

# Consultation on the abolition and transfer of functions of the Child Maintenance and Enforcement Commission

Public consultation

October 10 2011

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## Seeking views

1. The Government is minded to use the powers in the Public Bodies Bill (PBB), to implement the proposals outlined in this consultation document, in relation to the abolition of the Child Maintenance and Enforcement Commission (CMEC) as a non-departmental public body, and transfer of its functions to the Secretary of State for the Department for Work and Pensions (DWP).
2. The PBB requires that Ministers consult on their proposals before laying a draft Order, and the Government accepts this requirement, which supersedes any previous announcements of a confirmed policy position. On that basis, the Minister invites comments on these proposals as measures that might be carried forward by an Order under the PBB, subject to the outcome of this consultation and Royal Assent of the Bill. All responses, including those which propose an alternative to the Government's preferred option, will be given due consideration.
3. Therefore, the purpose of this consultation document is to seek your views on the:
  - Government's proposal to abolish the Child Maintenance and Enforcement Commission as a non-departmental public body and transfer its functions to the Secretary of State for the Department for Work and Pensions. We will explain here what this means in practice.
  - The draft Order which would effect that change using powers under the Public Bodies Bill currently before Parliament. There is no obligation in the Bill to include a draft Order, but we are doing so for consultees to see how we propose such a change would be reflected in legislation.

# Background

## Strengthening families, promoting parental responsibility

4. The Government have recently outlined in the Green Paper *Strengthening families, promoting parental responsibility: the future of child maintenance*, and the subsequent response, plans for a radical re-shaping of the statutory child maintenance system to better support families going through separation, recognising the range and complexity of the issues that parents face during this difficult time. Central to the approach to this reform is an integrated model of relationship and family support services, which helps parents make their own, lasting arrangements, because collaborative agreements, where this is possible, are better for everyone involved.
5. We are not seeking views on that strategic vision or more detailed policy issues; but are seeking your views on the proposal to abolish CMEC as a non-departmental public body and transfer its functions to the Secretary of State for Work and Pensions, and on the draft Order which will effect that change. This change will enable Ministers to have more direct control, responsibility, and accountability over the delivery of child support strategic and operational policy, and the ongoing and future reform of child maintenance.

## Rationale behind the proposal

6. The proposal was announced as part of the Public Bodies Bill Review (14 October 2010), in which the Government proposed to radically increase the transparency and accountability of all public bodies. As part of that proposal, CMEC would be abolished and DWP would exercise its functions, thereby bringing the delivery of child support strategic and operational policy under more direct Ministerial control.
7. The rationale behind the proposal to abolish CMEC and for the Secretary of State to exercise its functions is that CMEC did not meet any of the three criteria as set out by the Minister for the Cabinet Office that retained bodies would have to meet one of the three tests:
  - Performing a technical function.
  - Requiring political impartiality.
  - Needing to act independently to establish facts.
8. Whilst the agenda of reform remains challenging it does not meet the criteria above. CMEC is not a technical or fact gathering body that needs independence,

nor does CMEC require political impartiality to discharge its responsibilities. It is clear to Ministers that CMEC performs an administrative function which could be done either within, or at arms-length from, Government.

9. Given that CMEC satisfies none of the three tests and Ministers believe that they should be directly accountable for the reforms set out in the Green Paper, it was concluded that CMEC's functions did not need to be carried out by a non-departmental public body.
  
10. The Secretary of State wrote to the Deputy Prime Minister (8 October 2010) to confirm that CMEC, which was previously listed as 'under review' would now be listed as 'no longer a Non-Departmental Public Body' under Cabinet Office's latest guidance. All the functions currently delivered by the CMEC as a non-departmental public body would continue to be delivered within the DWP portfolio, but with stronger links to Ministerial responsibility.

# Scale of the change resulting from these proposals, and the impact on delivery of child maintenance

11. We expect the scale of the reform and impact of the proposals to be very small. The Secretary of State for Work and Pensions will have the same functions that CMEC currently has, and the transfer of functions to the Secretary of State will not affect the delivery of child maintenance payments or its administration.
12. The potential impacts of this proposal have already been part of a Lords Committee debate on the Public Bodies Bill in December 2010, through an amendment that was moved in the House of Lords. Its purpose was to understand and evaluate the rationale for including CMEC in the Bill as one of the bodies to be abolished.
13. The Government successfully argued that their intention is to increase the accountability of Ministers for public services, and that CMEC should not be removed from the Bill.
14. It was made clear during the debate that the change is not about removing the functions of CMEC, nor is it about undoing the progress that CMEC has made through the hard work and dedication of its staff, which can be seen in the performance improvements over the last three years. This change will simply give Ministers more direct control, responsibility, and accountability over the delivery of child support strategic and operational policy, and the ongoing and future reform of child maintenance.
15. As a result, the amendment was subsequently withdrawn.

## What will take the place of CMEC?

16. CMEC has to deliver its major change programme over the next two years, and therefore it is important for structural change to be kept to a minimum during this period. Our proposal to abolish CMEC and transfer its functions to the Secretary of State for Work and Pensions is to allow for fuller integration of child support delivery into the Department, as part of the ongoing wider DWP restructure, and before the conclusion of the change programme.
17. The Secretary of State for Work and Pensions will become responsible for the delivery of child support, and for ensuring that the change programme is implemented. This includes: establishing a major new IT platform with significant automation; introducing a new calculation methodology (gross income rather than net income); closing all existing cases (about 1.2 million cases); and for those that wish to continue with a state system, bring them onto the new platform.

### **What does this mean in practice for staff?**

18. The proposal would mean that CMEC is to be abolished, and no longer exist as a separate legal organisation. Its staff would transfer to DWP enabling fuller integration into the Department.
19. Staff would transfer from CMEC to DWP under the Cabinet Office Statement of Practice rules, and the transfer would be treated a machinery of Government change from one department to another department as CMEC is a Crown body and therefore exercises its functions on behalf of the Crown. Staff would retain their civil servant status, and staff terms and conditions would be protected at the point of transfer.
20. We would expect the impact on staff to be minimal. The exact structure of CMEC and its reporting lines into the Department will be decided in due course.

### **What will this change achieve in terms of improving efficiency, effectiveness, economy, and securing appropriate accountability to Ministers in the carrying out of CMEC's functions?**

21. In line with the requirements of the Bill, a Minister may only make an Order if the Minister considers that the Order serves the purpose of improving the exercise of

CMEC's functions, having regard to efficiency, effectiveness, economy, and securing appropriate accountability to Ministers.

22. We have considered these points. The key to this change is that CMEC is responsible for child support, an issue which affects many families, and this Government feels it is right that Ministers should be directly responsible for this important work.
23. The previous Government put the issue of child maintenance at arms length; however this Government believes that accountability and decision making responsibility for child maintenance should sit with Ministers. As we explained above, the 2010 review of Public Bodies concluded that there was no reason, based on the Government's three tests, for these functions to remain at arms length.
24. The Government therefore plans, through the abolition of CMEC as a non-departmental public body, and transfer of its functions to the Secretary of State for Work and Pensions, to make Ministers directly accountable for its performance and ongoing reform.

## **Will this change of status not just revert back to the days of the performance problems of the Child Support Agency?**

25. We acknowledge that there was a history of poor performance within the Child Support Agency (CSA). From 2006 to 2009, the CSA's Operational Improvement Plan did improve performance of the administration of child maintenance, but many families experienced service well short of what they should expect. Responsibility for child support functions transferred to CMEC in November 2008, nearing the end of the period covered by the Operational Improvement Plan.
26. Since its formation in 2008, CMEC has taken improvements further but inherent problems with the IT system means that there remain significant weaknesses including 100,000 cases being managed outside of the main IT system (clerical cases) at a rate of around double the cost of managing an on system case. The number of cases managed in this way will continue to increase until a new IT system is introduced. The statutory schemes are costly and children miss out due to the complexities of having two schemes running concurrently with quite different rules.
27. We are investing hundreds of millions of pounds in running the system within the constraints set out above. Improvements undertaken over the past four years are admirable but 100,000 clerical cases led to a doubling of handling costs, which shows that fundamentally the system does not work and will break down if not changed.



28. Any improvement that CMEC has made to date has been in spite of the clear inadequacies of its IT infrastructure. The legacy of past problems still casts a long shadow over the administration of the effectiveness of the child maintenance system and these still need to be resolved. The Government believes it is right and essential that Ministers are directly accountable for the significant changes that still need to happen within the child maintenance system, not least the introduction of a new scheme for calculating child maintenance and the associated new IT platform.
29. By proposing this change, this Government believes that it will have more control over the delivery and implementation of the future IT platform, avoiding a repetition of the well-catalogued problems of the past.

## Review of CMEC's Crown body status

30. The Child Maintenance and Other Payments Act 2008 requires the Secretary of State to review the status of CMEC as a Crown body as soon as practicable after three years, starting from the date that the transfer of child support functions came into force. That review power does not enable the Secretary of State to abolish CMEC as separate legal entity (as is proposed using powers under the Public Bodies Bill) but only to review its particular status as a Crown body and change that status, for example, to an executive non-departmental public body that does not exercise powers on behalf of the Crown. If, following this consultation, the proposal to abolish CMEC proceeds, it may not be practicable to undertake a review of its status as a Crown body at that point in time. A decision will be taken nearer to the time whether to proceed with this review.

## The draft Order

31. Below is a brief explanation of the key points of what the draft Order will do. There is no obligation in the Public Bodies Bill to attach the draft Order to the consultation, but we are doing so for transparency and completeness.
32. Articles 2 and 3 of the draft Order abolish CMEC and transfer its functions to the Secretary of State on the date the Order comes into force, which is intended to be in summer 2012.
33. Article 3 also transfers to the Secretary of State any property, rights or liabilities of CMEC, or to which CMEC is subject, on the transfer date. Article 4 ensures anything that is done or in the process of being done by CMEC on the transfer date will be treated as done by the Secretary of State when CMEC's functions are transferred. It also provides that the Secretary of State will be liable for anything CMEC has done in the exercise of its functions. The Order does not deal with the transfer of CMEC's staff to the Secretary of State as the CMEC's staff are civil servants and will transfer as described in paragraph 16 above.
34. Article 4 also ensures that if any documentation is sent out in the name of CMEC after its abolition, it will still be valid. This is to allow a cross over period before the IT systems used in relation to child support are changed so that in that intervening period documentation can be sent out in the name of CMEC but still have legal effect. It also ensures any documentation sent out in its name before its abolition is still valid.
35. The Schedule to the draft Order makes a number of consequential amendments to other legislation to reflect the fact that CMEC has been abolished and that its functions are transferred to the Secretary of State. The majority of the changes that would be required on the abolition of CMEC are included but there are other minor consequential amendments that will be required. The majority of the changes made to the draft Order are textual amendments that simply replace any references to the CMEC with a reference to the Secretary of State. In addition to those textual changes, certain functions of CMEC contained in the Child Maintenance and Other Payments Act 2008 are omitted and re-enacted in the Child Support Act 1991 as we consider it is more coherent to have all the functions in one Act. The draft Order also amends the Secretary of State's existing information sharing gateways to include child support, rather than to retain separate gateways for child support in the 2008 Act.
36. The statutory objectives that CMEC has and its duty to promote child maintenance, and to issue guidance and information, are not transferred to the Secretary of State by the draft Order. The Secretary of State does not require an objective to promote child maintenance in order to do so, and does not require duties to issue guidance and information to do so either.

## Questions

Question one: In respect of our proposal to abolish CMEC as a non-departmental public body and to transfer its functions to DWP, please tell us if there are any other factors that you would like us to consider?

Question two: Please let us have any specific comments about the draft Order that you would like us to consider?

# Annex 1 – About this consultation

## Target group for the consultation

We would like to seek the views of the body itself and those who are substantially affected by the proposals as explained in the consultation document.

## Duration of the consultation

The consultation period begins on 10 October 2011 and runs until 3 January 2012.

## Consultation arrangements

Please send your consultation responses to:

Information Management, Devolution and Governance  
Governance Team  
Room 2S25  
Quarry House  
Quarry Hill  
Leeds  
LS2 7UA

E-mail: [CMEC.TRANSFORMATIONCONSULTATION@DWP.GSI.GOV.UK](mailto:CMEC.TRANSFORMATIONCONSULTATION@DWP.GSI.GOV.UK)

Please ensure your response reaches us by 3 January 2012. We will not be in a position to extend this deadline. All responses will be acknowledged. Please say whether you are responding as an individual, or on behalf of an organisation. If on behalf of an organisation, please make clear who the organisation represents, and how the views of members were obtained.

The responses to the consultation will be published in a report to be placed on the consultations section of DWP's website [www.dwp.gov.uk/consultations](http://www.dwp.gov.uk/consultations). The report will summarise the responses and next steps.

## Procedure after consultation

If after consultation the Minister considers it appropriate to proceed with making the Order, the Minister will lay before Parliament:

- An Order.
- An explanatory document.

The explanatory document must give reasons for the Order, and contain a summary of the representations received in the consultation.

## **Freedom of information**

The information you send may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although this cannot be guaranteed.

More information about the Freedom of Information Act can be found on the Ministry of Justice website: <http://www.justice.gov.uk/guidance/freedom-of-information.htm>

## The consultation criteria

This consultation is being conducted in line with the Government Code of Practice on Consultation <http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>. We are consulting on the general principle of the status of the body only.

The seven consultation criteria are:

- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises.** The government Code of Practice on Consultation recommends a minimum 12-week consultation period for public consultations, unless there are good reasons for a limited consultation period.
- **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

## **Feedback on this consultation**

Your feedback on how well the consultation is conducted, is valued. If you have any comments on the process of this consultation, for example, how it could be improved, but not about the issues raised, please contact the Department's Consultation Co-ordinator:

Roger Pugh

DWP Consultation Co-ordinator

1st Floor Crown House

2 Ferensway Hull HU2 8NF

Email: [roger.pugh@dwp.gsi.gov.uk](mailto:roger.pugh@dwp.gsi.gov.uk)

## **Impact assessment**

A full impact assessment has not been published for this Order as it has no impact on the private sector and civil society organisations. Publication of a full impact assessment is not necessary for such legislation.