capital allowances. She reviews her debtors and identifies 3 clients, owing 20,000, who she says may not pay her. Her profits for the year to 30 April 2013 would have been

[20] Income Tax (Trading and Other Income Act) 2005, s 198
[21] Draft Regulations, Regs 4, 39
[22] Draft regulations, Reg 34

£70,000. However, she deducts £25,000 for the van, and £20,000 as a "specific provision" for bad debts, and so reduces her profits to £35,000.

She applies to the Commission for her child support to be calculated on the current year basis of £35,000 rather than the historic basis of £75,000.

5. ABANDONING LIFESTYLE VARIATIONS

Lifestyle variations can be used when the NRP has a lifestyle with no visible means of support. The lifestyle variation is based on expenditure, in contrast to the normal assessment which is based on income.

In practice, establishing the grounds for a lifestyle variation usually involves the review and analysis of credit cards and bank statements.

Example 6: Expenditure with no visible means of support

Ms F had a small self-employed income as a hairdresser. The PWC reported that she went on holiday to Mauritius and other exotic locations, had a Porsche with a personalised number plate, and a holiday home in France.

A review of her financial information showed she was spending at least £4,000 a month in excess of her declared income. No legitimate source was established.

It is relevant to note that HMRC use lifestyle in order to assess whether or not there is evasion. Most of their guidance on their techniques is not in the public domain, but their Enquiry Manual instructs inspectors to check "whether the director's lifestyle is commensurate with the earnings etc received from the company and capital injected into the company."

In their VAT Assurance Manual for Small and Medium Sized business[23], they say

> "Consider the trader's lifestyle - is this in keeping with the level of declared income? Some of the more obvious areas may be noted in housing, clothing, jewellery, motorcars, holidays, schooling, expensive domestic appliances, mortgage or rent commitments.

Although HMRC will do their best to uncover the evasion or avoidance which lies behind such lifestyle discrepancies, they will not find all, or even most, of these cases.

If the Commission is precluded from considering lifestyle variations, NRPs will be enabled to avoid or evade, not only their taxes, but also their child support obligations.

6. ABANDONING ASSET VARIATIONS

The draft regulations will not include the current asset variations, on the basis that income from assets will be reported as "other income" under one of the following[24]:

[23] VSME27005

(a) Part 3 ITTOIA 2005 (property income);

(b) Part 4 ITTOIA 2005 (savings and investment income);

(c) Part 5 ITTOIA 2005 (miscellaneous income).

There are two difficulties with this assumption. Firstly, it doesn't take account of the evasion, avoidance and planning points discussed earlier in this Submission, see Example 7.

Example 7: Holiday home

Mr G was the NRP. Investigation of his bank account by the Commission established that he had purchased a holiday home in the Pyrenees for £500,000. There was no visible source of funds for this purchase.

The Commission used the asset variation to impute income to the NRP.

The proposed draft regulations will also not deal properly with non-income producing assets, see Examples 8 and 9 below.

Example 8: Inheritance

Ms H was the NRP. On 1 January 2011 she inherited £250,000 from her mother. She used this to build a swimming pool and to purchase a piece of land for her pony to graze.

Under the current variations, this £250,000 can be treated as an asset which is available for the NRP, and the use for a swimming pool and a pony paddock would be regarded as not "reasonable in all the circumstances of the case."[25] Income would be deemed to arise which would be taken into account for the purposes of the child support calculation.

Example 9: Lottery winnings

Mr J was the NRP. On 1 June 2011 he won £100,000 on the lottery. He put this in an offshore income bond, which did not produce any income, but from which he could withdraw 5% a year. This is treated as a withdrawal of capital under the tax rules[26] and is not reported on the tax returns.

Under the current asset variation rules, the £100,000 was treated as giving rise to deemed income and this was then taken into account for child support purposes

7. PENSIONS

The consultation does not invite comment on the position of pensions. However, given the simple and straightforward opportunities which appear to exist for using

[24] Draft Regulation 69(2)

[25] Child Support (Variation) Regulations 2000, Reg 18(3)(b)

[26] Income Tax (Trading & Other Income) Act 2005. s 507

pension planning to avoid child support obligations, this Submission includes an outline of the main issues.

The new draft regulations provide that a deduction is allowed from the NRP's income for any pension contributions deducted either by the individual[27] or by the employer, whether under "net pay" arrangements[28], or otherwise[29].

The case law[30] interpreting the current regulations has held that a variation can be allowed under Reg 19 where the NRP has "unreasonably reduced" his income. Reg. 19 is replicated at Reg 71 of the new draft regulations.

However, it is not clear whether a variation will continue to be possible for excessive pension contributions, given the new right of deduction provided by Reg 35(3) and Regs 38(5).

If it is not possible to use Reg 71 in the same way as Reg 19, then pensions provide a simple and straightforward route for the NRP to reduce child maintenance payments.

Example 10: Diversion via excess pension contributions

Mr K was employed and paid £45,000 year. His P60 showed that his salary had reduced significantly. Investigation by the Commission and the Tribunal established that £18,000 a year was being paid into his final salary pension. Mr J already had over £500,000 of pension savings

A variation was directed under Reg 19 so that the amount allowed as a pension contribution for child support purposes was reduced to £6,000 (£500 a month).

Could a variation be directed under draft Reg 71, given that draft Reg 38(5) specifically allows for the deduction of pension contributions when calculating income for child support purposes?

Example 11: diversion via immediate pension lump sum

Mr L was self-employed and aged 58. He entered into a single premium pension arrangement under which he paid £40,000 into a pension with a well-known provider. This reduces his income for child support purposes under the draft regulations.

For tax purposes, a further 25% is added to the fund by HMRC, making the total worth £50,000.

[27] Draft Regulation 35(3)
[28] Draft Regulation 36(2)(a)
[29] Draft Regulation 38(5)
[30] See CCS/648/2009; *DW v CMEC (CSM)* [2010] UKUT 196 (AAC)

Because he was aged over 55, he was able to take 25% of the pension as a tax-free lump sum. This gives him a tax-free income of £12,500 with the balance giving him a small pension payment of £500 a year for the rest of his life

Under the current rules, a variation could have been directed under Reg 19 for £40,000; under the new rules it appears that only the £500 of pension income will be taken into account for child support purposes?

8. CONCLUSION

If no changes are made to these draft regulations, providing financial support for children will be based on incomplete and outdated information, and the Commission will be unable to rectify this.

Furthermore, child support risks becoming optional for NRPs who are able to use tax and pension planning. As a result this reform will fail to achieve its objective.

Anne Redston