Formal consultation response from the Chartered Institute of Payroll Professionals in respect of:

Organisation response to be submitted to: Child Maintenance Enforcement Commission

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Dear Sirs By Email

Introduction

The Chartered Institute of Payroll Professionals (CIPP) is grateful to have the opportunity to comment on the Technical Consultation on the draft regulations. We are pleased to be able to feed into the policy and operational changes that arise from this consultation, and hope that this written response will form the basis of an ongoing relationship with the Child Maintenance and Enforcement Commission. Company information about the CIPP and its role in representing employers can be found at the end of this response.

CIPP response:

On this occasion the CIPP did not survey its members as the nature of this consultation impacted parents rather than employers or the payroll industry.

However we would like to take the opportunity to comment on some areas of the document.

Calculation using a 25% variance

The CIPP welcomes this change as not only might it provide stability for parents and more importantly their children, but also the CIPP believes this may also reduce the number of amended Deduction of Earnings Orders (DEOs) and the resulting enquiries to the payroll office.

Point 54 – Evidence of earnings

The CIPP would welcome clarification as to who would provide any evidence of earnings required; the employee/parent or the employer?

Question 1 – Students

Whilst the CIPP has no political opinion as to whether it is fair to include students or not, the CIPP would highlight that often students may have more than one job and it may be that the Protected Earnings level is not reached in each of the employments if wishing to operate a DEO. Perhaps it might be better to encourage direct debit in these circumstances? Also the CIPP would strongly recommend that should the regulations change to include students that organisations such as those that represent employers are made aware, universities and the Student Loan Company.

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Point 74 – Stability

As highlighter earlier in this response the CIPP welcomes any initiative to introduce stability to deductions.

Point 80 – annual provision of information

The document provides explanation on the current tax system reporting requirements from employers. The CIPP would wish to ensure that CMEC is aware of the fast approaching changes in reporting for employers. From October 2013 and therefore tax year ending March 2014 an employer will no longer be required to submit P14s or a P35 to HMRC. This system is being replaced with one that ensures the employer submits all relevant earnings, tax and other statutory information on a real time basis i.e. each payroll run. Therefore firstly it might be possible for CMEC to review earnings on a more regular basis although this would not assist with stability but would with accuracy, and secondly it may be that HMRC will need to design an end of year reconciliation report for CMEC; CMEC may want to clarify that this will be possible after April 2013.

Thank you once again for the opportunity to comment.

Yours faithfully

Karen Thomson MSc FCIPP
Associate Director of Policy, Research & Strategic Visibility

Should you require clarification of any of the points that have been made in this response, please do not hesitate to contact me or another member of the Policy and Research Team.

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Company Information

The Chartered Institute of Payroll Professionals (CIPP) was established as an official industry body in 1985 when the Institute of British Payroll Managers (IBPM) was formed. In 1998, the IBPM merged with the Association of Pensions and Superannuation Administrators (APSA) to form the Institute of Payroll and Pensions Management (CIPPM), which became the Institute of Payroll Professionals in September 2006 and was granted Chartered Status in November 2010. The CIPP is the Chartered Institute for payroll professionals in the UK and currently has in excess of 5,000 members enjoying a range of benefits. In addition, the CIPP is the UK's leading provider of education for payroll, and has a Pensions Faculty responsible for delivering qualifications and membership services to those responsible for public sector pensions.

The mission statement of the CIPP is:

Leading payroll and pension professionals through education, membership and recognition

Representation

The views of the Chartered Institute are sought and valued by Government departments and other organisations, as witnessed by its representation on bodies ranging from HMRC, and other external Employer Consultation Groups. The Institute, through its Policy team headed up by Karen Thomson, has been responding to consultation documents and attending consultation meetings for more than 16 years.

As a result of this sustained effort, we have created sound working relationships with the DWP, HMRC, BIS and other Government departments.

The Chartered Institute operates an Advisory Service staffed by professionals able to provide accurate and authoritative advice on a wide range of topics. It also runs national forums which allow members direct contact with representatives from HMRC and other relevant bodies and also provides a forum for members to input and feedback on the CIPP's policies.

Education

The Institute validates and controls a wide range of professional qualifications in both the payroll and public sector pensions sectors, from Foundation Degree level to Masters level. CIPP Education, a wholly owned subsidiary of the CIPP, it delivers the qualifications and provides tutors at officially recognised standards. CIPP Education also runs a comprehensive range of short training courses throughout the UK.

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Events

The CIPP also runs a series of conferences throughout the year, culminating in the Annual Payroll & Pensions Conference and Awards Ceremony.

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FLBA Response to the Technical Consultation on the Draft Regulations:

The Child Support Maintenance Calculation Regulations 2012

1. Responses to questions posed in the consultation document

Q1 Do you agree with the proposal to remove students from the nil rate cases and calculate the liability on their gross weekly income?

Yes, in principle. However, as many, if not most, students will be funding their fees and their living expenses from student loans, there should be an express exclusion of the drawing down of loans taken for maintenance and fees from the calculation of gross weekly income within a student non-resident parent's income. Consideration should also be given to making a deduction from gross weekly income for student loan repayments, as there is a case for these to be treated in the same way as pension contributions as legitimate deductions from gross weekly income.

Q2 Is the making of an assumption about shared care the right approach to avoid some of the current practical difficulties regarding shared care calculations?

We are not aware what the "current practical difficulties" are regarding shared care calculations. Neither the consultation document nor the regulations provide much guidance on what would, in the Commission's opinion constitute" sufficient" evidence to enable them to make a determination. In the absence of a court order or written agreement there is frequently a dispute about how many nights a qualifying child in fact spends with a non-resident parent. The introduction of an 'assumption' would seem likely to work in favour of a non-resident parent (in so far as he will have the benefit of a reduced calculation) and may result increasing the evidential burden on the parent with care in the event that is her case that the degree of shared care is less. We fear that this may encourage parents with care in this situation to refuse to make the concession referred to at reg 47(2)(a); put another way, parents with care who disagree with the non-resident parent about the level of shared care may be more likely, in the light of this

change to the legislation, not to wish to make any concessions about shared care so as to try to ensure that no deductions can be made from their maintenance calculation.

Any change which makes for a smoother, more accurate flow of funds to the children who are subject to the assessment, is to be welcomed but not if this encourages tactical decisions on 'shared care' issues by parents

Q3 Do you think the periodic income check adds value to the review process?

Yes. Periodic review adds value, in that it relieves the parent with care from the responsibility of 'chasing' the Commission and should also ensure the maintenance liability remains up to date.

Q4 What do you think of the proposal to remove assets and lifestyle inconsistent with declared income grounds given the new approach to unearned income?

We do not agree with this proposal. The difficulty, unfairness and the 'loopholes' arising out of the current variation system have been widely noted amongst practitioners and even commented upon in a number of recent Upper Tribunal Decisions. However, our concern is that the proposed variations, while addressing some areas of unfairness, will provide fertile ground for non-resident parents wishing to find new ways to avoid or reduce their child support liability. It would be interesting to know what percentage of maintenance calculations currently in force involve an element of additional income arising out of the existing asset or lifestyle inconsistent grounds.

The need to preserve discretion in this contentious area ought not to be underestimated. Those working in the court system dealing with financial remedies on family breakdown are all too aware of the sophisticated lengths to which a determined person will go to conceal the true extent of their resources. For those who are able to influence how their resources are paid, there is scope, for example, to make payments to themselves by way of capital advance or loans from a privately owned company. As these do not necessarily show on an income tax return, there is scope for a prosperous non-resident parent to show a low income whilst still being in receipt of

significant resources. This was the very mischief, identified in Phipps v Peace [1996] 2 FCR 237, which led to the introduction of departure directions in the first place, with the introduction of the provisions to attach an income to assets. To have an incomplete variation regime, allowing the scope identified for non resident parents to escape or minimise their liabilities would be, in our view, a retrograde step.

It is not clear what the case is for removing these grounds in its entirety; it is a misconception to link the improved provisions for ascertaining unearned income with the removal of these grounds. For those determined not to reveal the extent of their resources, there may well not be any evidence of unearned income on which the Commission could rely. Such a person is unlikely to be declaring other financial resources such as drawing down of capital or living on loans from a private company as unearned income to HMRC. Unearned income and diversion of income grounds are valuable, but require very precise evidence. Diversion of income cases have their limitations as it is not particularly difficult for a non resident parent to show how a new partner or new spouse is a legitimate transferee of business profits or of a shareholding. Many legal practitioners with a court practice in this field are familiar with cases where business accounts show a modest level of profit, and yet the business owner is able to take expensive skiing or other overseas holidays, with no apparent additional source of income.

The Government is urged to consider how sufficient flexibility can be introduced to the new scheme of variation to ensure that non-resident parents who present as asset rich/income poor are not unfairly benefited by these changes.

Assets Ground

The principal criticism in relation to the present 'asset' ground of variation is the level of notional income which may be attributed to a non-resident parent's assets, namely 8 % (a figure which may have been well founded in 1995 but is now hopelessly out of date). There would have been ample scope for mitigating some of the harshness of the current system by, for example, reducing the rate of assumed income to a figure more in line with the realities of the current economic climate. Those who derive income from letting property justifiably complain

that the current system takes a notional income into account rather than the actual income derived from the property. However, equally, it cannot be right that a non-resident parent may have unlimited capital resources (which may even be increasing in value) but, if these resources do not produce an income which he or she is required to declare within a tax return, they will be ignored for child support purposes.

Lifestyle Ground

In relation to the lifestyle inconsistent ground, our experience is that this is an extremely hard difficult ground to make out. Before we could support its abolition, we would need to understand how the Commission/ Tribunal are to approach those cases where a non resident parent is able to afford a lifestyle costing in excess of his declared income and which he/she cannot establish is paid for by capital. The revised variation scheme appears to provide limited opportunity for investigating a non-resident parent's resources beyond the information provided within his/her tax return (aside from where a diversion of income can be shown). This is regrettable.

The consultation paper does not address the transitional arrangements. It will be important, particularly in relation to those variation applications currently being determined, to know whether a variation made under e.g. the old asset ground will continue to apply once the new regulations have been introduced.

Q5 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?

It is not clear why there is a £2,500 threshold before unearned income is taken into account, given that it is still income. For a family with 2 children who are qualifying children, unearned income of £2,499 would result in no increase in child support payments, whereas unearned income of £2,501 would lead to a potential increase of £400 pa if no shared care deductions would apply. As HMRC data is going to be the fundamental source of information, there would not be an obvious increase in administrative costs to take the whole of declared unearned into account.

Furthermore, Regulation 21 states that the Commission "may" request up dating information in relation to unearned income when they make a request to the HMRC for the purposes of reviewing a non resident parents income in accordance with regulation 20. It is questioned why there should not be a duty upon the Commission to do this each year in the same way as they are required to update their formula calculations annually from historic information. If, as it seems, it is to become commonplace that variations will be made so as to bring into account income from land and property, dividend and other income from savings, these figures should be considered annually and the calculation updated as it would be if based on historic income.

Q6 Do you agree the percentage rates applied for relevant other children should be reduced to produce a more equal treatment of children in 1st and 2nd families?

Yes. Any provision that treats all children whatever their family circumstances as fairly / equally as possible is to be welcomed.

Q7 Do you agree with the proposal to increase the flat rate?

Yes. The proposed increase appears to strike a decent balance between an increase to reflect current general economic circumstances, to ensure a meaningful amount is paid and to make the additional charge on low incomes payers manageable.

Q8 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?

This is difficult and we have mixed views. On balance, and in the interests of the children who are to benefit from any increased maintenance paid, we support the proposal. It is fair that the non-resident parent should pay an increased sum immediately should his financial circumstances improve in such a significant way. However, we have reservations in particular about the

potentially high level of non-compliance and the likely difference in approach towards employed and self-employed non-resident parents.

This proposal targets those in employment or who are office holders, which are a group whose compliance with child support liabilities are generally better, and against whom it is often easier to enforce, by way, for example of deductions from earnings orders, and the recent change by which deductions from earnings can be used as a collection method not just as an enforcement method. This group of employed non-resident parents often feel themselves to be soft targets when compared to the self employed or those in circumstances akin to self employment. 7 days appears to be a very tight reporting deadline, especially where it is an offence not to comply – 14 or 21 days may be a more realistic reporting requirement, especially in circumstances where the Commission will be backdating any subsequent revision to the date the change of circumstances took place.

It is suggested that requiring non-resident parents to provide the information set out in (new) regulation 9A may prove onerous or confusing for non-resident parents. In particular it is highly likely that employed non-resident parents in occupations where their wages/salary regularly fluctuate will struggle to keep records of whether their actual gross weekly income has exceeded the figure used by the Commission for (say) 5 weeks in a row. We would expect non-compliance with these requirements to be high.

Since the Commission's objective is to ascertain a fair figure for normal weekly earnings, an alternative proposal in the case of employed non-resident parents whose incomes fluctuate, is that a broad view be taken, retrospectively if necessary, at the end of each 12 month period as will happen with self-employed non-resident parents, or those who are subject to additional income variation awards on account of receipt of unearned income

<u>Q9 What do you think of the proposal only to make this compulsion to apply to employed non-resident parents (ie not parents who are self employed or who have an element of unearned income)?</u>

We agree that an element of uncertainty exists for those who are self-employed in that it is only at a (tax or accounting) year end that the financial picture becomes clear. It would be difficult, therefore, to determine the moment at which any reporting requirement for the self-employed will be activated or how such a requirement could be enforced effectively.

However, is not immediately obvious why those who have unearned incomes should not be part of a scheme requiring notification of a 25% increase. For example, dividends from private companies are a classic example of unearned income, where a non-resident parent is both director/ employee of a company in which he has shares. The 25% threshold is sufficiently high to enable the usual fluctuations in such income to be safely ignored reserving the reporting requirement for more major changes.

Q10 Do you think that the amounts a default maintenance decision awards should be increased with inflation?

Yes. Default Maintenance Decision rates are unchanged from the 2003 scheme to the new gross income scheme. Reg 49 of the Draft Regulations keeps this sum unchanged. Applying inflation rates from 2003 to the default rates would give current rates of £38.40 £51.20 and £64. It is not clear why the current rates should not reflect inflation changes since 2003, and this may be a preferable solution than to provide for annual uprating, presumably by Statutory Instrument.

2. Responses to matters not specifically raised by way of question posed in the consultation document – sub headings are to paragraph numbers in the consultation document

General remarks

The tenor of many of the proposed new arrangements is to promote simplification and transparency. The constituencies involved in the scheme, being preponderantly the parents with care and non resident parents, are vocal and opposing groups. The new scheme in the form proposed by the Draft Regulations has many blunt and inflexible provisions, which may lead to

frustration, injustice and polarisation of these groups. Any system which tries to impose a formula on the calculation of maintenance, which has traditionally been a discretionary issue for a judge to determine, is bound to cause unfairness and provoke disquiet from one or both of the opposing groups.

If the policy objective of promoting family based arrangements succeeds, that will be in those cases where there remains an element of trust and co-operation. It will be the more entrenched, complex cases where there can be no recourse to court that will need to use the statutory scheme. For the statutory scheme to be seen as unfair risks returning the statutory scheme to the status it had in the early years of its operation, being, bluntly, reviled and mistrusted. The early incarnation of the statutory scheme, is acknowledged to have failed, not just in policy and administration terms, but in leaving legion numbers of entitled children unsupported financially. We are not particularly convinced that the new scheme has any greater prospect of success.

Para 69 Shared care - equal care leading to no maintenance calculation.

Whilst nothing should be done to disrupt shared care arrangements that are agreed amicably between separated parents, the proposal whereby an equal shared care arrangement would lead to no maintenance calculation creates a significant potential problem. In many families with children, one of the parents will earn more than the other as a natural consequence of the necessity to care for young children. The receipt of child benefit as an evidential marker as to which is the parent to be treated as the parent with care remains a sensible first presumption. However, serious financial injustice could be caused to the household where there is financial vulnerability, through lower or no earnings, but where, for reasons that are entirely child-centred, the children are absent for half the week as they are with their other, equally important but far better-off parent. The financial stronger parent could easily have retained the child benefit, and to preclude flexibility in this area would risk injustice to the poorer household. For families where the parents were not married, and thus there is no opportunity for the court to deal with adult maintenance issues, there may be a further layer of injustice. Other than relieving caseworkers of a decision making power, it is not immediately clear what benefit there is to the children of separated families as a result of this proposal. Split care provisions, as set out at

paras 99-101, appear to work well, and these are situations that are less likely to be encountered than equal shared care arrangements, with sibling groups moving together between households.

Para 73. Maintenance paid for children overseas

It does not immediately appear clear why only the most formal of arrangements for a child overseas would be considered when taking family based arrangements into account. If there is cogent evidence of a regular arrangement, by way of monthly bank transfers or standing orders, which would be good enough evidence for a UK family based arrangement to be taken into account, this level of flexibility and support for family based arrangements could assist to further both the policy of supporting family based arrangements and of ensuring the best flow of funds to the households where children need those funds. Case workers will no doubt have access to translation services for formal child maintenance arrangements by way of court order or statutory assessment, and it ought not to be a particularly difficult task for those translation services to support cases where a legitimate overseas family based arrangement is in place.

Paragraph 60. Contact cost now deductible by non resident parent in addition to reduction for shared care.

Whilst approving the aspiration to encourage and support regular contact between parents and children, this will result in there being an additional and material reduction in child support maintenance for parents currently subject to the shared care regime. This may not ultimately benefit the qualifying children. Additionally it is noted that the provisions for calculating the appropriate deduction (regulation 63) are detailed and would appear to provide fertile ground for argument (what is a reasonable mode of transport? Is it reasonable to stay overnight? If so, what should be cost of 'appropriate' accommodation? Is it appropriate for a non resident parent to be accompanied, for example by a girlfriend or parent whose costs should also be covered?). We are not convinced that the advantage of promoting contact in this way will outweigh the disadvantage of a parent with care having deductions made from the maintenance. Furthermore there would appear to be a real risk these provisions could have the result that parents with care

are discouraged from agreeing further contact where they believe that an application will be made on this ground and their maintenance will be reduced.

FAMILIES NEED FATHERS

Consultation response: The Child Support Maintenance Calculation Regulations 2012

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

It is right that all parents should provide financial and emotional support to their children wherever possible.

Families Need Fathers does not object in principle to students being removed from the nil rate category. However, it should also be recognised that students are not analogous to other fathers in part time work and/or in a low-income bracket. It is likely that these parents will be paying significant amounts in fees related to their courses, and the increased earning potential of further education means it is in the best long-term interests of the children involved that these parents should not be discouraged from carrying on with their studies. It would be prudent for the Commission to examine whether specialist information or support services could be provided to help parents plan and manage this additional liability.

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

Whilst understanding the difficulties involved in shared care calculations, the proposed approach could have the unintended consequence of incentivising a parent with care to limit a child's time with the other parent.

In cases where there is no agreement or sufficient evidence to determine established patterns of care, the knowledge that this is likely to result in a 1/7 reduction in maintenance may act as a deterrent to any contact being provided for. As such a situation is more likely in the initial aftermath of separation, any potential disruption to care arrangements resulting in a loss of contact between the non-resident parent and child could quickly become the status quo before arrangements can be formalised, creating long-term disruption to the parent-child relationship. Parenting arrangements and maintenance, whilst treated separately in law, are seen as inherently interlinked by the majority of families entering the system, and The Commission needs to be aware of the potential for increases in conflict that such a move could bring.

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

The periodic income check will add value to the review process. It will help to ensure that regularly collected accurate data is the basis for maintenance calculations, whilst also providing confidence for all parties that the details for calculations will be regularly examined. This may be particularly useful for cases where communication has entirely broken down between parents.

We would, however, question whether the required 25% threshold for the use of current rather than historic income is an appropriate level. If a non-resident parent's income were to fall (by up to 24%), they would continue to be subject to the previously calculated liability rate, set before their income decreased. This is likely to place an intolerable strain on non-resident parents' income and ability to pay. Alternatively, if a non-resident parent's income were to rise, they could be providing a far higher level of financial support for their children than would be accounted for with the proposed threshold. Whilst understanding the need to set this rate at a level which will ensure minor or temporary changes in income do not result in continuous reassessments and associated delays, it is clear that an increase or decrease of just under a quarter of a parent's annual income would have a significant impact on the lifestyle of the parents and families involved. We believe that a threshold of between 15 and 20 percent would provide a better balance between ensuring the system is not subject to unnecessary challenges, whilst also ensuring that parents and children are adequately supported depending on whether income has increased or decreased.

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?

Families Need Fathers agrees that the new approach to unearned income removes the necessity for the assets and lifestyle inconsistent with declared income grounds for variation of a calculation. The HMRC data will provide a reliable source to assess taxable income from a wide range of sources, ensuring more accurate assessments can be made. This provides a far stronger basis for calculation assessments than those based on assets and lifestyle.

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?

<u>Non-resident parent with unearned income:</u>

Families Need Fathers agrees with the scope of this ground, and believes that it is clear and understandable.

<u>Where the non-resident parent receives a benefit resulting in a flat rate or nil rate liability but has additional taxable income from employment or self-employment or income from pension schemes, of at least £100 a week:</u>

We agree that assessing additional taxable income in these situations by the standard calculation rules and adding these to the flat-rate liability simplifies the administrative process, and will be clearer for parents to follow than is currently the case.

<u>Diversion of income:</u>

This ground, whilst a basis for legitimate claims, is not as clear to follow or administer. Without further elaboration on what makes payments 'excessive', it is difficult for parents to know where they stand in this regard. Clearly, this will vary somewhat on a case by case basis, dependent on factors such as parental age and income. However, further guidelines on this matter would be required for parents to better understand what an acceptable level of payment into pension schemes may be.

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?

We agree with the decision to reduce the percentage rates between children from first and second families and to bring them more into line with each other. It is crucial that all children a parent is responsible for are provided for equally, and amending the system as described would support this goal.

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

Families Need Fathers urges caution on this issue. Many non-resident parents already struggle to pay the current rate of £7, and raising this further will only heighten debt levels and will reduce the amount of money available for contact costs including travel.

Looking at the amount payable in terms of a percentage of disposable income is not an adequate measure of ability to pay. Only by looking at discretionary income can account be taken of basic expenses; food and bills which have all been increasing in recent years. In the five years from August 2006 to August 2011, food prices increased by 31.6%, at nearly twice the rate of Jobseeker's Allowance (JSA).[1] Consumer spending on food shopping increased 26% between 2006 and 2011, [2] also a rate considerably higher than the increase in JSA. These pressures are most keenly felt by those who would be directly impacted by an increase in the flat rate, and could result in accumulating debts and arrears which would harm their capacity to gain employment. Such a situation would not be in the best long-term interests of their children.

The costs of contact with their child should also be accounted for. Many non-resident parents who are living on JSA and low wages are unable to care for their children as much as they would like due to the high travel costs involved. Raising the rate of liability would further reduce their ability to be involved in their child's life.

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?

It is right that parents who experience a significant increase in income should increase their financial provision for their children. However, a 7 day notice period is too short, and could easily place those with a legitimate reason for delay, such as illness at risk of prosecution.

A notification period of between 14 and 28 days would provide a more suitable limit, and as increases in maintenance would be backdated to the date that the increase in income occurred, the provision available for the children would not be adversely affected. This would also provide stronger evidence that those who do not notify the Commission of an increase in earnings are attempting to actively avoid their increased liability.

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[1] From April 2006 to April 2011, Jobseeker's Allowance for an adult aged 25 and over, only increased by 17.49% from £57.45 per week to £67.50, Consumer Price Index, Oxfam 2011

[2] Consumer Trends, Office of National Statistics, 2011

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)?

Due to the irregularity of payments resulting from self-employment, the only way to calculate income effectively is by considering the total amount over the year as a whole. This also applies to those who have elements of unearned income.

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

It is reasonable to increase a Default Maintenance Decision in line with inflation in order that the payments retain the same real value, the benefit of which can be passed on to the child.

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Gingerbread
Single parents, equal families

The Draft Child Support Maintenance Calculation Regulations 2012

Response from Gingerbread to the technical consultation

February 2012

For further information and any queries, contact
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Introduction

1. Gingerbread is the national charity working for and with single parent families. We provide expert information and advice, along with membership and training opportunities, to single parents and their families, and campaign for single parents and their children to be treated fairly and equally. Child maintenance forms an important part of our work. Queries relating to child maintenance make up around 10 per cent of calls to our Single Parent Helpline. We undertake research and publish reports examining various aspects of child maintenance, and the views of parents eligible for child maintenance. We produce and distribute factsheets on key aspects of child maintenance as they affect single parents, and it has been a longstanding goal of the organisation to help achieve an effective child maintenance system in this country so that children growing up in separated households are not financially disadvantaged as a result, and that both parents contribute their fair share to children's upkeep on a regular and sustained basis.

2. The views in this submission are the views of Gingerbread and are based on our knowledge – through casework, direct feedback from single parents, research, and dialogue with practitioners – of the child maintenance system.

Overview

3. Gingerbread appreciates the considerable work and investment there has been since the passage of the 2008 Child Maintenance and Other Payments Act, in creating and developing the detail of the future statutory maintenance system. There is much in the new maintenance calculation rules to welcome, including the greater use of HMRC income data (including access to self-assessment information); annual reviews of non-resident parents' income; the alignment of the definition of a qualifying child used by the Commission with that in Child Benefit provisions; and the removal of the bar to a variation if Working Tax Credit is in payment. We also welcome the work that has been done to provide a better service to parents within the new statutory service, including a self-service online portal, new written and online communications (with the ability to alter swiftly), and greater risk profiling to improve arrears action.

4. Clearly a balance has to be struck between what is more convenient and cost-effective for the Commission at a time of austerity, and the creation of a system which seeks to ensure that parents living apart from children pay their fair share towards their own children's upkeep. Fairness matters not just for the individual children concerned, but also between parents, and in determining wider public support for the child support system. Considered as a whole, Gingerbread considers that this balance has not been struck in the draft maintenance calculation regulations, leaning too much towards a preoccupation with the Commission's own interests rather than striving as much as possible to meet those of children.

5. What suits the Commission in terms of convenience and cost cutting can result in a non-resident parents' actual income being ignored in favour of a partial picture based on what is easy information to collect. For example, a mistaken concern (in our view) to avoid different treatment between non-resident parents whose income is captured via PAYE returns, and those who complete annual self-assessments when doing the basic maintenance calculation, will result in a blind eye being turned to available information concerning the unearned income of the latter. The result is a risk of fundamental unfairness to many children who will lose out on much needed financial support for their upbringing from one parent (unless the parent with care understands and pursues the little-known and little-used procedure of applying for a variation.)

6. It is also disappointing that the opportunity has not been taken to tackle the rules which enable wealthier non-resident parents, and those who have control over how their income and assets are presented to the Revenue, to successfully minimise their maintenance liabilities to the detriment of their children, with little the parent with care can do to prevent this.

7. It is of particular concern that the Impact Assessment which accompanies the draft regulations reveals that around 100,000 families currently in receipt of child maintenance are likely to suffer an average reduction in their maintenance of £6 per week, as a result of a non-resident parent's tax credit income no longer being taken into account. The rationale given for this substantial loss to children is that HMRC's 'gross income' details only include taxable income, and that the change will mean non-resident parents in receipt of tax credits "are treated no differently than other non-resident parents with earnings."[1] (Despite the fact that they are in receipt of an additional source of income).

8. This seems a thin rationale for taking so much money away from children, especially given the fact that HRMC holds full details of the annual tax credits paid by the Revenue to non-resident parents. Ease of administration appears to have trumped money for children in a way which is unacceptable. Children in lower income families are likely to be the biggest losers – because where non-resident parents qualify for tax credits, their ex-partners are similarly likely to be on low to modest incomes. Where there is one qualifying child and no other relevant children, parents with care will be worse off where the non-resident parent has a gross income up to £370 per week; with two qualifying children, parents with care will lose where the non-resident parent has up to £350 gross income a week; and where there are three or more qualifying children, parents with care will get less maintenance where the non-resident parent's gross weekly income is up to £530 per week.[2]

9. These cuts to statutory child maintenance will come on top of planned future reductions in child maintenance of up to 12 per cent for parents with care who have to rely on the statutory maintenance service to collect the money due, as a result of a non-resident parent's failure to pay of his own accord[3].

10. We accept that because of the complexity and density of the draft maintenance calculation rules and because much remains unclear about the combined impact of the government's child maintenance proposals on families in different circumstances (including linked families), it is difficult to be definitive at this stage about the net effect on children of all the proposed changes. These include proposals to make on-going deductions from maintenance for children to help pay for the statutory collection service, and the impact of the transfer of existing CSA cases to the new system – where the net effect will depend on the age of the case, and the extent to which the existing calculation is based on current information. We see this submission as part of an on-going discussion with the Department and the Commission on its proposals. We hope there will be further opportunities to consider the net impact of the child maintenance policy reforms going forward.

11. Below we reply to the consultation questions asked, with some additional matters raised at relevant points.

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[1] Impact Assessment para 28.

[2] These figures are taken from the Impact Assessment para 138. See also Graph 1.

[3] Ninety-five per cent of non-resident parents within the statutory scheme are fathers, and ninety-five per cent of parents with care are mothers. For ease of reference, we therefore occasionally refer to non-resident parents as 'he' and parents with care as 'she'. Full details of the Government's planned future charges to use the statutory maintenance service are contained in *Strengthening families, promoting parental responsibility: the future of child maintenance* DWP (2011) Cm 7990

Making the calculation

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

12. Yes. The Impact Assessment suggests that students who work "are likely to be assessed at around £9 in term time and £27 in vacation time, based on average wages."[4] This is puzzling given that we had understood that the maintenance calculation will be based on historic income over the whole of the previous tax year, then scheduled for payment (under the draft (New Calculation Rules) (Consequential and Miscellaneous Amendment Regulations 2012) in equal instalments over the 52 week reference period.

13. We raise the matter because, in practice, a student who has minor earnings during the 30 weeks of term time, might have difficulties paying a child maintenance liability which also reflects considerably higher vacation earnings. The Commission will need to think carefully about how it collects maintenance (including taking enforcement action) from non-resident parents whose annual income (although accurately reflected in the historic income data from HRMC) fluctuates significantly at different points of the year. Or will such cases routinely be based on current income?

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

14. Because levels of child maintenance – both payment of it and receipt – are so sensitive to the existence and extent of shared care arrangements, the latter can become a source of conflict between parents, with the motives of either parent regarding their attitude to a child's overnight stays being subject to possible suspicion due to the financial consequences. It can lead to 'overnights counting' of the worst sort, where the welfare of children gets lost. Ultimately, Gingerbread believes the matter can only be resolved by raising the threshold at which maintenance is reduced to take account of the difference between 'sleep overs' at the home of the non-resident parent and meaningful shared care.

15. Turning to the provisions in draft regulations 46 and 47, there is a risk that the parent with care may suffer a 'de facto' reduction in child maintenance of one seventh when – whilst having agreed in principle to overnight stays by the child with the non-resident parent - such arrangements do not in fact consistently take place. Information provided by CMEC to Parliament[5] suggests that around a fifth (22 per cent) of parents with care have their maintenance reduced to take account of overnight stays with the non-resident parent. This suggests that extending a 'shared care' reduction to a much larger proportion of the statutory caseload will result in losses of maintenance for children - without necessarily a much greater uptake of actual shared care arrangements. For the main carer of a child, the loss of one seventh of child maintenance (just over 14 per cent of full liability) is a significant loss, particularly in the context of future collection charges which will also reduce maintenance for children by between 7 and 12 per cent. We would suggest that:
    a. The period of an assumed shared care arrangement of one night per week should be shorter than 12 months in most cases: we suggest six months as a maximum;
    b. The Commission should make clear to parents what evidence it will regard as sufficient in determining the pattern of shared care which is actually taking place;

[4] Impact Assessment para 130
[5] Hansard, 01/12/2010, Written Answer

c. Parents where shared care arrangements are contested should, as a matter of course, be referred to family support services to assist them in seeking to make an agreement on this;
d. If the maintenance calculation is going to be subject to annual review going forward, part of that review should involve checking the accuracy of the reduction in the amount of child maintenance liability to take account of shared care arrangements, in the light of the actual pattern of children's stays with the non-resident parent.

16. The wording of draft regulations 46(4) makes it unclear how the Commission will deal with the situation where there is a contact agreement between the parties or a court order, but where in practice the terms of the agreement or the court order are not being adhered to. There appears to be no provision for the Commission to consider the actual pattern of shared care in this situation, regardless of what the formal agreement or court order states.

17. It is also unclear how the Commission will establish under draft regulation 47((2)(a) whether the parties do agree – or appear to agree - in principle that care of the qualifying child shall be shared between them, and what happens where one or other party makes it clear that there is no such agreement in principle.

18. A further question arises concerning an 'indicative assessment' and the extent to which an assumed element of shared care will be incorporated into that, in the absence of a clear pattern of contact already being in place. The existence of the 'assumed shared care rule' and the knock-on consequences in terms of the amount of maintenance actually due will need to be carefully explained to parents at this stage.

Changing the calculation

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

19. Yes. The latest figures show that there are 264,200 CSA cases with a nil liability, or 23 per cent of the overall caseload – a surprisingly high proportion.[6] Whilst this partly reflects the maintenance calculation/assessment rules, it is also a reflection of the fact that cases are not automatically reviewed at intervals to ensure that non-resident parents' income information is kept up to date. Information to Parliament in 2011 revealed that, of cases between five and ten years old, over a third (33 per cent) had never been subject to a change of circumstance review.[7] This matters, because it means that the children concerned are not necessarily sharing in the non-resident parent's true standard of living.

20. As well as the annual review process, the periodic income check is therefore an important safeguard where the non-resident parent's maintenance liability is being determined on current income. Not only will it provide an update on current income, if that remains the Commission's method of assessing the non-resident parent's income, but it also gives the opportunity to compare the income information given by the non-resident parent with the historic income data held by HMRC, and to revert to the latter if there is no longer a 25 per cent difference.

[6] CSA Quarterly Statistics, December 2011.
[7] Hansard, 18/07/2011, col 590-591W

Grounds for revision: taxpayer amends information previously given on a self-assessment

21. We are concerned about the scope for self-employed non-resident parents to manipulate historic income by seeking to off-set losses (which can be brought forward from the past as well as applied retrospectively to previous years) as a current year deduction. This could result in parents with care not only having their child maintenance reduced, but in being informed by the Commission that they have been overpaid and having to pay back the amounts previously received.

22. This creates scope for considerable uncertainty and insecurity for parents with care, many of whom struggle to raise children on limited budgets and for whom regular and reliable child maintenance is an important element in making ends meet.

23. The issue of retrospective readjustments to child maintenance liability also arises in connection with Default Maintenance decisions. This is discussed further below.

Variations

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?

24. We accept that the ability of the Commission to access income information from HMRC contained in self-assessment forms will make it considerably easier to identify a non-resident parent's income streams and assets. This is a valuable step forward and is to be welcomed. Also welcome is the decision that receipt of Working Tax Credits by a non-resident parent will no longer be a bar to a variation application by the parent with care.

Assets

25. We have no objection to the Commission capturing the actual income from an asset when considering a variation to take account of additional income, as opposed to the current 'asset ground' for a variation when the statutory rate of interest of 8 per cent is applied, a rate which is clearly excessive in today's financial climate.

26. However, we foresee a problem arising where non-resident parents possess an asset or assets capable of producing an income which they then choose not to take full advantage of. This would have the result of enabling such non-resident parents to retain the full capital value of the asset or assets (which may appreciate) for themselves in the future, whilst depriving their child or children of current financial support. This is a potential loophole which we think the Commission should be looking to block.

27. The loss of the 'asset ground' for a variation also removes the opportunity to tackle the situation where wealthy non-resident parents have significant income from ISAs or other non-taxable savings which would not otherwise be counted when assessing the financial contribution they should make to their children's upbringing. Again, it is important that the Commission does not turn a blind eye to the position of wealthier non-resident parents who may end up paying a lower proportion of their gross income in child maintenance as a result, compared to non-resident parents with solely taxable income.

28. The solution we suggest would be either to:
    a. Retain the asset variation but with a lower rate of interest, reflecting a more realistic rate of return;
    b. Allow a variation whereby a notional income is assumed from an asset capable of producing a reasonable level of income, where non-resident parents have chosen

to forgo such income without good reason, bearing in mind their maintenance responsibilities towards their children.

Lifestyle variation

29. The lifestyle variation has the tremendous advantage that it does allow parents with care to bring to the attention of the Agency and to a Child Support Tribunal, cases where there is a clear and inexplicable discrepancy between declared income and lifestyle. Whilst this does not always result in a variation on lifestyle grounds, it can often lead to proper scrutiny of a non-resident parent's actual financial situation and a variation on other grounds, such as diversion of income.

30. Given the limited powers available to a parent with care to obtain full disclosure of a non-resident parent's declared income, 'inconsistent lifestyle' is an important tool for parents with care with legitimate concerns that the non-resident parent is seeking to evade paying proper child maintenance.

31. For reasons of convenience and cost, the Commission appears reluctant to engage with the very real problem of non-resident parents who seek not only to conceal their true income for child maintenance purposes but also for tax purposes. The view taken by the Commission is that such cases should be dealt with by HMRC. In reality, as the Commission will be aware, under HMRC's 'risk-based' approach and value for money criteria, non-resident parents who are cheating their children as well as the taxpayer, do not necessarily come high up on the list of HMRC priorities when investigating tax evasion – unless considerable funds are at issue. Yet the money lost, which would otherwise go to supporting children, whilst maybe modest in terms of tax income forgone, matters tremendously in terms of the quality of those children's lives and hence their futures.

32. Whilst there are legitimate reasons for looking to make better use of income data from HMRC, this should not mean relying on the Revenue to root out maintenance evaders. HMRC has different responsibilities and different priorities, and hence different values. It should remain the central purpose of the Commission to ensure that parents properly pay towards their children's financial support – ideally on a voluntary and consensual basis, but if necessary by the Commission taking action to ensure parents (whatever their income) are not allowed to evade their responsibilities.

33. The Impact Assessment accompanying the draft regulations argues that, because variation applications are a source of tension between parents and are time-consuming for staff to investigate, it will be beneficial to parents as well as staff that the above grounds for variations are being dropped.[8] To suggest, as the Impact Assessment does, that the new variations rules will be better because there will be "less conflict between the parents and the Commission where currently caseworkers get caught in the middle" is to overlook the fact that there may be a substantive issue to be resolved between the parents, regarding very real questions as to whether a non-resident parent is attempting to evade paying adequate child maintenance.

[8] Impact Assessment, para 109

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 this is taken into account?

The definition of gross income used in the standard calculation unfairly favours non-resident parents with additional income

34. Non-resident parents with income other than directly from employment are at an advantage when it comes to the assessment of their child maintenance liability. Any unearned income such as property income, savings income and dividends will be ignored by the Commission in the basic assessment, even though it will have access to much of this information via HMRC. Income from Tax Credits will be discounted altogether in the definition of gross income, despite HMRC holding full records of payments made. It is also proposed to ignore State Retirement Pension, even though verification of receipt by the non-resident parent would be easily available to the Commission as a DWP Agency. This means that the amount certain non-resident parents will be asked to pay for their children by the Commission will be far lower than the 12 per cent/16 per cent/19 per cent of gross income other non-resident parents will be liable to pay. Gingerbread puts on record that it strongly disagrees with the decision to exclude such income from the main maintenance calculation, with the parent with care's only possible recourse being to seek a variation.

Parents with care do not understand and are not encouraged to consider an application for a variation

35. At present, the variations procedure is little known, little understood and hence little used. It does not help that the Child Support Agency has consistently failed to produce clear and accessible information and guidance to parents with care on the variations procedure, either on its website or in leaflet form. Indeed, some single parents who have been concerned that a maintenance calculation does not reflect the non-resident parent's true income, have told us that they are have been discouraged by Agency staff from challenging the maintenance calculation, on the grounds that they are unlikely to succeed. Very few parents with care make use of the appeals process, despite the expertise available (via financially qualified Panel Members) to examine financially complex cases.

36. The avoidance of child maintenance and efforts to pay as little as possible on the part of some non-resident parents is a fact of life. It is also the case that the tax efficient arrangement of setting up a private company, and receiving the majority of income in forms other than earnings, can also have the effect of substantially reducing child maintenance liability. This is not a trivial or unimportant matter even though it requires effort and expertise on the part of the Commission to uncover this. Not only are many tens of thousands of children being raised in financially straitened circumstances as a result, but the fact that it results in certain non-resident parents paying proportionately less can embitter those non-resident parents paid solely via PAYE who have no option but to pay their full child maintenance liability. It also encourages a general culture where maintenance avoidance and evasions appears to be condoned, particularly for the better-off.

37. Given its access to HRMC and DWP data, the Commission will be in a far better position than the parent with care, in many cases, to know whether non-resident parents have additional income which could materially affect their maintenance liability if a variation was sought. It therefore seems unfair that it will be left to a parent with care (who may have little idea of the non-resident parent's current financial circumstances after years of

living apart) to raise the issue of 'additional income', and understand how to use the variation procedure.

38. The possibility of a parent with care understanding the scope for a variation request will not be helped by the fact that the Commission will not pass on to the parent with care a breakdown of the non-resident parent's annual taxable income. Instead, the Commission will only respond to specific queries on the calculation made by a parent with care.[9] Again, this puts the parent with care at a considerable disadvantage in challenging the income figure used in the maintenance calculation.

39. We recommend that the Commission gives full and detailed information to all parents with care regarding the grounds for a variation and how to apply, both when the initial calculation is notified to the parent and at each annual review. Detailed information should also be available on the Commission's website. Where the Commission has access to HMRC or DWP data which clearly indicates that the non-resident parent has additional income, we believe it should actively invite the parent with care to apply for a variation.

40. The interpretation of the Commission's obligations under Section 18 of the Child Maintenance and Other Payments Act 2008 will therefore be crucial. What threshold of information or evidence will the parent of care have to meet, before the Commission will be satisfied that "consideration of further information or evidence may affect its decision"? What "further information or evidence" will be considered "available" to the Commission? Will this include information regarding pension income from DWP or tax credit information from HMRC? And what further "appropriate steps" will the Commission consider it is obliged to take to obtain "further information or evidence"? Gingerbread believes that the Commission's obligations under Section 2 of the Child Support Act 1991 require it to exercise its discretion in these matters, with regard to the welfare of the child or children likely to be affected by its decisions. Ensuring that a child receives proper child maintenance, at a level reflective of the non-resident parent's actual financial circumstances is an important consideration in this respect.

The bar on a variation where unearned income is below £2,500 per annum is unfair

41. We consider it wrong and unfair that non-resident parents with unearned income have an extra 'cushion' of income of £2,500 outside the maintenance calculation - even via a variation - compared to non-resident parents whose sole income is from employed earnings. This is another example of the more favourable treatment afforded to non-resident parents who have the ability to control how their income is received.

Excessive pension provisions and the use of the 'diversion' variation ground

42. If the decision is taken to adjust historic or current income to exclude amounts paid as contributions to an approved occupational or personal pension scheme, and to retain the provision within the variations scheme for a parent with care who considers the non-resident parent's contribution to be excessive, we consider that – as part of a strategy to prevent maintenance evasion – the Commission should be prepared to share with a parent with care who is seeking a variation on these grounds, the information it has available to it via HMRC concerning the pension contributions being made by the non-resident parent. We accept that, where contributions have been offset against earnings by an employer, this information will not be included in the information the Commission receives from HMRC. Nevertheless, the Commission should make available what

[9] See Consultation Document Annex C, para 11

information it has to parents with care in this situation, to assist them in reaching a proper view on the matter.

No variation allowed where a Default Maintenance Decision (DMD) is made

43. We can see no reason why non-resident parents, content to live with a default maintenance decision (DMD) (currently limited to £30 for one child, £40 for two children, and £50 for three children) should be allowed to avoid a variation application from the parent with care just because a DMD is in place. Whilst the number of default maintenance decisions might well be reduced in future due to greater reliance on HMRC information, it still leaves open the prospect of non-resident parents on 'current income' opting for a DMD, knowing that – if a variation application were allowed – their maintenance calculation would be higher. This cannot be right. We would urge the Commission to reconsider this rule in the future statutory scheme.

Other Matters

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?

44. We accept this proposal, although we must point out that a non-resident parent and the second family gain disproportionately if child maintenance is also being paid by another non-resident parent for the same relevant other child in the second family.

Family-based agreements

45. We accept the principle that, in a system which seeks to encourage private maintenance arrangements, the statutory maintenance calculation in respect of a child has to take account of any private maintenance agreement the non-resident parent has entered into with regard to other children of his.

46. However, questions arise concerning verification of the conditions set out in draft regulation 48. As a minimum, we suggest that:
    a. The non-resident parent should be required to produce proof that they are the parent of the child or children in question, and that the children are habitually resident in the UK.
    b. The other party to the oral or written private maintenance agreement should be asked to confirm their understanding of the oral or written agreement regarding maintenance.
    c. The continued existence of any agreement should also be confirmed with the non-resident parent and the other party to the agreement each year when the annual review of the calculation is carried out.

47. Ideally, to prevent the obvious evidential difficulties which could arise in connection with this provision and the possibility of challenge by a parent with care regarding the existence of such a 'qualifying maintenance arrangement,' we would like to see the development of a 'kite-marked' private agreement form which parents, wishing to make a family-based maintenance agreement, were encouraged by the Commission to complete and register with the Commission. Such a form would have to be signed in the presence of an accredited person or organisation, and could form the basis for recognition of a family based agreement within the statutory maintenance calculation.

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

48. Gingerbread agrees with the principle that all parents should support their children where they have the means to do so, and accepts that the flat rate contribution should be

updated to £7. However we would oppose any further increase beyond £7 given the very limited means of non-resident parents on benefit (£67.50 if living alone on Jobseeker's Allowance), and the fact that the benefit rates in question contain no allowance for the children concerned. The suggestion that an even higher contribution be taken from the poorest non-resident parents sits uneasily with the decision to ignore Tax Credit income completely when assessing the child maintenance liabilities of working non-resident parents.

49. A single person's Income Support or Jobseeker's Allowance is paid at a rate intended for their own, very basic, subsistence. Even £7 per week will be a stretch for a non-resident parent who has been out of work for some time, and who – at a time of rising prices for food and fuel - may well have incurred on-going debt repayments for social fund loans, fuel debts and credit card bills. Where non-resident parents are forced into greater poverty than other unemployed people, it risks putting them at a disadvantage in having the resources for job preparation and job hunting.

50. Payment beyond £7 would make it especially difficult for a non-resident parent on benefit to have any resources available to entertain a child on a contact visit. Although, if the child stays overnight on a regular basis, the flat rate is no longer payable, not all non-resident parents on benefit are in a position to have their children to stay. Obtaining large enough accommodation suitable to enable children to stay overnight can be a particular problem for low-income non-resident parents dependent Housing Benefit. The Government's plans to reduce Housing Benefit for so-called 'spare rooms', and the recent restriction of Housing Benefit for single non-resident parents under 35 to a lower 'shared accommodation' rate will also affect the ability of some non-resident parents to have their children to stay overnight.

51. When non-resident parents are living on such low levels of income, it makes sense that, whilst expecting a token contribution towards child maintenance, the Government considers instead investment in projects, as in the US, where unemployed non-resident parents are targeted specifically with the aim of getting them into employment, strengthening family ties, and paying increased amounts of child maintenance on a regular basis once they are back in work.[10]

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?

52. Yes. We agree that non-resident parents whose maintenance liability is based on current income are potentially in a position to take advantage of an increase in income, which will not be picked up for some time by HMRC to be translated into a future 'historic income' figure. Therefore placing non-resident parents under a duty to report an increase in income of 25 per cent or more is sensible.

53. The seven day period to report such a change in income is unrealistic, however, and should be altered to 28 days.

54. The introduction of a requirement to report substantial changes of income should not take away from action by the Commission itself to monitor substantial changes in a non-resident parent's financial circumstances. It is important that the Commission establishes close working relations with HMRC and DWP so that the Commission is

[10] See for example http://www.urban.org/UploadedPDF/411567_pff_outcomes.pdf

regularly informed through data matching exercises, carried out routinely at frequent intervals, as to when non-resident parents leave benefit and when they start a new job.

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

55. We can appreciate there can be a degree of practical difficulty, in some cases, in reporting during the course of a year an increase in income which is relevant for child maintenance purposes. However, it would seem perfectly possible to require self-employed non-resident parents and those with unearned income who have a 'current income' assessment to notify the Commission within a reasonable period (of say, 28 days) after they have submitted their tax return on the 31st January each year, of any increase in income of 25 per cent or more compared to the previous year.

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

56. The scope for Default Maintenance Decisions will hopefully decrease in future as a result of much greater reliance on HMRC information. We have no objection to Default Maintenance Decisions being increased by inflation.

57. Gingerbread would like to see more published information regarding the extent to which Default Maintenance Decisions are made, and how long they last. As part of a maintenance evasion strategy, we recommend that where a non-resident parent has consistently paid Default Maintenance for a period of 12 months, the Commission carry out an investigation (for example, checking unearned income and assets) to ascertain whether this is a tactic to reduce maintenance liability.

58. We also draw the attention of the Commission to the problems caused to parents with care, where a non-resident parent – after possibly a lengthy period of non-cooperation – finally produces the relevant income information leading to a reassessment of his child maintenance liability. This can lead to the parent with care being notified that child maintenance has been overpaid, and being forced to repay funds – in effect acquiring a debt due to the other parent's non-cooperative behaviour. We recommend that a Default Maintenance Decision should only be subject to revision from the date that the non-resident parent begins to cooperate and not before.

THE LAW SOCIETY of SCOTLAND
www.lawscot.org.uk

Child Maintenance and Enforcement Commission: technical consultation on the draft Child Support Maintenance Calculation Regulations 2012

The Law Society of Scotland's response

February 2012

INTRODUCTION

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession.

Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Society's Family Law sub-committee is pleased to have the opportunity to respond to the Child Maintenance and Enforcement Commission's technical consultation on the draft Child Support Maintenance Calculation Regulations 2012.

GENERAL COMMENTS

Many of the Society's members who work in the family law sphere are mediators and are trained in Collaborative Law. Almost all Scottish family lawyers are members of the Family Law Association which has developed practices and training for members in the best non-adversarial methods of guiding a family case to a satisfactory conclusion with the minimum of adversarial litigation, all in the interests of the children concerned.

We are glad of the opportunity to respond to the government's proposals for the reform of child support, believing that many of the proposed changes would be detrimental to parties, to children and to the fair administration of cases. We note that the technical consultation does not discuss the matter of the Scottish registered Minute of Agreement and its potential for removing large numbers of difficult and complex cases from the CMEC caseload. We hope to have the opportunity to discuss that matter, and others, in due course.

SPECIFIC COMMENTS

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

We agree that student NRPs should be treated in the same way as any others. Most students have little income and will pay very small amounts of maintenance, but those who have more should be expected fully to share the financial burden of their children.

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

We oppose any assumption about shared care. The range of possible patterns of shared care is very wide, and even if, as now, we look only at the number of nights spent with either parent, the calculation of maintenance should reflect the reality and not an arbitrarily assumed norm. In some cases, it is true that there may be a dispute about the level of shared care in place (as opposed to the level which ought to be in place) but that does not mean that the financial liability should ignore the reality, nor that case workers should not have to look at the evidence produced by either party at the initial stage.

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

Periodic review of the income of the NRP was always intended to happen under the 1993 scheme but was never fully implemented. It may be optimistic to suggest that it will happen in the proposed scheme, bearing in mind past failures and restricted resources.

Our much stronger objection is to the proposal that changes in circumstances should not be taken into account until the next tax year unless there has been an alteration of more than 25%. This is far too high a threshold, especially given the volatile nature of incomes of people in short-term jobs. As usual in the CMEC system, calculations and administration are relatively easy if the NRP is employed with a steady income, has no bonuses or other extra payments, has no changes to residential contact and has only predictable increments. In

reality, few people have that financial regime.

The case is stronger for the self-employed whose incomes may well be very changeable over the course of a year or two, and whose means may make it impossible to fund maintenance payments calculated on the basis of a tax return lodged some two years previously. On the other side of the case a self-employed NRP could very easily adjust his business to reprioritising salary, dividends, investment and other factors to minimize his maintenance liability. We cannot be confident that the machinery of CMEC, even working through HMRC, will be able to untangle such activity in the interests of the children concerned. The 25% limit is very much too high and will create injustice. The restriction on using real evidence of changes in circumstances, as opposed to evidence from an out of date tax return – which itself may be faulty and difficult to challenge – makes the proposal worse in practice.

Furthermore we are not convinced by the proposals in respect of the corrections of official errors. Through no fault of his own an NRP could find himself facing a large sum of arrears with no warning for which he could have made no financial provision.

This is our most serious concern in the whole consultation.

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

Regulation 18

We agree that a deemed rate of 8% on net assets greater than £65,000 is excessive. It has also been unsatisfactory that some assets are fairly easily excluded from the variation and that regulation 18(3)(b) has been patchily understood by decision makers. However, we think that to remove the asset variation is a mistake. An NRP could defeat a claim for maintenance merely by accumulating asset value either from business growth or from, for example, an inheritance, putting such wealth beyond the scope of maintenance and allowing him to avoid sharing that wealth with the child.

The wealthier NRP very often has property outwith the UK and the retention of these assets would also be left out of account with no benefit to the child. A rich NRP may well be advised to put his assets overseas for that very purpose. If the rate of 8% is too high – and we believe that it is – it could be reduced to a notional 4%, with the possibility of an alteration if either party could show, with evidence, that the true figure in a particular case was greater or lesser.

Regulation 20

It has been suggested that Regulation 20 is little used, but that may be because it appears to be the practice of CMEC not to revise applications for a variation on the lifestyle ground, leaving it to the appellant either to produce evidence to a Tribunal, or else persuade the Tribunal to make directions to flush out the evidence from the NRP. One of the most common proposed defences to a reg application is that the NRP is funding lifestyle out of savings. At present it is possible then to demand to see evidence of that capital decline, and at the same time, to see the capital which is alleged to be declining. Sometimes that is the first sight one has had of that capital. In other words a reg 20 case not only stands alone, it can also be a successful route into a reg 18 case. Even if reg 18 is to disappear (which we would oppose), a reg 20 case can still force an NRP to disclose the source of his funding and that could well show otherwise hidden capital from which income does actually flow. It is unrealistic to rely solely on HMRC records in respect of a jurisdiction in which, ex hypothesi, there is disagreement about the truth of the other party's evidence and disclosure.

Abolition of regs 18 & 20 would make calculations simpler for CMEC but would make life very much easier for the legally-advised wealthy NRP who wished to minimise his maintenance liability to the detriment of the qualifying child. Some legal advisers may welcome this new line of work, but we recommend that it should be denied them.

We support the removal of the automatic exclusion of variation where the NRP receives Working Tax Credit. There are cases in which the NRP receives, but ought not to receive WTC and under the present rules, the PWC is left with the difficult task of challenging the grant through the benefit authorities before CMEC will look again at the circumstances of the

case.

We do not however support any suggestion that HMRC should be the sole source of information upon which the maintenance calculation should be made. Is information from the PWC (who will often be the best source of information about resources not disclosed to HMRC) to be excluded from consideration altogether?

5. 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??

The proposed navigation system does not appear to be likely to be any more efficient from the point of view of the PWC, relying, as it does, on HMRC having correct information. Does HMRC claim to have correct information in every case? Is it acceptable to predicate the welfare of any child on that assumption?

The new variation ground is limited, according to the proposal, to unearned income in excess of £2,500. This is not acceptable. Currently no minimum unearned income level is specified and we would want this to continue to be the case.

6. 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?

We agree that the percentage rates for ROCs should be reduced.

7. Do you agree with the proposal to increase the flat rate?

We agree that the flat rate should be increased to ten pounds per week.

8. 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?

We disagree with this proposal. If there are to be annual reviews then any increases will be caught without undue delay anyway. The administrative burden of penalising or even prosecuting those who, by oversight fail to report increments must surely be a strong argument against such a change.

9. 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)?

We do not agree with this proposal. It is true that the self-employed NRP would find it most difficult to report every fluctuation in his business performance, and we would question what CMEC would do with the information anyway. Will a new CMEC have staff capable of examining and reinterpreting mid-year changes to business income? We believe that the present system of supersession is flawed, but preferable to the proposal.

The amounts of DMD awards are far too low and should be increased in order to encourage the NRP to provide full financial information promptly. The use of DMDs should be limited to the rare case in which information cannot, for some good reason be obtained reasonably quickly. The use of such devices as ASHE is preferable and will result in fairer calculations in more cases. There will always be anomalies, but the DMD, while convenient and cheap to administer, creates more.

We would be happy to discuss these matters with CMEC at any time.

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Consultation on the Child Support Maintenance Calculation Regulation

Response by the Law Society
of England and Wales
February 2012

supporting
solicitors

The Law Society broadly welcomes the changes proposed in the Child Support Maintenance Calculation Regulations 2012.

These reforms, coupled with the integration of the Child Maintenance and Enforcement Commission (CMEC) within the Department of Work and Pensions, should enable greater cooperation between Government departments, leading to a more efficient and comprehensive system. Provided that the IT software is efficient, and that there are systems in place to ensure that the periodic checks on the income are made and not missed, the system proposed should provide a much fairer way to calculate maintenance. This should reduce the number of reconsiderations for higher maintenance claims made by the non resident parent, and reduce the burden on them having to supply the information.

Nonetheless specific concerns still need to be addressed: Family-based arrangements may break down, or remove/relax the need to supply such information. Such an assessment might not be fair in these cases, especially if unearned income is not considered or disclosed. On that basis, it may be more beneficial to allow the Court to deal with the maintenance issues. There will also be self employed individuals who may not disclose all their revenues to HMRC, or other individuals who are not entirely honest in their tax returns. A mechanism to challenge and verifying this is therefore necessary.

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

Yes. The majority of students work whilst studying, and if they have children there is no reason why they should be exempt from paying maintenance for the child. This is particularly beneficial in that the more mature students will also have to take financial responsibility for their child. It is the financial reality that matters, not the occupational status.

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

This is problematic, as blanket assumptions in family matters are bound to create unfair outcomes, even if these are only temporary.

There is also concern that the level of maintenance is reduced until the matter is agreed if this assumption is made, and this may leave the non resident parent in financial difficulty. This factor can be manipulated by non resident parent within the proceedings. Even if reductions for shared care look equitable in theory, the fact is that they reduce income to the child's main home. The mortgage, rent, or council tax, still has to be paid by the parent providing that main home for the child, irrespective of whether the child stays with the other parent every alternate weekend, or more frequently, or not at all.

It might therefore be in the interest of children and resident parent to reverse this assumption, by saying that the parent who has contact does not see any reflection of this in the maintenance

assessment until their is a parental agreement as to contact or a court order. Whilst both solutions are imperfect, the latter ensures that children are not adversely affected by misplaced presumptions.

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

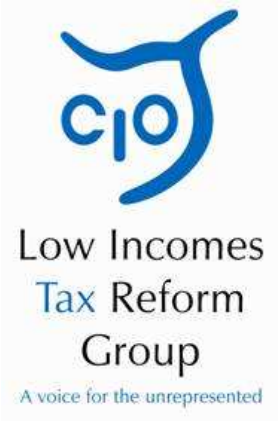
Yes. There are many cases of fathers that increase their working hours and then never it, therefore reducing their liability to pay maintenance. This process would reduce the potential for abuse, whilst ensuring that the amount earned is taken into account and clearly reflects the amount of maintenance liable to be paid. This will reduce the number of resident parents approaching the CMEC claiming such wages have increased, and reduce the burden on the department as a whole if periodic checks are automatically in place.

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

The new approach to unearned income is acceptable. Such unearned income should be taken into consideration, as it will at some point become additional income that the non resident parent has access to. Consideration of this unearned income would make the calculation of the maintenance fair. Considering how easy it is to manipulate this, however, possible challenges should remain.

- *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?*

Considering the threshold is set at 25%, this seems a fair proposal. Sanctions should be imposed against those that take no steps to report such changes. This would make the system fair and ensure that the no resident cannot shirk their financial responsibility to this child whilst providing a better lifestyle for themselves.



Draft Child Support Maintenance Calculation Regulations 2012

Child Maintenance and Enforcement Commission consultation

Response by the Low Incomes Tax Reform Group

1. Introduction

1.1. The focus of our response is on the use of HMRC data in the child maintenance assessment process. We have raised concerns about the use of HMRC data since our involvement in a working group in 2008. Whilst we understand the principle behind the changes, the complexities of the tax system mean that using raw data provided for one purpose for a completely different purpose is not always straightforward.

1.2. Although we welcome the opportunity to comment on the draft regulations, it is disappointing that many of the issues we raised in 2008 and in subsequent responses have not been resolved or been subject to further discussion. We recommend that a working group is established to discuss the issues that remain around the use of HMRC data before the draft regulations are finalised. This is particularly relevant at a time when HMRC are in the midst of a major change to the PAYE system with the introduction of Real Time Information (RTI) with effect from April 2013.

1.3. It is also relevant to note that the move to "gross income" from HMRC which occurred in the 2008 Act has been overtaken in 2012 by the development of RTI which collects both "gross" and "net" and indeed it appears that Universal Credit will be based upon "net". The consultation document also envisages taking" Pay As You Earn end of the year returns" as the base for PAYE income. Such returns will cease to exist under RTI.

1.4. We believe that a detailed examination of the interfaces between the proposed child maintenance regime and RTI is essential and if ignored now may produce significant problems down the line. We also do not believe that sufficient attention has been paid to how the PAYE system currently works, with the consequence that income sources may be omitted or even double-counted.

2. About LITRG

2.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.

2.2. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it - taxpayers, advisers and the authorities.

3. General comments

3.1. *Our interest in this consultation document*

3.1.1. Our response focuses solely on the issues arising from the use of HMRC data in child maintenance calculations. We have expressed concerns about the use of such data since our involvement in a DWP working group examining child maintenance variations in 2008. For that reason we have not addressed the specific questions in the consultation document as they cover issues wider than our remit.

3.1.2. When we submitted our response to the Green Paper[1] in April 2011, we recommended that a detailed consultation be undertaken about the specific issues relating to the use of HMRC data. So although we therefore welcome the opportunity to comment on the technical detail of the regulations, we believe it would have been better if the former working group had been re-established to look at the detail. We recommend that a meeting be called to discuss the issues we highlight below before the regulations are laid.

3.1.3. Although supportive of the attempt to produce a 'faster, more accurate and transparent process for assessing child maintenance payments', we are concerned that the changes may lead to more confusion for parents, inaccurate awards based upon out of date, incomplete or potentially inaccurate data and possibly more opportunities for non-resident parents (NRPs) to manipulate their income.

[1] http://www.litrg.org.uk/News/2011/child-maint-tax-data.htm

4. Data from HMRC

4.1. *Income definitions*

4.1.1. According to the consultation document, the use of HMRC data should '*reduce the possibility of delay, the supply of inaccurate information and the burden on employers to supply this information'*. Yet the document focuses on annual information from HMRC at a time when, under RTI, HMRC will have moved to monthly income reporting under PAYE. This new flow of information should be taken into account in a number of parts of these regulations.

Out of date information

4.1.2. Draft regulation 4(1) states that information from HMRC is based on the 'latest available tax year' which is defined as the last tax year for which HMRC have received the information required by the Commission. This could be any of the last six years. We are concerned that if a particular figure is missing, a previous year's figure may be used which could be significantly out of date. Although parents can ask for current year income to be used, this is only where the figures differ by 25% which is a large margin. Even a 10% difference could negatively impact on a low income worker.

4.1.3. We are also concerned about what information might be provided for someone who is, say, both employed and self-employed. Let's say a request for the NRP's income details is made on 15 June 2012. HMRC might have PAYE income details available for the tax year to 5 April 2012, but the self-employed profits may not be returned under self assessment until much later, the deadline for the tax return being 31 January 2013.

4.1.4. The consultation document states that HMRC has agreed that where it has received both types of return for a NRP, the income figure will be taken from the self-assessment return. However neither the regulations nor the document seem to outline what happens where the PAYE data is available when the request is made but the SA data will not be available until much later? Will this mean that HMRC provides PAYE details for 2011/12 in response to the Commission's request and so the self-employment income is not passed across? Or Will HMRC be able to identify that a self-assessment return is due for that year and so they will send the last complete year which will be 2010/11? This point should be clarified in regulations.

4.1.5. This could produce an extremely unfair result for someone who has switched the balance of their work between employment and self-employment, for example, and the combined total income of two different tax years is not reflective of their current position.

4.1.6. It is also not clear to us what happens in the situation where someone has moved from employment to self-employment or vice versa – HMRC data might not be available at all (and presumably then the estimate provisions will come into effect) or the historical data might be wrong. Will HMRC, when providing information, flag for example that the last PAYE data they have shows income of £X but that this is from a P45, hence the employment has ceased, and there is no record of continuing PAYE income? Shouldn't they do so to alert the Commission that the figure might be inaccurate?

4.1.7. Similarly, HMRC might have a self-assessment return for the year showing trading profits of £X but that the trade ceased on a certain date. Again, will they notify the Commission of the cessation? Or if

they have received notification that the NRP has commenced trade, will this be notified? We think these issues need further consideration, as the regulations at present seem to pick and choose certain elements of HMRC data to use, which may not be reflective of the true position.

4.1.8. Furthermore, we know that there can be delays between HMRC receiving P14 data from employers and that data making its way onto the individual's tax record. Most data is now processed reasonably quickly, and much more rapidly than in former years when employers submitted data on paper, but there can still be exceptions where HMRC are querying the data submitted by the employer or there are errors in the data meaning it cannot be reconciled to individuals' records.

4.1.9. This could mean that the NRP's PAYE income for the latest tax year is somewhere within HMRC's system but not yet posted to their record. We assume in that case that HMRC will provide the latest data which has been processed through to the individual's record, which could be for an earlier year. In that situation, it would not be the individual's fault that more recent data was not available – it could be their employer's fault – but unless they can prove more than a 25% difference, they will not be able to dispute the income figure used. And similarly, the parent with care could lose out if the most recent year's data would have shown higher income than that used.

4.1.10. Whilst draft regulation 36(5) does say that self-assessment data will be taken in priority to PAYE data 'where, for the latest available tax year, HMRC have both' such data, we do not believe this covers the situation above, where HMRC have more recent PAYE data under RTI for part of an individual's income.

Pension Contributions

4.1.11. The only adjustment to the gross income figure provided by HMRC is for contributions to an occupational or personal pension scheme. However, draft regulation 35 states that this only happens 'if the non-resident parent so requests and provides such information as the Commission requires'. It is not clear from the consultation document what information is required and in order for this deduction to be effective for the NRP, the availability of the deduction should be included on calculation notices.

4.1.12. In terms of manipulation of income by paying excessive pension contributions, we question whether there is adequate protection for parents with care, particularly where the NRP engages in a salary sacrifice arrangement in exchange for additional employer pension contributions.

4.1.13. Paragraph 91 of the consultation document states that diversion of income includes consideration of whether a NRP has diverted income by paying an excessive amount of contributions into a pension scheme. And paragraph 45 says:

> '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.'

4.1.14. If no fixed limits are to be applied, it is important that parents are given adequate guidance on what might ordinarily be considered reasonable and what factors will be taken into account.

Benefits in Kind, payrolled benefits and unearned income

4.1.15. The regulations make it clear that benefits in kind are included in the historical income data feed from HMRC (draft regulation 36(1)(a) includes all employment income as defined under Part 2 ITEPA 2003).

4.1.16. We are concerned, however, that no mention is made of how benefits which employers have taxed via the payroll will be dealt with. This practice involves employers including the value of benefits in kind as income each time an employee is paid, in addition to returning the amount of benefits in kind paid during the tax year on a P11d or P9d.

We believe there is a risk of payrolled benefits in kind being double counted when HMRC provide historical income data, as HMRC at present have no clear policy direction on this treatment of benefits. Furthermore, there are non-statutory processes as to how employers notify payrolled items[1], where the reliability is suspect.

Duty to notify changes to current income

4.1.17. The regulations state that parents who are on a current income measure must notify the Commission within 7 days if their income increases by 25% or if they receive a number of consecutive payments which are individually 25% or more than the current income figure in place.

4.1.18. What income figure is used in the maintenance calculation is quite complicated. Although there are only two figures (historic or current), adding in the annual review check and periodic income checks means it could be very confusing for parents. It is therefore crucial that parents are made fully aware of which income measure is being used and the obligations that exist in relation to that specific income measure on their calculation notice. It should also be borne in mind that Universal Credit (UC) claimants will be receiving monthly award statements setting out what their income is for UC purposes. It is desirable that an individual can reconcile their income on those statements with their income for the purposes of child maintenance.

Other income

4.1.19. The consultation document outlines new arrangements for dealing with other income, so that it will only be taken into account if one of the parties asks for a variation. Page 45 of the document gives an example of how this will work in practice, but it is unclear how property income is calculated and what figure HMRC will be providing. Draft regulation 69(2)(a) suggests that this is the taxable profit figure under Part 3 ITTOIA 2005, yet the example given in the consultation document refers to 'gross profit' of £800 a month which could be read as meaning rents of £800 a month. How this will work in practice therefore needs careful consideration.

4.1.20. Paragraph 88 refers to unearned income of a taxable nature, but is silent about non-taxable sources of unearned income and their treatment. There is a note that taxable Social Security benefits will be taken into account, but there is only reference to three of these, why not all such taxable sources? A

[1] See HMRC guidance for employers: http://www.hmrc.gov.uk/paye/exb/overview/basics.htm#8

range of taxable income sources will be "coded out" by HMRC in the PAYE process and these will not be reflected in the gross income line as they are not included on any return by the employer or via the self-assessment system, how will these be captured?

Use of estimates

4.1.21. Regulation 42 allows the Commission to estimate income and that they 'may make any assumption as to any fact' when doing so. Specifically, where the Commission believe the NRP is engaged in an occupation, a power is given to estimate their income based on the average weekly income of a person engaged in that occupation in the UK or any part of the UK.

4.1.22. This power appears to apply where historic income is nil or not available and the Commission consider the current income information unreliable or insufficient. Where income information is not available, the NRP should first be given the opportunity to provide it before any assumption is made. This is particularly important for someone who may not earn an average wage due to disability or another related factor such as being unable to work full time due to caring for another family member, for example. Presumably the default assumption would be average wage based upon full time work?

4.1.23. Our other concern is about the use of this power where historic income is nil. This is a particular concern for the self-employed as those on low incomes often make a loss or return nil profit which would seem to trigger Regulation 42. The regulations should include safeguards that set out when information is to be considered unreliable or insufficient and this should be supported by detailed guidance for staff to ensure that figures cannot be used without good reason. Once again we do not see how the advent of RTI has been taken into account in consideration of these provisions.

4.2. ***Understanding and challenging incorrect data***

4.2.1. In our earlier response, we noted some concerns about errors in HMRC data and the opportunities that parents would be given to check the figures used. We recommended that a working group be set up to consider how this would work in practice, and still believe that this is an essential step to ensure the process is as robust as possible and takes into account RTI/UC developments.

Understanding figures used in calculation

4.2.2. The consultation document (paragraph 11) confirms that the Commission will not receive a breakdown of the historic income figure unless requested to help resolve a parent's enquiry. We do not think that this goes far enough in ensuring that the NRP has enough information to understand how their payment has been calculated and a full breakdown should be provided with each assessment. At the very least, the NRP should be explicitly told that a breakdown can be requested.

4.2.3. We do not understand some of the references to the Commission receiving data from HMRC when under RTI, the DWP will have direct access to current HMRC income data.

4.2.4. There is no time limit given for the Commission to provide a breakdown of the income figures used to the NRP. Given that the NRP needs to have this breakdown quickly in order to challenge the figure, and that any error will continue until at least the breakdown is produced, it is essential that the Commission produce the breakdown in a reasonable time, such as within 14 days of the request.

A related concern is about the wording in regulation 42 where HMRC delay or do not provide historic income information. Would regulation 42, which allows an estimate to be used where income is 'not available' and current income is considered unreliable or insufficient, be used in such circumstances?

4.2.5. Our initial response to the Green Paper outlined similar concerns based on HMRC's own P800 tax calculations and the problems caused by deficient detail and explanation on how they were made up. We are also concerned about the potential for incorrect figures to breed mistrust between the separating parties if the NRP does not receive a full breakdown and time to query the calculation before it is received by the parent with care. Even if the NRP can get the calculation corrected, the seed of doubt will already have been sown in the mind of the parent with care.

Correcting incorrect data from HMRC

4.2.6. We note from paragraph 76 of the consultation document that provisions are in place to allow a revision of a calculation to take place where an historic income figure is amended by HMRC (or where a self assessment is later amended by the NRP). But there is no explicit provision that covers a situation where a NRP identifies an error in data provided by HMRC. We presume that this would be covered under the official error provision, and a revision would therefore be possible, however we recommend that this is stated explicitly in guidance, if not in the regulations themselves.

4.3. ***Under assessment of child maintenance against ability to pay***

4.3.1. In our Green Paper response we outlined concerns for parents with care if they place 100% reliance on a calculation using HMRC data. HMRC's details of a NRP's income might not be a true reflection of their ability to pay if tax planning has resulted in a lower taxable earned income figure.

4.3.2. Similarly, unearned income is another area where the NRP may have substantial income. Although provisions have been introduced to allow the parent with care to ask for a variation if such income exists, they will only be effective if the parent with care knows about the additional income. Given that HMRC hold the data, it does not follow why it cannot be used to ensure that calculations are based on actual income as far as possible.

5. Self-employed

5.1. ***Fairness between employed and self-employed***

5.1.1. One of the key principles noted in the consultation document is that the use of HMRC data should result in equal treatment between those who are dealt with through self-assessment and those who are dealt with in the PAYE system.

5.1.2. Several of the provisions in the consultation document could lead to unfairness for either employees or the self-employed including:

- No deductions are allowed for employees for items such as travel expenses and other expenses of work whereas the self-employed will be able to deduct such costs in arriving at their taxable profit.

- HMRC will have historical income information much sooner for employed people than for self-employed. It is therefore less reflective of current circumstances and we are unclear as to what allowances will be given for losses (other than those brought forward under draft regulation 36(4)) or other adjustments such as farmer's averaging.

- Employed earners can amend their income by moving to a current income basis (if the change is 25% of more) which helps if they have a significant reduction in working hours whereas the self-employed do not have the same ability to get an immediate recalculation. This does not cater for sudden changes such as the loss of a major client or a downturn in work and will not help encourage people to remain in work if they have a large maintenance bill based on our of date income without any opportunity to have it amended to be more reflective of current circumstances.

- Regulation 71 deals with diversion of income. We recommend that further clarification is given about the intended use of this provision in relation to those in self-employment. Specifically, can it be used where a parent with care asks for a variation, to delve into the business decisions of a self-employed person such as a decision to invest money in a capital asset?

6. Communication and IT

6.1. *Testing the IT interface with HMRC*

6.1.1. HMRC is undertaking a stabilisation programme to address the issues arising from the move from their 'COP' PAYE system to a single IT platform – the National Insurance and PAYE Service (NPS). This is not due to be complete until the end of 2012. With the introduction of RTI, HMRC systems are to undergo further significant changes and with those changes come the potential for further problems.

6.1.2. In our Green Paper response, we noted that we thought the launch of a new scheme in 2012 was ambitious not least because of the need to build an IT system without having the regulations in place. The current RTI developments merely reinforce that conclusion.

6.1.3. We recommend again that further discussions are held with stakeholders to discuss areas of concern where the data transfer may be problematic.

6.2. *Communication to parents*

6.2.1. We have mentioned in several places throughout this document the need for various rules to be clearly explained to parents. Many of the rights and responsibilities in the new scheme rely on parents taking action and therefore it is essential that if it is to work as envisaged, clear guidance in Plain English and suitable telephone support is in place.

6.2.2. Without such guidance, parents may be paying too much or too little maintenance and may find themselves open to criminal prosecution for missing deadlines.

LITRG
23 February 2012

Rosalind Barton
Matchmothers

Email address redacted

I have read so much of the document and wish to raise the point on Page 16, regarding shared parenting.
The consultation proposes that when shared parenting is in order that they shall assume what this means, one night in the week for example by the non-resident parent's state, this may be what the court has ordered but actually never occurs as we at MATCH have found as the court orders are not worth the paper it is printed on.

I am not aware at the moment of a way to establish this fairly as it is hard to imply. This error in your calculations can cause much anger in parents lives and inevitably in the child's.

Please reconsider this working out.

Rosalind Barton
Matchmothers

The Child Support Maintenance Calculation Regulations 2012 – A Technical consultation on the draft regulations

Morton Fraser's Response

Thoughts on questions asked:

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

   - Essentially, yes, if there is an income there is potential liability.
   - There may also be situations where the non-resident parent is a mature student or perhaps completing a degree on a part time basis and could have considerable earnings. This income should certainly be taken into account.

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

   - We would consider that proceeding on any assumption is dangerous, and could end up in a situation whereby calculations are being made based on an artificial situation. We would suggest that the CSA has a duty to establish the correct factual position.

   - We are particularly concerned regarding the proposal that the CSA would not make any assessment if there was equal shared care between the parents. This seems a proposal which could result in an entirely unfair outcome, and which could also encourage parents to steer clear of such equal shared care arrangements. If there is equal shared care and disparity between the earnings of the parents, the lower earner should be allowed to apply to the CSA for a calculation.

   - We also continue to have a general concern about the appropriateness of using overnight contact as a measure of what monetary contributions should be made. This fails to take into account very great expense that the non-resident parent can incur during daytime contact. The current CSA scheme also, in our experience, acts as a disincentive for some parents to agree to any, or increased, overnight contact.

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

   - We don't think it adds value to the process.
   - Furthermore, we think that the threshold of 25% difference in income is too high (see question 8).

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

   - We believe this proposal is appropriate, given the new approach.

5) 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?

   - We believe this is a fair approach – it has always seemed anomalous not to take unearned income into account.

6) 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?

   - Yes, the reduced percentage rates should apply.

7) Do you agree with the proposal to increase the flat rate?

- We are in favour of the increase of the flat rate.

8) 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?

- Yes, providing they are suitably warned that that is their obligation.
- We further believe that the obligation to notify of an increase in current income should be imposed on a percentage increase lower than 25%, perhaps 10%, given the current climate. A 10% increase in income would be very significant for some people.

9) 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)?

- We disagree strongly with this proposal. The information would still be available annually to the non-resident parent and should be asked for.

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

- We agree the amounts a Default Maintenance Decision awards should be increased with inflation.

NACSA response to
Maintenance Calculation Regulations 2012
Technical Consultation.

Introduction:

National Association for Child Support Action (NACSA) is an organisation dedicated to helping parents who suffer difficulties with the Child Maintenance and Enforcement Commission. We offer support to both Parents with Care (PWC) and Non Resident Parents (NRP), together with their extended families. We also provide support and guidance to MPs, Solicitors, Advisory Services and Employers.

The following response is based on the difficulties that we, as an Organisation witness on a daily basis. NACSA also presented a summarized document of the Green Paper to our client database and invited their comments. A number of clients submitted their responses directly to DWP, others presented their comments to us directly, which have been considered within our response**.**

Whilst NACSA welcomes any proposal to improve the system of child support, and appreciate how some of the proposals are intended to produce the desired outcome, it has to be said that we see many pitfalls, not least of which is the historical problem of excessive workloads, and administrative shortfalls as a result. We appreciate the vision that to encourage private arrangements will result in a smaller client base for the Statutory Scheme to address, but we do not see the work load being reduced as envisaged. We also have reservations that the Statutory Scheme will be *"a simple and transparent calculation scheme"* as stated. The decision to drift between Historical and Current income has great potential to be anything but simple. As such, we fear the existing inefficiencies and delays will blight the replacement system and parents will still suffer as a result.

Question Responses:

Q1: Do you agree with the proposal to remove students from the lower rate cases and calculate the liability on their gross weekly income?

NACSA acknowledge that there are cases where an NRP who has a Student status may also be in receipt of income. We also appreciate that a number of students may rely only on Student Loans as a form of income.

As there are measures in place to restrict maintenance payments for those on low income, or benefits, namely the flat rate – we have no objection to a Student NRP being assessed along with all other low income NRPs, and remove the automatic nil rate option available to them.

Q2. Is making an assumption about shared care the right approach to avoid some of the current practical difficulties regarding shared care calculations?

Through our experience, we have found the issue of shared care to be particularly contentious. We acknowledge the difficult decision faced by CS Officers who may have conflicting information from both parents, but we do believe that the issue of shared care is further complicated by the culture that has developed throughout the Agency which assumes the PWC statement to be the presiding facts.

In almost every case we see regarding disputed shared care arrangements, a PWC's statement is automatically accepted over any statement of the NRP, even where the NRP has provided factual evidence to support their claims. In essence, the Agency is proposing to shift this presumption from that of the PWC to that of the NRP, and this is still not an appropriate way forward.

The failure to make an appropriate decision leads only to further delay as the case is catapulted into the appeals process. The Tribunal Service is already under increasing pressure due to the volume of applications made, and this is aggravated by the reluctance of CS officers to implement a decision. CS Officers are aware that a Tribunal decision is more authoritative then an Agency decision and so provides the incentive to "pass the buck" and prevent the case from reappearing in his workload following dispute from the other party.

Shared care will remain an element that will be problematic. There will be PWC's who withhold access in a bid to increase maintenance payment, and there are NRPs who will claim overnight access in a bid to reduce their liability. Encouraging the route of appeal only creates delays, which subsequently produce arrears which inevitably have to become subject to enforcement measures for collection.

Any Statutory Scheme has to be free of all prejudices, with decisions based on the strength of evidence as opposed to a "standard practise" culture in which the PWC is deemed the more credible party. Those with genuine reason to believe the decision is wrong should still have the right to appeal, but a more robust approach must be taken by CS Officers to limit the number of applications submitted to HM Courts and Tribunal Services.

On the whole we believe if the system is fair, and a higher rate of compliance comes as a result of this, there will be fewer conflicts over the shared care element, but where shared care is in dispute, the Statutory Scheme must improve its tolerance towards NRP's and make a decision based on the available evidence. We do not believe it is appropriate to make an assumption over shared care.

Q3. Do you think the period income check adds value to the review process?

NACSA believe it is crucial to retain simplicity with any Statutory Scheme. In its history, the Child Support Agency has attempted to carry out Periodic Reviews and feel that the objective was never successfully achieved.

We acknowledge that the intention is for a much smaller client base for the Statutory Scheme to administer, which in turn presents the opportunity to complete annual income reviews without delays being a concern. However, we do not have the same optimism. Not only do we believe the client base for the Statutory Scheme will be higher than anticipated, there are no reassurances over appropriate staffing levels, staff training, or IT stability to provide the security of Periodic Income Reviews.

The Statutory Scheme intends to secure its information from HMRC in order to complete Periodic Reviews, but this proposal relies on the data at HMRC being up to date and accurate. In our experience, this is often not the case. CS Officers currently have access to income records held at HMRC, but in many cases the information is outdated and inaccurate. Consideration should also be given to the huge potential for exploitation of which accounting information is available.

Timeframes available for account submissions is not restricted to every 12 months. The information held by HMRC is only as good as the information provided to it by the NRP, Accountant or Employer, and that will inevitably create questions as to the accuracy of figure for income used in some maintenance calculations.

The proposals further suggest that revisions may occur again should information to the HRMC be altered at a later period – which again generates further work and potential delay.

NACSA would want assurances that the Statutory Scheme is fully embedded and stable, with a solid record of accurate income traces, together with a true client base level before the system should be mired by annual income reviews.

As long as parents continue to have the opportunity to request a recalculation of maintenance should they deem it necessary, we do not see the benefit in complicating the system by automatically reviewing income on a yearly basis.

Q4. What do you think of the proposal to remove assets and lifestyle inconsistent with declared income grounds, giving the new approach to unearned income?

We have serious concerns over this proposal and certainly do not support the removal of the Lifestyle Grounds.

Assets.

NACSA believe that the judgement rate of 8% set against an asset value is unrealistic and adverse outcomes are often seen. But whilst we would welcome the removal of the judgement rate, we are not confident the abolition of the Asset grounds itself is appropriate.

We accept the need to include additional income where revenue is gained from the asset, but a "*one rule fits all*" approach is not appropriate. Not all assets are capable of generating additional income and to make decisions without due consideration of the full circumstances creates the risk of unjust outcomes.

The proposal to remove the variation ground for Assets is of concern. We believe a far more suitable approach would be to retain the option allowing the PWC to investigate the merits of additional income from the asset ownership, but with a greater flexibility to determine the income appropriately, and not limited to a specific percentage rate.

The proposals assume that all unearned income gained from assets will be visible within the NRP's annual tax returns, and we welcome the approach to include this as income, although puzzled over the proposal to do so only by the Variation Scheme. If the information is available, there is no logic to disregarding it until the PWC asks for it to be considered.

Inconsistent Lifestyle

Although we have seen this element of the Variation Scheme being exploited by the vengeful PWC, who uses the scheme – and all its resources, to achieve little more than further disruption to their ex partner, but we are thankful that the majority of cases are valid applications that are absolutely vital to some PWCs.

There is no shortage of cases which demonstrate the absolute need for this option to exist. One such example: a PWC contacted us following an award of just £5pw, based on the NRP's declared income of £55pw, as depicted by the accounts of his company. The NRP allegedly enjoys the benefits of an 8 bedroom home, a second holiday home, a 40ft Yacht, and owns a collection of prestige vehicles.

From documents supplied to the Agency, there appears to be no error made with a calculation of £5pw, but clearly there is something amiss with this case. If the option of "Inconsistent Lifestyle" was removed, the true financial status of this case would remain a mystery, and the children of the relationship would suffer as a result.

We do not accept the claims that all income will be captured by inclusion of unearned income, as it is entirely possible for tax returns to present the information required to achieve a low income.

We have an exceptionally high success rate for PWC's who eventually receive an appropriate level of maintenance as a direct result of the Inconsistent Lifestyle grounds. Removing this option will sever a crucial lifeline to so many PWCs and children.

Q5. 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?

Whilst we welcome proposals to make the Statutory Scheme easier to navigate and administer, this cannot be at the detriment of appropriate maintenance calculations. From the work that we do, which includes full auditing of a client's case files, we have little confidence in the content of Tax Returns to validate the use of 'Unearned Income'

There is no dispute over the existence of a cohort of unrelenting non paying NRPs who, according to the proposals, will form the majority client base of the Statutory Scheme. It is perhaps a little naïve to assume that all such clientele will happily provide a full and accurate statement of their true financial status. It will be these very cases that have high risk "false accounting" issues, and so we fail to see how the reliance on a Tax Return will aid such cases.

Currently, even if the tax return provides a false portrait of NRP income, the PWC has the security of the Variation Scheme for Inconsistent Lifestyle.

In that respect, we would not support the use of unearned income in preference to the current ability to consider income through assets/inconsistent lifestyle.

Q6. 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?

We believe it is vital for all children to be treated with equality and this focus should remain at the heart of any Statutory Scheme.

We acknowledge that in the present scheme, a case in which Relevant Other Children are present will create a situation whereby the children in the NRP's household benefit from 100% of his income, whereas the Qualifying Children receive only a percentage of maximum 85% of the income. We appreciate the example calculations which highlight how a reduced percentage for the Relevant Other Children will overall produce a more balanced award. However we are sceptical that the public will view the proposals in the same light, and will see this as another element where the

children of the NRP are being disadvantaged. Perceived unfairness will undoubtedly affect compliance rates.

Some of our members have expressed the view that children in the NRP household will generally be more financially dependant on the NRP than children living in the PWC household. A number of members have expressed the view that additional money is spent on the Qualifying Child during access. One member said:

> *"In some cases, the NRP already spends a fortune on their non-resident kids. Costs like housing, clothing, travel, accommodation, school trips, solicitors fees etc are not taken account. Having to pay CSA on top of all this often leaves the resident kids with not much to live on… Extremely unfair! Really hope these proposals don't go ahead. They need a better way of doing things as every case is different"*

Although we appreciate the reasons why a lower percentage is awarded to the Relevant Other Children, we are not convinced that they will be accepted by the public easily. We acknowledge the comments of our members who raise important issues over the costs incurred for children that live with, and apart from the NRP and believe these issues should be considered when deciding if it is appropriate to lower the percentage for Relevant Other Children. .

Q7. Do you agree with the proposal to increase the flat rate?

The current system has been in place for almost a decade and seen no increase to the Flat Rate amount. With that in mind we acknowledge the need to increase the amount from £5pw to £7pw.

That said, it cannot be disregarded that a Flat Rate award is applicable to those NRPs who are already on significantly low income. A small increase may have very little impact on the PWC's finances, but can be seriously detrimental to an NRP trying to budget his low income with child support as well as having sufficient funds to enjoy

access with the children. We would therefore not support an increase beyond the already proposed £7pw.

Q8. 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?

We have concerns over the complexity of historical vs current income and the proposed comparisons that will be carried out in preparation of maintenance reviews.

Genuine cases of NRPs drifting between Self Employment and PAYE may find themselves caught in an endless cycle of reporting changes that may or may not be necessary. We are concerned that this will result in an increased workload for an almost certainly diminished staffing level, and delays will quickly blight the system.

The proposal is aimed at the PAYE clients only, which immediately bypasses the NRP with a greater capacity to manipulate income, namely the Self Employed. We accept there may be a number of NRPs that have the ability to increase PAYE income following a review of maintenance, but believe such cases would be minimal. The Self Employed NRP has the greater potential for manipulating income but appears to be exempt from the need to report upward changes.

We would not wish to see an initial system become complicated by endless revisions of maintenance and believe it is important to restrict the workload and prevent delay in assessing and securing payment of maintenance.

Not only is there potential for genuine confusion over what income is being used, and what changes are to be reported or not, but there is huge potential for exploitation by NRPs who have the ability to manipulate their employment status to achieve the best results for ‘available’ income

Whether parents have the opportunity to report change of circumstances as necessary or the proposals for annual reviews proceed to legislation, we do question if the mandatory reporting of increased income is of sufficient value to merit its introduction?

Finally, we would add that the timescale allowed for reporting such changes is totally unrealistic. We would like to see this timescale increased to 28 days.

Q9. What do you think of the proposal only to make this compulsion apply to employed non resident parents (ie not parents who are self employed or who have an element of unearned income)?y.

See point above.

Q10. Do you think that the amounts a Default Maintenance Decision awards should be increased with inflation?

NACSA believes that the current scheme does not make sufficient distinction between an inability to provide income information and a refusal to do so. The original CSCS system made provision by different categories of Interim Maintenance Assessments, one of which was demonstrably a "penalty" assessment.

The current DMD level is appropriate where its intention is to provide an "interim" payment of maintenance due to a lack of income information being available, such as those starting a new business. The DMD currently provides no incentive to the higher income NRP to supply information and their refusal to comply is rewarded by what is often a substantially lower maintenance liability. We do not believe an increase to the DMD will achieve a solution to this anomaly.

NRPs who are clearly refusing to supply required information should face harsh penalty for non compliance, and be a trigger point for swift enforcement action. From our experience, the old Interim Maintenance Assessments only became a concern to non compliant NRP's when debt enforcement commenced. If an NRP

with an appropriate penalty charge is also subjected to prompt recovery action, there is greater potential for compliance and less delay in securing regular maintenance to the PWC.

NRPs who are willing but unable to provide income information, should not be tarnished with a label of “non compliance”. The aim of the Statutory Scheme is to secure regular maintenance quickly. We believe an affordable DMD rate will achieve that aim.

With that in mind, we would not support the proposal to increase the current rate of DMD, but would welcome additional rates for those who are evidently non compliant.

Other Matters

The decision to issue a notice of a successful application is acknowledged, but would like assurances that the validation of a case remains dependant on that notice being served to a confident address. We have witnessed many situations where essential paperwork has been served on an address that is unknown to the NRP, and arrears will have accrued unjustly in such circumstances. We feel it is a basic requirement that the Statutory Scheme is able to prove confident contact with an NRP before any charges are made against the account.

Conclusion

NACSA have concerns over a number of the proposals and with particular concern over the feasibility of the system being managed successfully. We acknowledge the intention to introduce application charges in a bid to reduce the number of clients held within the Statutory Scheme, but we are not optimistic that the desired outcome will be achieved.

There are elements of the proposals that may result in improvements should the system prove to be stable and operate without the difficulties of the past child support systems. We wait in anticipation for successful results.

On the counter side, there are proposals, such as the removal of variation grounds for “Inconsistent Lifestyle and Assets” which we believe will have catastrophic results for the many PWC’s that rely on these options to secure an appropriate level of maintenance.

We are grateful for the opportunity to provide our response to the proposals, and hope that our views and those of our members will be considered when finalising legislation.

resolution
first for family law

The Child Support Maintenance Calculation Regulations 2012

Resolution's response to the Child Maintenance and Enforcement Commission

Resolution's 6,000 members are family lawyers and professionals committed to the non-adversarial resolution of family disputes. Resolution solicitors abide by a Code of Practice which emphasises a constructive approach to family problems and encourages solutions that take into account the needs of the whole family, and in particular, the best interests of any children. As an organisation, we are committed to developing and promoting best standards in the practice of family law amongst our members and family lawyers in general.

When relationships break down, Resolution's aim is to achieve constructive and lasting outcomes for the family. As a matter of course, Resolution promotes a number of alternatives to the resolution of family disputes, such as parenting programmes, mediation and collaborative law, so that couples can negotiate solutions without using the courts. Many Resolution members also practice as mediators and collaborative lawyers and many are accredited by the organisation as specialists in particular aspects of family law, such as contact cases or financial aspects of separation.

This response has been prepared by Resolution's Child Support Committee.

Response to questions

Q1 Do you agree with the proposal to remove students from the nil rate cases and calculate the liability on their gross weekly income?

Yes, Resolution does not see why students should be treated differently from others with a low income.

Resolution believes this change will only affect a few cases/parents. We agree that, on the basis that research indicates a student's earnings can be fairly substantial, there is no reason why maintenance liabilities should not be calculated in the same manner as another Non-Resident Parent (NRP) with employed earnings.

We also appreciate that a number of students may rely solely on Student Loans as a form of income. However, as there are measures in place, namely the flat rate which limit maintenance payments for those on low income, or benefits, we have no objection to a Student NRP being assessed in the same manner as all other NRPs and removed from the automatic nil rate option.

Q2 Is making an assumption about shared care the right approach to avoid some of the current practical difficulties regarding shared care calculations?

We do not agree that it is appropriate to make an assumption about shared care or with the proposed blanket assumption. To assume shared care equivalent to one night each week is arbitrary. The addition of this regulation could give rise to as many, if not more appeals than exist at present, both by the Parent With Care (PWC)

and the NRP. It has the possibility of promoting and encouraging parents to seek a defined order under the Children Act 1989 (thereby increasing costs for the parties and indeed the State) to secure that position.

As a matter of principle, where care is equally shared between the parties, it should not be the case that no maintenance should be payable in all circumstances. There will be cases where there is a disparity of income between the two parents and one parent may require the assistance of ongoing financial support from the NRP to provide for the child.

Resolution believes that regulations to allow the Commission to make "assumptions" about the amount of shared care will make matters even more difficult for families in conflict, allowing manipulation by either party for their own benefit.

We recognise that sometimes there are difficulties determining the extent of shared care, but the solution is for case workers to make a decision based on the available evidence, which attaches to it, a right of appeal.

Q3 Do you think the periodic income check adds value to the review process?

Resolution would give a cautious welcome to this proposal, as currently, under the two existing schemes, assessments and calculations can exist without any review or further consideration for a number of years. However, yearly reviews proved to be an unrealistic target in the past and the Agency accept the objective was never successfully achieved. As such, Resolution has some concerns as to whether or not this proposal is feasible, looking at CMEC's currently available resources. If introduced, Resolution believes CMEC should keep its ability to manage and resource an annual periodic review process, particularly whilst the new statutory scheme is not fully embedded and proven to be stable.

CMEC appear to anticipate that, as information will be made available from HMRC, the annual review process will be straightforward. Resolution is of the opinion that it will in fact be more complicated: in addition to securing the information from HMRC, CMEC will need to contact the PWC and NRP each year to check that the previous information used is accurate. For example, questions will need to be raised as to whether or not there are any additional children in the NRP's household to take into account; and the issue of shared care will have to be considered every year by making enquiries with both parents.

One further matter of considerable concern to Resolution is how periodic reviews may give rise to abuse in respect of the information to be provided by HMRC with regard to a self-employed person. Depending upon the accounting period, the information which will be given and therefore considered by CMEC could be 1 to 2 years out of date. Thus, the proposed future scheme could be open to significant abuse by self-employed earners, potentially at a great cost to the PWC and child. In self-employed NRP cases, the NRP could suppress their income in the year of separation, and could present further suppressed income figures which, if more than 25% lower than in the last tax year, will be accepted.

Example

The NRP sets his company year to end of 30 April. On 6 April 2013, he submits his Tax Return reporting on company earnings in the company year 1 May 2011 to 30 April 2012. Any child support application made before 6 April 2014 (and perhaps later) would be based upon this information. In effect, the start of the period by

reference to which child support maintenance is fixed, could be four years before the Agency comes to carry out the calculation. This scenario clearly offers enormous opportunity to the NRP to catch up with his accounts and avoid being assessed on any good year's profits. Being able to increase salary and thus reduce profits will provide further opportunities to manipulate the data entering CMEC's calculations. Any termination of the lifestyle inconsistent with income variation ground (referred to below) is likely to make it hard to capture these cases.

Resolution believes that an increase or decrease of 15% as the "trigger event" for a recalculation would be much more appropriate. As CMEC have acknowledged that there are few cases in the bracket of between 15%-25%, Resolution does not believe this would increase CMEC's workload considerably, but what it would do, is provide both parents with an element of fairness, as the "hurdle" of reaching the threshold of 25% before a case can be reconsidered will be unjust and unfair for many families. Resolution is of the opinion that if the current income change figure of 25% was reduced to 15%, this could provide an opportunity for reviews to be carried out on a biannual basis, which would considerably reduce an annual administrative burden to CMEC. At a time where inflation is low and any pay rises are mainly between 1% and 3%, it seems an unnecessary cumbersome task to state that as its objective, in all cases, CMEC should recalculate maintenance payments every year, whereas if a parent seeks change in calculation, they can only do so if they satisfy the threshold criteria set as 25%.

Resolution believes that until the new statutory scheme is introduced, proven to be stable, and there is a clear idea as to the true client base level, the system should not be subject to annual income reviews. It is acknowledged the intention is for a much smaller client base for the statutory scheme and in the future: this may present the opportunity to complete such periodic reviews without delays or other problems being a concern. However, it is premature to consider this at this stage. There are many changes to be introduced within the new statutory scheme. Resolution feels that energies would be far better focused elsewhere, using resources to make sure that these considerable changes are a success first, before adding unnecessary layers of complication to what is going to be a new and untested scheme.

In addition to our comments above, there are one or two general comments we would make concerning paragraph 75, which refers to revisions arising from official error which we would not support. Resolution members see substantial unfairness as a result of purported revisions made many years later, which are then backdated presenting an NRP with, often, very substantial historic arrears. We believe that the parties themselves are free to appeal a decision in the usual way and increased transparency should reduce scope for official errors in any event.

For the same reason, we do not support additional grounds for revision arising where a taxpayer amends information they have previously given. This could result in a PWC believing the amount of an assessment to be correct and making lifestyle decisions appropriately, only to be told, perhaps many years later, that the maintenance figure is to be changed and that he/she is required to make a (perhaps substantial) repayment.

Q4 What do you think of the proposal to remove assets and lifestyle inconsistent with declared income grounds given the new approach to unearned income?

Resolution strongly opposes the proposal to remove 'assets and lifestyle' as grounds for a variation. The proposal will prevent the Commission from reaching their stated objective of maximising child maintenance arrangements. Resolution believes that any research carried out by the Government will have made it very clear that the majority of appeals submitted by parents within the "variation" procedure will include one or both of these two grounds. We do not accept that introducing new regulations concerning "unearned income" will negate the need for these two variation grounds. Looking at the grounds individually:

Aggregate assets in excess of £65,000

We do agree that problems have been caused in the past with the Tribunal Service applying a notional income of 8% to such assets, as this is generally far higher than that which has actually been received by an NRP. We believe the sensible way forward would be to introduce regulations to incorporate the actual income that is derived from assets which could be "collected" from information reported to HMRC.

If this variation ground is removed, a number of issues will arise. For example, an NRP's foreign property would no longer be brought into consideration. As such, it would be in the self-employed NRP's interest to retain assets rather than draw significant income. This would enable self-employed NRPs to have a greater ability to determine how income is taken into account, be in a position to manufacture calculations and substantially reduce child maintenance liabilities. In essence, an NRP could deliberately reduce income, but increase their asset portfolio with no recriminations as far as child support is concerned at all. In this regard, Resolution would question as to whether or not it is morally right that an NRP can have unlimited capital resources which can be ignored for child support purposes, as long as no income is produced. As referred to above, a retention of an accumulation of assets therefore becomes an "incentive" for the NRP.

As a further observation, Resolution does not accept that investment income, dividends and property income, should only be available following an application for a variation. This could result in a substantial amount of work for the Commission which is unnecessary. It is Resolution's opinion that all unearned income should automatically be included within an assessment calculation. CMEC will already have the information from a completed self assessment return and could use it and benefit children more quickly. Under these proposals, even if Tax Returns are filed and are fully completed to include property assets, this and any other unearned income will be disregarded unless the PWC applies for a variation. This does not make sense. It is often the case the PWC does not have the necessary information concerning unearned income, which can often only be obtained through the completion of self-assessment returns. As such, if the responsibility continues to rely upon the PWC, it will minimise the opportunities as to when such income will be taken into account.

Lifestyle inconsistent with income

This is perhaps the most useful variation ground which exists, to demonstrate the fact that the NRP's disclosed and declared income to CMEC is incorrect. Where little information can be provided by the PWC as to assets or diversion of income, it is often easier for the PWC to demonstrate that from the declared income, the NRP could simply not discharge his monthly expenditure. The PWC is unable to make

forensic investigation of the NRP's financial position based on full and frank disclosure as the court would. On these occasions, it is extremely useful that the Commission can attribute a notional income to the NRP after effectively carrying out a "forensic exercise" as to the NRP's outgoings at a Tribunal Hearing.

One example of the problems which could be caused if this variation ground is removed, is where an NRP "hides" his capital or the tax return does not provide the full picture as to the income position. With the "lifestyle ground intact", enquiries can be made at a Tribunal Hearing as to the capital from which the lifestyle is funded and maintenance can be payable.

As such, Resolution can see no justification for the removal of this ground. Again, it will allow self-employed NRPs to effectively manipulate the statutory system, thus reducing child support liabilities to a nil or low assessment whilst they continue to enjoy a very good lifestyle. This variation ground is often the last and only way in which to secure a proper assessment for a PWC and children and it is essential that this variation ground remains. It is well known that income can often be hidden, not only from CMEC, but also from HMRC and indeed, it is lifestyle which is a good indicator of the position. Resolution's opinion is that it is not good enough for CMEC to simply state that this is a matter for the HMRC (presumably for tax reasons), rather than taking the responsibility of taking an inquisitorial stance and looking at the "lifestyle inconsistent with income" ground.

Resolution can provide a number of examples to illustrate the manner in which (if removed) the situation could be abused by an NRP. A recent case (which is particularly typical), arose where an NRP had a collection of Bentley cars, an eight bedroomed house, together with a holiday home in the Cotswolds, all allegedly supported by an income of less than £55 per week. The removal of the "lifestyle" ground, would make it impossible for the PWC in such a case to secure any real level of maintenance for children. Resolution believes that if researched by the Government as part of this consultation process, the success rate for a PWC for variations on this ground is very high. In our experience, it is generally the case that these parents are only "rewarded" with the just level of maintenance following the appropriate variation and tribunal hearing. To remove this ground will sever a crucial lifeline to so many PWCs.

Resolution believes it is important when looking at the future scheme, to consider ways in which these issues could be addressed differently, in order to assist in providing a more streamlined system. We would state this is a prime opportunity for alternative methods of resolving such disputes to be introduced, for example, a dispute resolution service, which could be provided and encouraged by the Tribunal upon application. The parties could be given the opportunity to attend a conciliation appointment, so that issues could at least be narrowed or indeed, agreed.

Q5 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?

Whilst we welcome the objective to make the Statutory Scheme easier to navigate and administer, this cannot be at the detriment of appropriate maintenance calculations. Resolution believes that if the proposals are introduced in their current form, unintended flaws will arise to the detriment of the PWC and the children, whom maintenance payments are meant to support. If the Government intends to continue

with these proposals, we would suggest that one way forward, would be to provide for a pilot scheme first, to assess the impact on families.

At this time, Resolution has little confidence in the content of Tax Returns to validate the use of “unearned income” in preference to variation grounds for “lifestyle” and “assets”. The statutory scheme is intended to limit its client base to those PWCs who are unable to secure appropriate maintenance through private arrangements. It will be these very cases that have high risk “false accounting” issues and as such, Resolution fails to see how complete reliance on a Tax Return will aid these cases and maximise child support liabilities.

In Resolution’s opinion, the new system will not be easier to navigate, understand and administer, particularly where it would appear the responsibility for making an application for a variation will still rest upon the PWC in cases where dividends, investment income and property income are an issue. We do not believe the “new ground” will ensure the NRP will be brought to task for child maintenance payments, where he/she has significant unearned income. This will all but disappear should the grounds of assets and lifestyle inconsistent with income be removed. Additionally, Resolution does not accept that in any event, the “new variation ground” should only be invoked where there is more than £2,500 unearned income per annum. This would appear to “discriminate” against an NRP who has employed income only.

With reference to the self-employed, Resolution are of the opinion that the new scheme will not be easier to administer, particularly when losses can be carried back from the future and brought forward from previous years. In Resolution’s opinion, this is likely to result in complications to the system which will be difficult for the lay individual and the CMEC staff to understand.

With regard to paragraph 94 of the consultation paper, is it the case that any information provided by the PWC as to “evidence of the non-resident parent’s circumstances will simply be ignored and disregarded? If this is indeed the case, then a number of cases will simply “fall beneath the net” and maintenance for children will not be secured.

Q6 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?

Yes we agree with the rate change proposed with the aim of producing more equal treatment of children in first and second families.

Q7 Do you agree with the proposal to increase the flat rate?

Having in mind that the flat rate has not increased for 10 years, we agree with an increase to £7, but would be concerned about a rate above that. For a poor NRP, a higher figure would be punitive rather than helpful in terms of their positive engagement with their children, i.e. realistically being able to feed and do things with their children during contact.

Q8 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?

We can see some of the potential advantages of this type of approach and that it may seem child focused, but it seems fraught with difficulty and against the 'taking the rough with the smooth' argument. It would increase complexity and Resolution believes any enforcement of this provision would be difficult to manage. If annual reviews are to form part of the future system, we do question, if the value of a mandatory reporting of increased income is sufficient to merit its introduction. Most importantly, with no experience of such an approach it is impossible to predict the impact; namely whether a fair level of maintenance for children would follow and whether parents would be encouraged away from making their own arrangements.

Reference is made to the fact that the person who fails to comply with the requirement "may" be prosecuted. The proposal could in fact have the effect of criminalising law abiding citizens who pay maintenance in a timely fashion. If the Government is intent on introducing this provision, should there be a provision for a financial penalty? Monetary penalties are more likely to be "persuasive" rather than the fact that a prosecution can simply ensue. Looking at statutory cuts in the public sector, Resolution believes there will be little appetite in these cases to pursue prosecution even where it is deemed to be appropriate in accordance with the regulations. The proposed introduction of this Regulation would appear to go against the Coalition's stated policy of reducing "red tape" with unnecessary legislation.

Q9 What do you think of the proposal only to make this compulsion apply to employed non resident parents (ie not parents who are self employed or who have an element of unearned income)?

In our members' experience, as detailed above, it is the self-employed who are more likely to flagrantly avoid their responsibilities towards their children. The proposal to make the compulsion apply only to employed NRPs and not the self-employed, just effectively encourages the self-employed NRP to avoid their child support responsibilities. The individuals, in respect of whom an income change of or in excess of the proposed 25% level will arise, will generally be the self-employed. Resolution does not see the point of introducing legislation that will not apply to the individuals to whom it should be most relevant.

The self employed have more opportunity to use their historical versus current income to their advantage by drifting from self employed/employed status as necessary. These are the very individuals to whom the provision would be useful to secure proper maintenance arrangements. We do not understand the reason for the technical distinction between a truly self employed NRP and one who is able to manipulate his own income because he is employed by his own limited company. Again, these proposals will simply allow the self-employed NRP to legitimately reduce child support liabilities. There will be the risk of exploitation by NRPs who will manipulate their employment status in order to achieve the best results in terms of available income, alongside those NRPs who genuinely drift from self employment to PAYE in order to secure regular income.

To date, the Commission have always resisted making distinctions between an employed NRP and self-employed NRP. Resolution does not believe that to differentiate between NRPs in this instance, will provide fairness to a PWC. The regulation would be complex to administer, particularly when the 'employment status'

of an NRP can be difficult to understand. This will certainly be rather difficult for members of the public to understand.

This provision if introduced, will act as a loophole for self-employed NRPs to suppress their income for assessment. They will have the potential to receive the benefit of a reduced calculation for up to 3 years and potentially restart that cycle by suppressing income every 3 years thereafter.

In any event, Resolution queries how such changes will be investigated. We believe it in no way captures the problem where an NRP intends to operate within the rules. It is unclear, for example, what the financial penalties would be for failure to advise; whether the PWC can request a review where they think there has been an increase/bonus; or if the NRP would be able to resist this where the PWC is spitefully motivated.

The stipulated time period of 7 days to report changes is extremely short and unrealistic. If a person receives a considerable pay rise or a change in work hours, the person's foremost thought may not be to contact the CSA to report the changes. It may not be feasibly possible to report the changes for a few weeks. A time period of 28 days would be more appropriate if this proposal is not revisited. The requirement to report a change within 7 days of occurring has the potential to criminalise law abiding citizens.

Q10 Do you think that the amounts of Default Maintenance Decision awards should be increased with inflation?

We have no objection to Default Maintenance Decisions (DMD) being increased with inflation, but consider that a different approach should be taken depending on the category of case. The current DMD is far too low for penalty cases, and provides no incentive to the NRP to provide the required information for a full assessment to be made. Often default assessments arise where the NRP fails to provide financial information. As such, Resolution cannot see why the figures stated should not be increased to provide more of a penalty and disincentive to the NRP not to cooperate. Resolution therefore believes there should be considerations as to whether or not these figures should be substantially increased.

However, there should be a distinction between the "inability to provide information" as opposed to individuals who "refuse to supply information" for example, those starting a new business. Historically, the Agency made such a distinction between the two types of "non supply of information" by way of a different category of Interim Maintenance Assessments. This is an approach that should be adopted in the new statutory scheme. NRPs who clearly refuse to supply required information should face harsh penalty for their non compliance. Those who are willing but unable to provide the information should be subject to a lower rate DMD, although we see no reason why there should not be an increase to the current levels given that they have seen no increase for several years.

Resolution's position is that CMEC should make less use of DMD's and strive towards making a full maintenance assessment, using the Annual Survey of Hours and Earnings (ASHE) where no other evidence is available. We would state that whilst this should not be used in all cases, as a matter of last resort, where no other evidence is available, this is a useful mechanism for CMEC. Resolution's proposal links in with the CMEC consultation on the Child Support (Miscellaneous Amendments) Regulations 2011, paragraph 2.23.

Resolution would be very happy to meet with CMEC to explain our thoughts in greater detail, if this would be helpful.

For further information please contact:

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Resolution
February 2012

Response to *The Child Maintenance Calculation Regulations 2012: A technical consultation on the draft regulations*

February 2012

About Rights of Women

Rights of Women has been working for more than 35 years to secure justice, equality and respect for all women. Our mission is to advise, educate and empower women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

We received the Mayor of London's Award for Distinction for outstanding and innovative work in relation to domestic violence (November 2007) and the Lilith Project's Best Voluntary Sector Violence against Women Campaign (November 2005).

Rights of Women is an Industrial and Provident Society and an exempt charity. Our Rules set out our charitable purposes. Pursuant to the Charity Act 2006 we are in the process of registering as a charity.

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

Our response documented here reflects the concerns we have about the potential impact that the proposed reforms, if implemented, will have on the women that we work with.

Between March 2011 to January 2012 we spoke to 1259 women on our family law advice line. Our expertise and the recommendations we make about the proposed reform of the child maintenance system is informed by the conversations we have with these women.

Overview of Rights of Women's response

Rights of Women welcomes the opportunity to give views on all the current proposals concerning child maintenance. Child maintenance is an issue that is frequently raised by callers to our family law advice line. We therefore agree that there is room for improvement for the calculation, collection and enforcement of child maintenance. Whilst we welcome some of the proposals that are set out in the consultation we also have concerns with a number of these.

Owing to the matters that we set out in detail below, Rights of Women considers that these proposals raise serious concerns under gender equality provisions of the Equality Act 2010 and will result in outcomes that are not in the best interests of the child/ren.

- The proposals on child maintenance are not gender neutral because they impact disproportionately on parents with care (PWC), 95-97% of whom are women.
- We are concerned that in reaching an agreement it is usually the non-resident parent (NRP), who tends to be the father, who refuses to agree to pay the amount of maintenance that they are required to by law. We think that it is important that this is recognised and accepted.
- Rights of Women is very concerned about introducing an assumption of shared care as this proposal is likely to cause an increase in the number of eligible families not in receipt of the correct amount of maintenance through the statutory system or agreeing less favourable arrangements for child maintenance.
- We welcome the idea of trying to obtain information on unearned income. However, this will not always be possible to calculate by assessing how much tax has been paid by the NRP. We consider that the "lifestyle inconsistent with declared income and assets" ground must be carried forward, particularly where the lifestyle is inconsistent with both unearned income and earned income.
- Rights of Women agrees that income checks will help to ensure that the correct level of maintenance is calculated and add value to the process but we suggest that NRPs should notify the PWC when there is a 5% increase in their income, rather than 25%.
- The proposed reduction for shared care will take into account contact costs and therefore do not agree with the proposal to reduce maintenance to further take account of contact costs.

Ministerial forward

- The ministerial forward explains that the purpose of reforms to the child maintenance system is to ensure parents take responsibility in making their own choices to establish post-separation agreements that place the child's welfare at their heart. We agree with this in principal. The ideal post-separation situation is for parents to cooperate and act fairly towards one another. However, for some parents this is just not possible. Where relations between the parties are intractable, it is often best that they do not communicate directly or have contact with each other, whilst ensuring that contact between the NRP and the child happens regularly and that the appropriate amount of maintenance is paid. The proposals on child maintenance are not gender neutral given that 95-97% of parents with care are women. We are concerned that where reaching an agreement on child

maintenance is not possible, it is almost always the NRP, who tends to be the father, who refuses to meet his financial obligations to his child, and will not pay the correct level of child maintenance. It is very rarely the case that the PWC, who is usually the mother, will be demanding maintenance for her child that is greater than the statutory level. It is important that this reality is factored into reforms, so that any additional financial burden related to maintenance disputes is placed with the NRP and not the PWC.

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

Rights of Women agrees that the new scheme should continue to take into account shared care, so that NRPs who are involved with the care of their child will usually pay less maintenance. However, we have serious concerns about the proposal to make an assumption of shared care. It is proposed that caseworkers at the Child Maintenance and Enforcement Commission (CMEC) would make an assumption about shared care in cases where there is no agreement between parents, no court order that sets out the amount of contact or where there is insufficient evidence of any established pattern of such care. CMEC has proposed that caseworkers will assume an amount of shared care equivalent to one night a week, resulting in most cases having a reduction of one seventh of the child maintenance due.
Rights of Women opposes this proposal as it is likely to unfairly tip the balance of negotiating power towards NRPs for a number of reasons:

- It will push the PWC into agreeing less favourable maintenance agreements where there is no overnight staying contact and there is no subsisting agreement or contact order. The introduction of an automatic reduction for presumed shared care, combined with the proposed application fee and collection charges for use of the statutory system[1], could give rise to many PWCs agreeing maintenance outside of the statutory scheme that is less favourable than the statutory entitlement for their child. This is because the PWC will be deterred from using the statutory system and NRPs will know at the same time that an automatic reduction in payments would be imposed if the statutory system were to be used.
- An NRP may refuse to put in writing the details of the contact that he has with his child, in order to take advantage of the assumed shared care situation. This could result in unnecessary court applications to ensure that a contact order is made that identifies the level of staying contact and concurrent deduction, if any, that should be made to the NRP's maintenance liability. This would result in legal expense for both parties, as well as acrimony and would not, generally, be in the best interests of the child.
- It is difficult to prove a negative i.e. it will be difficult for PWCs to show that the NRP does not have regular staying contact if they are asserting that they do or the NRP is refusing to advise the Child Support Agency (or its successor) that they do not have staying contact. It would be much easier [2]for NRPs to produce evidence that they have the child for staying contact for example, by taking photographs and providing receipts.
- From the experience of PWCs who call Rights of Women's advice line, there are many instances when a contact order is in place but is not fulfilled by the

[1] See proposals set out in Department of Work and Pensions, *Strengthening families, promoting parental responsibility: the future of child maintenance*, January 2011, online: http://www.dwp.gov.uk/consultations/2011/strengthening-families.shtml.

NRP. A contact order is not always evidence of the actual contact that is happening, and, therefore, other evidence should be considered where the PWC explains that contact is not happening in the way that is set out in the contact order.

- For these reasons Rights of Women is concerned that this proposal is likely to cause an increase in the number of eligible families not in receipt of any maintenance, not in receipt of the correct amount of maintenance or agreeing less favourable arrangements for child maintenance.

Question Three: Do you think periodic income checks add value to the review process?

- Rights of Women believes that periodical income checks are crucial to the operation of a fair child maintenance system, particularly as a parent's income tends to increase over time due to inflation and career progression. Periodic income checks would allow children to benefit from increased maintenance where the NRP's income has increased.
- Rights of Women suggests that NRPs should be required to notify the PWC when there is a 5% increase in their income, rather than 25%. Rights of Women also propose that income figures should be provided by the NRP on an annual basis and maintenance should be adjusted accordingly, whether downwards or upwards. From our experience speaking to women on Rights of Women's family law advice line, we know that for most women and children, even a small increase in the amount of maintenance received makes a difference. The suggestion that only salary increases of 25% and above need to be reported to the PWC seems inadequate. Any increase in maintenance from an additional £10 per week can make a lot of difference to a single mother.[3] Furthermore, a 24% increase could be a significant amount of money depending on the NRP's income. In some situations the NRP could ensure his income did not increase by 25% to avoid paying additional maintenance on an annual basis.

Special expenses

- The consultation proposes that it should also be possible to reduce maintenance paid in recognition of expenses incurred during contact even where there has also been a reduction for shared care.
- Rights of Women does not see the logic in this proposal. Where there is shared care, it is likely that both parents will incur expenses for contact, for example, travel expenses. The experience of our advice line callers is that contact costs (usually related to costs incurred through travel) are generally shared between both parents. In most scenarios, one parent picks the child up and the other drops the child off or the parents meet half way. The reduction for shared care already takes into account contact costs and we therefore do not agree with the proposal to further reduce maintenance to take into account contact costs. If a reduction is made, it does not necessarily mean that the NRP will pay the travel and other costs of contact going forward. This change is also likely to make the system more complicated and less understandable for all parents.

[3] According to the single parent family charity, Gingerbread, single parents in the poorest households spend on £49.70 a week on housing and £43 a week on food. See Gingerbread, "Strengthening families, promoting parental responsibility" – Government plans for child maintenance, Gingerbread briefing, February 2011, p13, online: www.gingerbread.org.uk/file_download.aspx?id=7155, Citing Office for National Statistics, Family Spending: A report on the 2009 Living Costs and Food Survey, 2010.

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?

- Rights of Women generally welcome the proposal to change the way maintenance is calculated from using net income to using gross income. We also welcome the use of HMRC calculations. HMRC will use both self-assessment calculations and PAYE. However, these measures will not necessarily improve the way that maintenance is calculated when the NRP is self-employed. Many self employed persons fund their lifestyle through expenses, paying themselves only a very small salary, which can be incongruous with their lifestyle.
- Many NRPs will provide sufficiently for their children, but those who wish to be difficult will still be able to get around the system under the new scheme.
- We know that there are already problems with the calculation and payment of maintenance when the NRP is self-employed. Many women who contact Rights of Women's advice line are unable to get any or an appropriate amount of maintenance from the NRP when he is self-employed.
- There are a number of common problems concerning calculation of maintenance owed by the NRP that we hear about from women callers to our family law advice line that would not be resolved through using a HMRC calculation. These include situations where the NRPs income is derived from non-taxable sources, for example gifts or allowance from parents, illegal work, or work that is undertaken and remunerated out of the United Kingdom and situations where the correct amount of tax is not paid to HMRC.

Sally has 3 children under the age of 10. She is the parent with care of her children. Her ex-partner and the father of her children, Sam, runs his own property business and pays himself a salary of less than £10,000 per year. Sally explains that Sam goes on 6 foreign holidays annually, that he has a Mercedes and a BMW.He lives in a 7 bedroom home which is in his mother's name. Sam refuses to pay adequate maintenance for the children but what he pays is correct in accordance with the CSA calculation. Under the new scheme his taxable income might be slightly higher, but would be inconsistent with his lifestyle. Therefore, the lifestyle inconsistent with declared income is Sally's only option in securing proper maintenance for the children.

Case study from Rights of Women's family law advice line.

- For these reasons, we submit that the "lifestyle inconsistent with declared income" ground must be retained in order to ensure that NRP's comply with their responsibilities to support their children.

Additional income cases

It is proposed that a PWC should be able to apply for a variation in the maintenance calculation in cases where she considers that the NRP has income which the main calculation has not taken into account. Where such income is identified it has been proposed that this will be added to the existing gross weekly income and used to set a new liability. Rights of Women welcomes this proposed amendment, which will be useful particularly in those cases where income is derived from non-taxable sources as described above, for example from gifts or allowance from parents, illegal work, or work that is undertaken and remunerated out of the United Kingdom.

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?

Rights of Women welcomes the idea of trying to obtain information on actual unearned income. However this will not always be possible to achieve by analysing how much tax has been paid by the NRP to HMRC. The "lifestyle inconsistent with declared income and assets" ground must be carried forward with any changes to the system, particularly where the lifestyle is inconsistent with both unearned and earned income.

It is useful that under the proposed changes the onus will not be on the PWC to provide information on the NRPs income in most situations. However, there are situations, as detailed above, where evidence will be required to show that the NRPs taxable income is incongruent with their lifestyle.

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.

Rights of Women considers it important that the onus of reporting any changes in the income of the NRP is placed on the NRP who is in the best position to report any changes.

We particularly welcome that a non-resident parent who fails to comply with this requirement may be prosecuted as we consider that this will encourage timely and appropriate payments in the best interests of the child.

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)?

Rights of Women submits that it does not make sense to exempt self-employed NRPs from the proposal to compel non-resident parents to report upward changes in income. Indeed, as is discussed above, it is particularly difficult to accurately calculate maintenance owed by self-employed NRPs who are less likely to be transparent than other NRPs about their actual income. Rights of Women considers therefore that all NRPs should be obliged to inform the PWC that their income has increased.

23 February 2012

For further information, contact Ruth Tweedale, Acting Senior Legal Officer (Family Law) or Katherine Perks, Policy and Public Affairs Officer on 020 7251 6575.

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Response to:

Public Consultation:

Child Maintenance Calculation Regulations 2012- A Technical Consultation on the Draft Regulations

By: UKFRM Forum

Endorsed by: Advocacy Fund

FASO (False Allegation Support Organisation)

February 22, 2012

2012-02-22

Policy and Legislation team
Child Maintenance and Enforcement Commission
PO Box 61791
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Dear Sir or Madame:

Response to Public Consultation: Child maintenance Calculation Regulations 2012- A Technical Consultation on the Draft Regulations

Submission by: UKFRM Forum (lonsb65@gmail.com). Endorsed by Advocacy Fund (paul.jolliffe@gmail.com) & FASO (False Allegation Support Organisation) (www.false-allegations.org.uk)

1.0 GENERAL

We are pleased to respond to the above-titled public consultation, and request confirmation of receipt pursuant to para 12.

1.1 UK Family Rights Movement (UKFRM)

The UKFRM is a Forum of individual members from 32 organisations with the defined mission:

- To act as a national consensual voice for the UK FRM Community
- To advocate for Family Justice System reforms

The UK Family Rights Movement (FRM) is defined as the community of members and organisations representing mothers, fathers, children, grandparents and second spouses within the extended divorce community subscribing to core principles

The core principles of the UK FRM are:

- Presumptive Shared Parenting
- Gender Equality
- Recognition of domestic violence as a genderless dysfunction

- Recognition of Parental Alienation as a form of child abuse
- Adherence to EU Conventions and UN Declarations consistent with presumptive shared parenting

In response to para 12, we believe this submission provides the most consensual view of the FRM community based on the following:

- Participation by members from various FRM organisations ;
- Utilisation of survey responses on broad range of topics to ascertain consensual FRM community views
- Circulation of draft document to Forum membership for review and comment prior to formal submission

Document authorship is:

- Primary Author and Editor: George Piskor
- Substantive Contributors: Stuart Graham
- Reviewers: Brian Hitchcock

1.2 Summary

While the UKFRM views the "Gross Income" formula as simplistic and inequitable, it takes the position that the flawed solution is not of the current government's making, and the proposed resolution represents the lesser of evils to the current untenable situation. Our approach to this consultation is to suggest minimum changes to clear oversights and omissions on the assumption that the "Gross Income" formula is a short-term expedient to stabilise the long plagued child maintenance operation. Our most substantive recommendation is to correct the obvious clerical error in calculating applicable fractions in a shared care situation (Question 2).

Our view is that the "Gross Income" scheme is both arbitrary and inequitable under Administrative Law. We therefore recommend that the government now commits to implement an equitable child maintenance formula immediately following completion of the current Cutover/Conversion process of 2012/13.

We would be pleased to meet with ministerial representatives to discuss our recommendation or any aspect of this document. Additionally, we would be pleased to submit proposals for an equitable follow-on child maintenance scheme.

1.3 Response Structure

Recognising the restricted scope of the consultation in para 8:

> *"This consultation applies to Great Britain. The consultation does not cover the principles behind the changes to primary legislation set out in the Child Maintenance and Other Payments Act 2008 as these were widely debated at the time and followed a period of consultation on the White Paper 'A new system of child maintenance' published in December 2006. Consequently, the consultation is concerned with the implementation of those principles"*

But within the purview of the broader response invitation in para 10:

> *"We would be grateful if you would respond to these questions and, in addition, we would be pleased to hear your views on any aspect of our proposals for the Child Support [Maintenance Calculation] Regulations 2012. "*

Our response is structured in three sections:

- Public Consultation Questions
- Other Aspects of Consultation Document
- General Perspective on Child Support Methodology

1.4 Contact Information

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2.0 RESPONSE TO SPECIFIC CONSULTATION QUESTIONS

NOTE: We disagree with the simplistic nature of the "new scheme". Nonetheless, responses in this section are to be interpreted within the context of the "gross income scheme" formula as a fait accompli as stated in the consultation document.

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

Qualified agreement. We agree with the general premise that all parents, regardless of occupation, should be subject to child maintenance, and that students should not be exempted providing that regulations are amended such that:

a) Special Cost categories for students are recognised, specifically: education fees, textbook and supplies, boarding and living expenses, travel fees, personal debt such as student loans,
b) Positive obligation exists on CMEC/DWP to ensure student has sufficient living reserve to allow continuation at colleges and universities without "undue hardship";
c) Assessment process be made as simple as possible in recognition of busy student schedule without requiring variation proceeding as first instance;
d) Assessment procedures recognise that student expense categories are inherently difficult to substantiate in advance requiring CMEC to use pro forma assessments with benefit of the doubt accruing to student.

We are concerned that utilisation of gross income without recognition of unique student expenses may drive students out of colleges and universities contrary to EU and UN Human Rights covenants.

On a more general level, we have serious doubts that the typical discretionary income (after special costs) available to working students coupled with the high annual variability of annual income merits the administrative costs and time consistent with the "faster, more accurate, and transparent process" of the Child Maintenance and Other Payments Act 2008 ("the 2008 Act").

Paragraph 63 text "*Research has indicated that a significant proportion of students work whilst studying and in many cases their earnings can be relatively substantial. We have reached the conclusion that there is no compelling reason why students should be treated differently from other non-resident parents with earnings"* is hardly convincing as it recognises earning "can" be relatively substantial, but provides no evidence-based basis that discretionary income will be typically adequate. The negative conclusion of "no compelling reason" would seem to fail the administrative law standard of a positive "duty of care" obligation on the government to confirm sufficient discretionary income at an appropriate confidence level exists to warrant inclusion of students.

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

Qualified agreement. We recognise the difficulties of making assessments "in the absence of firm evidence" and agree with the concept but disagree with the proposed approach on two grounds:

1) Perverse economic incentive. Proposed minimum default assumption of one-seventh provides incentive to Parent with Care (PWC) to intentionally argue shared care levels to obtain minimum. We recommend selecting the mid-point between PWC and NRP (Non-Resident Parent) claims in the interest of statistical subjective symmetry; and if not available, use two-sevenths as the default.
2) Care fractions for number of nights be based on average interval, not minimum interval. We note that recommended fraction to subtract for care in part provided by local authority is based on minimum nights – e.g. 52-103 nights is one-seventh reflecting the 52 night minimum (Table s.53(6) in Consultation Draft, Family Law, Child Support, The Child Support Maintenance Calculation Regulations 2012). We recommend fractions for both parental shared care and local authority care be standardised around the mid point as follows:

Number of nights	Fraction applicable
0-51	One-seventh
52-103	Two-sevenths
104-155	Three-sevenths
156-207	Four-sevenths
208-259	Five-sevenths
260-312	Six-Sevenths
313-365	Seven-sevenths=100%

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

No. As the consultation document itself recognises that most incomes don't change much from year to year, and given that the current scheme is based on 25% change threshold to qualify for favourable variation consideration, periodic income checks after a 12 month interval without change not only do not warrant the administrative CMEC/DWP overhead involved, but also violate the fundamental rule of reciprocal consideration for all parties under administrative law-payer, recipient, and the government.

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?

Qualified agreement. The provision of para 88 "*This information will be available to the Commission on request, but only following an application for a variation*." unnecessarily places the onus on the NRP to initiate variation hearings and similarly unnecessarily incurs unnecessary CMEC/DWP administrative overhead costs.

As a matter of standard operational procedure, CMEC/DWP should request all available HMRC data in advance of any administrative review to minimise need for any clerical review and variation proceedings consistent with the " faster, more accurate and transparent process" objectives of the 2008 Act.

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 with the proviso that the positive obligation exists on CMEC/DWP to first exhaust all available HMRC data sources to reasonable resolve issue before following up with clerical queries.

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?

Agree with dual calculations being made to calculate the net offset payable as being consistent with the" faster, more accurate and transparent process" objectives of the 2008 Act.

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

No. We submit that the proposed interpretation of the principle "*that all non-resident parents on low incomes should pay something towards the maintenance of their children whilst recognising they have more limited means to do so*" places insufficient weight on limited means of the NRP already impoverished below the welfare rate. The issue of flat rate increase can not be considered in isolation of an accompanying adjustment in the income brackets (e.g. £7 - £100)

This question raises the broader issue of "undue hardship" consideration of ensuring a reasonable self support reserve. Schemes in other countries have minimum 'Nil rate" threshold set at qualifying social assistance income levels; in Australia the rate is set higher as a poverty alleviation policy to encourage higher earning levels and eventual higher child support contributions.

However, if political optics require flat rate to be increased, we would propose consideration that income brackets be adjusted by the amount of the increase as a minimum, and preferable by the amount of the entire flat rate. This will allow compliance with the articulated principle in a balanced manner respecting inflationary and cost-of-living impacts on both PWC and NRP. We recognise that this change would result in no change, save for political optics. We add that PWC

have already received a de facto increase by adoption of the "100% disregard" in April 2011 and will not be adversely affected.

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. Aside from the minimal likelihood of 25% increases in annualised income as recognised in the consultation document, the approach is both redundant and inconsistent with the fundamental approach of utilising lagged HMRC income data. Additionally, the criminal sanctions place the NRP with highly variable income in an unfairly vulnerable situation of having to second guess annualised income, a point likewise accepted by the consultation document.

Our proposed approach is to remove the reporting income requirement and associated criminal sanctions and utilise the normal current income approach under which HMRC data would automatically flag such changes, and under which the change over 25% could be retroactively imposed.

In instances of income underreporting or wilful evasion, we note that this is already an HMRC responsibility, and the proposed CMEC/DWP process for this situation is administratively redundant. We would propose that such suspected instances of tax fraud be passed by CMEC/DWP staff to HMRC for follow-up.

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)?

No. The answer in question eight applies here. In fact, the question raised is why CMEC/DWP would seem to be intent on designing unnecessary clerical administrative overhead rather than allowing the automated HMRC interface accomplish this same function in a faster and more cost-effective fashion.

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

No. While we accept the intrinsic merits off this proposal, we note that the proposed regulations place CMEC/DWP on the horns of a dilemma under administrative law. Allowing admittedly desired inflationary adjustments would be inconsistent and discriminatory with the requirement for 25% change threshold for variation considerations.

3.0 RESPONSE TO OTHER ASPECTS OF THE PROPOSED REGULATIONS

NOTE: We disagree with the simplistic nature of the "new scheme". Nonetheless, responses in this section are to be interpreted within the context of the "gross income scheme" formula as a fait accompli as stated in the consultation document.

The focus of 2008 Act is to produce "a faster, more accurate and transparent process" (para 24) while the subsidiary Regulations identify "the greater priority … to provide calculation rules which maximise the possibility of consistency across all cases" (annex C/20) "to benefit families and children, while delivering value for money for the taxpayer(para 30) [emphasis added].

These are not inconsistent objectives, especially consistent accuracy. Unfortunately, the approach adopted in the proposed regulations result in consistent inaccuracy as outlined in sections below.

We accept that the regulations were prepared in "good faith", but submit they fail to meet the "reasonable person" test for prudence and duty of care in the preparation of regulations.

3.1 25% Rule

The regulations are fundamentally flawed both under both the stated objectives of "maximising consistency (annex C/20) as well as administrative law by failure to apply the 25% error threshold in a consistent manner. It is fundamentally discriminatory to require a minimum 25% change to qualify for variation while significantly lesser changes are acceptable for other area as referenced above. Without limitation, other areas where this has ben noted are paras 81, 86.3, and 88.

We note further that the CMEC Equality Impact Assessment required under law is likewise fundamentally flawed as it fails to examine the gender impact of the 25% rule altogether.

3.2 Net to Gross Impact

The utilisation of a single scaling factor to arrive at equivalent percentage rates to be applied against gross income to arrive at the goal neutral scaling is fundamentally flawed as that assumes a flat tax rate across income levels resulting in progressively increasing under-scaling and over-scaling around the uniform tax rate used for conversion.

We contend that the government response to this same issue previously raised by the Work and Pensions Select Committee (Table 1, Report on the child maintenance White Paper -A new system of child maintenance. CM 7062, May 2007) failed to meet standards of duty of care under administrative law as it compared average impact without considering statistical variances at a defined confidence level. The variation around the mean is generally known to be high in economic studies leading to substantial undue hardship for those affected.

We note further that the CMEC Equality Impact Assessment required under law is likewise fundamentally flawed as it fails to examine the gender impact of the Net to Gross Impact altogether.

3.3 Distortion Effects due to Lack of Parental Sharing of Child Related Tax Benefits

As noted in the Departmental economic Impact assessment (DWP 0013, dated 19/10/2011), " Gross income will not include any tax credits which are presently included in a non-resident parent's net income ". Exclusion of child-related tax benefits and allocation of 100% of these benefits to PWC without sharing in recognition of joint parental responsibility espoused in government policy leads to a serious distortion effect, most notably at lower income levels. PWC receives a windfall, whereas the NRP is required to pay substantially higher child maintenance level inconsistent with fundamental equity principles and administrative law.

As 95% of NRP payers are male, we submit this constitutes unwarranted discrimination under administrative law. We note further that the CMEC Equality Impact Assessment required under law is likewise fundamentally flawed as it fails to examine the gender impact of the distortion effect due to lack of child-benefits sharing altogether.

3.4 Undue Hardship Effect of Low Income Brackets

We submit that retention of the income brackets identified in para 34 for liability rates under the nil, flat rate, reduced and basic rates are unduly low relative to comparable poverty levels and welfare entitlements thereby constituting an undue hardship for low income NRP together with discriminatory practices as 95% of payers are male.

We note further that the CMEC Equality Impact Assessment required under law is likewise fundamentally flawed as it fails to examine the gender impact of the Low Income brackets altogether.

We suggest that the income brackets be raised to reflect welfare levels and/or the payable amount be added to existing social security benefits and/or the government make these payments directly.

Evidence from English-speaking democracies indicates about 2/3 of defaulters are in the low income category are are unable to pay due to underemployment, unemployment, and, in about 30-40% of cases) related health/substance abuse/mental health issues. We also suggest that the administrative savings from the increase in Nil rate payers by adjustment of low income brackets would likely pay for any increased government outlay.

3.5 Failure to include Earnings Cap results in Double-Dipping

We submit that failure to include an earnings cap on assessable earnings constitutes double-dipping via embedded spousal support and furthermore exceeds state authority under the doctrine of *parens patriae* at higher income levels where minimum well-being of the child is no longer an issue.

The government is well aware from its own research and numerous studies in other countries of the settled economic fact that the percentage of parental income spent on child care decreases with increasing income, notwithstanding that the absolute rate increases but at a correspondingly lower rate. The adoption of a fixed rate percentage of income (POI) schemes (above low income levels) leads to the well-documented effect of equivalency at one earnings point with under-contribution at lower earning levels and progressively increasing over-contribution at higher earning levels. These over-contributions are over and above prudent provisions for child maintenance and hence constitute embedded spousal support contrary to legislative intent.

We therefore recommend that an earnings cap be placed on assessable income levels to prevent double-dipping. We also note that the adoption of 100% disregard in April, 2011 was a major step towards addressing the under-contribution gap due to flawed design of the child maintenance scheme.

As males constitute 95% of payers, we note further that the CMEC Equality Impact Assessment required under law is likewise fundamentally flawed as it fails altogether to examine the gender impact of the exclusion of an earnings cap.

4.0 GENERAL OBSERVATION AND RECOMMENDATION

Pursuant to Para 10 of the consultation document, we take this opportunity to make general comments to improve the child maintenance scheme and associated regulations.

While almost all advanced countries have long ago abandoned the fixed rate percentage of gross income scheme, the UK is singularly alone in regressing through a series of schemes and operational failures to now adopt what is acknowledged to be the most primitive and unfair form of child maintenance methodologies.

The need to stabilise the existing child maintenance system via recourse to this simplistic approach has to be seen as a political fig leaf against national and international embarrassment for a country with such a long and distinguished scientific and industrial tradition. We maintain that the UK is compounding its embarrassment by adopting a simplistic scheme and regulations that clearly via administrative law on the basis of inadequate “duty of care” and adverse effect discrimination.

The fixed rate percentage of gross income approach has long been recognised as intrinsically unfair and inequitable on multiple counts:

- Reliance on NRP income alone as opposed to that of both parents reflecting joint parental responsibility;
- Reliance on gross rather net income unnecessarily introducing tax distortion effects in child maintenance quantum calculation;
- Failure to share child tax benefits with both parents thereby providing the PWC with a windfall while inflating NRP obligations
- Utilisation of flat basic rate in contravention of common knowledge that child costs decrease with increasing income
- Secondary distortion effects on calculation of shared care and special expenses

We sympathise with the current government as the situation is largely not of its making, and it has inherited a work-in-progress. Nonetheless, we submit there is no constitutional, administrative law, or moral justification for the adopted crude approach; nor can such a flawed approach facilitate post-dissolution family relationships as a cornerstone of coalition policy as perverse economic incentives in the formula will inherently reduce proposed mediated outcomes and private arrangements as parties will be bargaining under the "shadow of the law".

We therefore recommend the following to mitigate what is admittedly a no-win political situation:

1) Stay the Implementation Course but maximally simplify the regulations to improve operational success on the basis that the Gross Income scheme is a transitionary scheme intended to stabilise long standing operational issues;

2) Accelerate conversion/cutover to a single system by modifying regulations to allow <u>mass</u> conversion of payers under the two old schemes to the new scheme as "deemed equivalent arrangements"; parents would still retain all options to negotiate a revised private arrangement. This will result in no changes but allow the old systems to be retired and staff to be repurposed.

3) Announce creation of Stakeholder Committee with end-user representation and outside consultants to recommend a follow-on equitable approach to the transitionary gross income scheme. Recommended remit is:

    a. Scheme must recognise post-separation after-tax income of both parents;

    b. Child-related Tax benefits must be equally shared for purposes of calculation;

    c. Scheme must be based on HMRC tax forms or HMRC data;

    d. Formula must be implement able as web tool for use by parents (or mediators , solicitors, or other third parties) to allow private arrangement calculations transferable to CMEC/DWP as a parental option

4) Announce that follow-on formula will be used as basis for one-time retroactive adjustment to existing transitionary "gross income" formula with government funding to bridge any large gaps or to make retroactive payments to NRP and PWC unduly affected

We would be pleased to meet with ministerial representatives to discuss our recommendation or any aspect of this document. Additionally, we would be pleased to submit proposals for an equitable follow-on child maintenance scheme.

Yours truly,

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A Response to: The Child Support Maintenance Calculation Regulations 2012

Issued by: Child Maintenance and Enforcement Commission

February 2012

Introduction

1.1. The Women's Support Network (WSN) welcomes the opportunity to respond to this consultation issued by OFMDFM.

1.2 The Women's Support Network (WSN), established in 1989, is a regional organisation that works across all areas of Northern Ireland. It includes in its membership community based women's centres, groups and organisations, with a concentration in disadvantaged areas. WSN is a charitable and feminist organisation, which adopts a community development approach. We provide a range of support and services to 63 community based women's centres, projects and infrastructure groups and 26 associate members drawn from across the community and voluntary sector who support women, families and communities. (see Appendix 1).

1.2. Our members provide a wide range of women-centred front line services across Northern Ireland, including:

- Specialist Advice
- Childcare and Family Support
- Counselling, Support and Advocacy
- Complementary Therapies
- Training & Education
- Health & Wellbeing Programmes
- Personal Development & Employment Support
- Volunteering, Leadership & Empowerment

1.3. WSN aims to achieve social, political and economic justice through the promotion of the autonomous organisation of women. The Network aims to strengthen the collective voice of women's groups and to promote and develop networking opportunities, to enable collective action and to impact upon policy and decision making processes. WSN provides an accessible, feminist, relevant and high quality support service and resource for its member groups. The Network is also an important information resource on issues relevant to community based women's organisations and for other infrastructure groups, nationally and internationally.

1.4. Over the past 30+ years, the community based women's sector has developed a range of front-line services such as childcare, support, advice, and education & training services in response to the needs they identified at a grass roots level. Women's groups continue to meet the particular needs of women and their children living in areas considered to be some of most affected by the conflict, and recognised as some of the most disadvantaged areas across Northern Ireland today.

1.5. Network members are actively engaged with their local communities, cross-community initiatives and regional structures throughout Northern Ireland.

General comments:

We reiterate the comments made in our response to the Green Paper. WSN is extremely concerned with the proposals to place an application charge when applying to the Child Maintenance and Enforcement Commission. The effects of Welfare Reform are yet to be realised however it is accepted that Northern Ireland will be hit hardest. In a report commissioned by the Law Centre NI, the Institute of Fiscal Studies established that after London, the tax and benefits changes planned up to 2014-2015 will have a disproportionate impact on NI. This is for two reasons: the high numbers of those in receipt of Disability Living Allowance, especially for mental health disorders, and the high number of families with children who will be adversely affected by cuts to social security.[1] It is wrong therefore to use charges which would discourage families and place a financial burden on those who are in low income households. These changes, along with the spending cuts already in place, will have a disproportionate impact on women and lone parents (90% of whom are female). Pressure on low income families have already increased, many of whom are struggling to manage their household budgets at present. WSN call on the government to offer this service free of charge to those on low incomes as charging for a system will only exclude children and parents from low income families.

WSN are supportive of the continuing need for families to receive help and intervention with negotiation. However, we are concerned for those parents who are unable to form or maintain a private relationship agreement. There are risks and limitations to this approach, for example some parents may be able to establish their own financial arrangements while others need help. This move towards private arrangements may see a shift in the balance of power between parents. We have particular concerns for women in this as it is predominately women who are the carers for children while the non-resident parent is mostly men. WSN does not see any safeguards contained within the calculation regulations that will ensure women receive a fair deal.

[1] James Browne, The Impact of tax and benefit reforms to be introduced between 2010-11 and 2014-15 in Northern Ireland, IFS Briefing Note 114, December 2010

There is a real fear that women could accept a lower monetary or even sporadic contribution for child maintenance for an easier relationship with an ex-partner. This has serious implications in relation to gender equality and the fact that less money would be going to the child. This will do little to reduce child poverty. Child poverty figures within Northern Ireland are stark; with figures for 2009-10 showing a 14,000 increase in the number of children in poverty. Northern Ireland has 28% of children growing up in poverty, with the figure for the whole of the UK standing at 20%. The Child Poverty Act 2010 is meant to ensure that action to end child poverty will be a priority for the current administration. The legislation highlights education, childcare, health, family support, financial assistance, employment, skills and housing as crucial elements in the battle to end child poverty. WSN would like the government to set out how it will monitor and evaluate private agreements in order to safeguard women and to ensure they do not settle for less money than they are entitled to.

Specific Comments:

Our comments below are based only on the questions asked within the consultation document.

Question One

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

We believe that if students are earning an income then they still have a financial responsibility to their child/children. However, we are assuming the same limits will apply as those in part-time / full-time work?

Question Two

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

We are not in favour of CMEC making 'assumptions' about shared care. We believe this would provide the non resident parent with an easy option of reducing how much they pay. We strongly believe the shared care calculations should be based on evidence.

Changing a calculation

Question Three

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

Checking income regularly ensures that the maintenance payable is accurate, as long as prove of income is also received.

Variations

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?

Removing 'lifestyle inconsistent' and basing this on actual earnings is probably more accurate.

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?

Unearned income is a term used by the HMRC, and refers to dividends, income from assets and properties, and should definitely be used for assessment purposes.

Other matters to note

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?

We believe that reducing the percentage due to a relevant child is fair - currently the system favours the child living in the non resident parent household, and the new proposal brings these closer in line.

Question Seven

Do you agree with the proposal to increase the flat rate?

The current flat rate is £5 per week which has been the same for 8 years. We believe this is too low and should be increased further.

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?

We strongly advocate for non-resident parents to be compelled to report any increase in income or if they receive any kind of gift or inheritance.

Conclusion

WSN welcomes the opportunity to respond to this consultation document. We have serious concerns over the implementation of this new system. It will exclude those in society who need the most help and who are at a vulnerable time in their life. We have offered some constructive recommendations as to how it could be improved. We are happy to further discuss this response if required.

For further information, contact:

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MEMBERSHIP 2012

	Member Group
1	All Ireland Mother's Union
2	An Munia Tober (Travellers)
3	Antrim & Ballymena Women's Aid
4	Ardmonagh Women's Group
5	Ardoyne Women's Group
6	ATLAS Women's Centre
7	Al Nisa Women's Group
8	Ballybeen Women's Centre
9	Ballymurphy Women's Group
10	Belfast & Lisburn Women's Aid
11	Belvoir Women's Improvement Group
12	Carrickfergus Women's Forum
13	Carew II
14	Causeway Women's Aid
15	Chrysalis Women's Centre
16	Clan Mor Women's Group (Sure Start)
17	Derry Well Woman
18	Derry Women's Centre
19	Falls Women's Centre
20	First Steps Women's Group
21	Footprints Women's Centre
22	Foyle Women's Aid
23	Foyle Women's Information Network
24	Granaghant District Women's Group
25	Greenway Women's Centre
26	Kilcooley Women's Centre
27	Lesbian Advocacy Services Initiative
28	Lesbian Line
29	Lenadoon Women's Group
30	Ligoneil Family Centre
31	Link Women's Group
32	Manor Women's Group
33	Markets Women's Group
34	NI Women's Aid Federation
35	NI Women's European Platform
36	Fermanagh Women's Network
37	Newry & Mourne Women
38	Newtownabbey Women's Group
39	Older Women's Network NI
40	Omagh Women's Aid
41	Rape Crisis Centre
42	Rasharkin Women's Group
43	Shankill Women's Centre
44	Strabane & Lifford Women's Centre
45	Strathfoyle Women's Centre
46	The Learning Lodge

47	Voices Women's Group
48	Waterside Women's Centre
49	Windsor Women's Centre
50	Women Connect Project
51	Women into Politics
52	Women's Information Group
53	Women's News
54	Women's TEC
55	Women 2 Gather
56	Women's Resource & Development Agency
57	WISPA (Women in Sport & Physical Activity)
58	Ardcarn Women's Group
59	OIYIN Women's Group
60	Mossley Women's Institute
61	Mount Vernon Women's Group
62	Coole New Opportunities
63	North Belfast Womens Initiative & Support Project
	Associate Members
1.	Ballymena Community Forum
2.	CiNI
3.	Community Relations Forum
4.	East Belfast Community Partnership
5.	Employers for Childcare
6.	HIV Centre (Women's Support Group)
7.	Mencap
8.	National Women's Council of Ireland
9.	Playboard
10.	RNIB (Women's Group)
11.	Good Morning Newtownabbey
12.	Monkstown Community Association
13.	WAVE Trauma Centre
14.	WEA
15.	Parents Advice Centre
16.	Templemore Community Action Group
17.	Gingerbread
18.	Larne Community Development Project
19.	Community First Coaching
20.	Changing Faces
21.	Sands NI
22.	Women's Project Ashton Centre
23.	Women on Track
24.	Matt Talbot Women's Group
25.	Ulster People's College
26.	Council for the Homeless NI