



Consultation on draft regulations:

The Child Support Management of Payments and Arrears (Write off and Part Payment in Full and Final Satisfaction) Amendment Regulations 2012

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Part One - Consultation arrangements

Who this consultation is aimed at

1.1 This consultation is aimed at parents who live apart, representative organisations for parents who live apart, representatives of the legal profession, other organisations involved with the delivery of these proposals and members of the general public with an interest in child maintenance issues.

Subject of consultation

1.2 This consultation is on the planned implementation of two new arrears management powers within the Child Maintenance and Other Payments Act 2008 (the 2008 Act).

1.3 The powers to be implemented are:

- 1.4 Section 32 - Power to accept part payment in full and final satisfaction
- Section 33 - Power to write off arrears

Purpose of the consultation

1.5 This document describes the provisions in the forthcoming The Child Support Management of Payments and Arrears (Write off and Part Payment in Full and Final Satisfaction) Amendment Regulations 2012 which are needed in order to implement the powers listed in paragraph 1.4.

1.6 For the purposes of this consultation these provisions have been listed as two separate draft instruments. It is possible after this consultation is complete that the two sets of draft regulations may be combined into one statutory instrument.

1.7 The Child Maintenance and Enforcement Commission (the Commission) is inviting you to review the proposals in this document and provide your views on the proposed way in which the new powers are implemented. Your views are important to us and wherever possible we will use them to inform the content of the regulations and the processes we use to apply them.

1.8 We cannot consider any comments on any powers not listed in paragraph 1.4 above.

Scope of consultation

1.9 This consultation applies to Great Britain.

Duration of the consultation

1.10 The consultation period runs for 12 weeks (in line with the Government Code of Practice on consultation) beginning on **19th of December 2011**.

How you can respond to this consultation

1.11 To facilitate the consultation process some proposals have been presented throughout this document. These are listed at the end of the document along with a page reference for where they appear.

1.12 Please send your consultation responses to:

By post: **Collection Enforcement and Debt policy team**
Child Maintenance and Enforcement Commission
PO Box 61791
London
SW1P 9NT

Email: consultation.responses@childmaintenance.gsi.gov.uk

Please ensure your response reaches us by 12th of March 2012

1.13 When responding, please tell us whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

Queries about the content of this document

1.14 Any queries about the subject matter of this consultation should be made to:

Name: **Paul Nash**

Address: **Collection Enforcement and Debt policy team**
Child Maintenance and Enforcement Commission
PO Box 61791
London
SW1P 9NT

Email: paul.nash2@childmaintenance.gsi.gov.uk

Gathering additional views on this consultation

1.15 We have sent this consultation document to a number of people and organisations who have an interest in child maintenance. Please do share this document with, or make us aware of, anyone you think will want to be involved in this consultation.

Freedom of information

1.16 The information you send us may be published in a summary of responses received.

1.17 All information contained in your response, including personal information, 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 which is 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 we cannot guarantee to do this. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

1.18 If you want to find out more about the general principles of Freedom of Information and how it is applied within the Commission, please contact:

**Freedom of Information Focal Point
The Child Maintenance and Enforcement Commission
PO Box 61791
London
SW1P 9NT**

Email: foi.focalpoint@childmaintenance.gsi.gov.uk

1.19 Please note that the Freedom of Information Focal Point can only advise on freedom of information issues, and not the content of this consultation document.

1.20 More information about the Freedom of Information Act can be found on the website of the Ministry of Justice: www.justice.gov.uk

Feedback on this consultation

1.21 The consultation is being conducted in line with the Government Code of Practice on Consultation which can be found on the Department for Business, Innovation and Skills' website:

<http://www.bis.gov.uk/files/file47158.pdf>

1.22 We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Name: Robin Van den Hende - Stakeholder Groups Manager

**Address: Child Maintenance and Enforcement Commission
PO Box 61791
London
SW1P 9NT**

Email: robin.van-den-hende@childmaintenance.gsi.gov.uk

1.23 In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria in the Government Code of Practice on Consultation or if you wish to make any suggestions as to how the process of consultation could be improved.

1.24 If you have any requirements that we need to meet to enable you to comment, please let us know.

1.25 The responses to the consultation will be published early next year in a report that will summarise the responses we have received and any action we may take as a result of them.

Part Two - Policy background and legislative context

Policy background - what is being done and why

2.1 The Child Maintenance and Other Payments Act 2008 (“the 2008 Act”) gave the Commission a number of new arrears management powers to allow the Commission to manage efficiently the level of child maintenance arrears that have previously accumulated and are owed to the Child Support Agency (CSA).

2.2 The Government proposes to take regulations to Parliament in spring 2012 to enable the introduction of these powers. These will set out in detail the manner in which the Commission may operate them. The latest draft versions of these regulations are included in the annexes at the end of this document.

2.3 The Commission remains focussed on pursuing arrears of child maintenance and ensuring that parents meet their financial responsibilities for their children. Arrears remain due, parents will not be relieved of their liability to pay and the Commission will (as now) continue to pursue arrears whenever a parent with care wishes and to do so is in accordance with the legal obligations and established policies of the Commission. The proposed implementation of the arrears management powers **does not** therefore represent a significant change of policy.

2.4 These powers will however aid the Commission in bringing to a resolution a small minority of cases where the arrears are unlikely to ever be collected in full, thereby enabling the Commission to concentrate its resources – and powers to enforce payment – in those cases where it is possible to recover payment.

Section 32 Power to accept part payment of arrears in full & final satisfaction

2.5 Where a non-resident parent has accrued significant child maintenance arrears over a period of time it is often difficult for the Commission to recover these in full. This is either because the non-resident parent’s financial circumstances do not support them making regular contributions or a lump sum payment to clear their arrears, or because the Commission has been unable to collect the arrears through its collection and enforcement powers.

2.6 The power in Section 32 of the 2008 Act will enable the Commission to negotiate with both the non-resident parent and the parent with care in order to accept a part payment in full and final satisfaction of all the child maintenance arrears owed.

2.7 The intention of the power is to get money flowing to children where the non-resident parent is unable or unwilling to pay the full amount of arrears outstanding and the parent with care would rather secure money in the short term than let the Commission’s enforcement processes run their full course. It is envisaged that where appropriate, the Commission’s flexibility in brokering a part payment as full and final satisfaction of the child maintenance arrears owed, will act as an incentive for the non-resident parent concerned to pay, where they may not have previously been inclined to do so.

2.8 It is intended that the power will be used where no suitable enforcement route is available in the short term, or to enable a quick resolution in cases where the parent with care is willing to accept a lesser payment from the non-resident parent in lieu of the full amount. It will also help the Commission realise some level of efficiency savings.

2.9 Under these proposals, where some or all of the child maintenance arrears are owed to either the parent with care or; the person with care and qualifying child over 12 years old in Scotland, the Commission will be required to obtain their written consent before accepting any offer of part payment from the non-resident parent in full and final satisfaction, if the level of part payment offered does not cover all the arrears owed to them.

2.10 Where the arrears are owed entirely to the Secretary of State by way of benefit recovery, the Commission will exercise its discretion to decide if the amount being offered by the non-resident parent is reasonable in their current financial circumstances.

Section 33 Power to write off arrears

2.11 The write off powers contained in the 2008 Act are extremely limited in nature, and are essentially a “tidying up” provision.

2.12 The Commission already has legal discretion whether to collect child maintenance and a decision not to pursue collection would result in the “suspension” of the arrears on its accounting records, but this does not extinguish the liability. Suspended arrears can be resurrected and re-visited by the Commission in certain circumstances.

2.13 Currently there is no provision formally to write off (or extinguish liability for) arrears of child maintenance. In the following circumstances where it is not possible or appropriate to collect arrears, the arrears are generally suspended and so remain on the Commission’s records even though they will never be collected:

- the parent with care makes clear that they no longer require the arrears to be collected (and the arrears are owed to the parent with care rather than the Secretary of State);
- the parent with care has died and there is no known next of kin;
- the non-resident parent has died and the arrears cannot be recovered from their estate;
- arrears accrued from an Interim Maintenance Assessment (IMA) which was calculated between April 1993 and April 1995; or
- the Commission has advised the non-resident parent that recovery of the arrears has been permanently suspended; for example, where the arrears have accrued as a result of delay in establishing the

maintenance liability (which was not the fault of the non-resident parent).

2.14 The proposed write off power in Section 33 is limited so that the Commission may only exercise it in respect of certain prescribed types of arrears where it would be unfair or otherwise inappropriate for it to enforce the liability in respect of these. The Commission proposes that the above five circumstances should be prescribed in regulations as circumstances for which the write off power may be considered.

2.15 The effect of this will be that the Commission may permanently extinguish arrears that are not being collected for the above reasons but that have remained on its records.

2.16 Use of this new power to write off arrears will be at the Commission's discretion. This means that the Commission will consider the circumstances of an individual case and may choose to exercise it or alternatively may decide to continue pursuing collection of the arrears concerned. There will be no right of appeal.

2.17 By introducing the power to write off arrears in certain circumstances, the Commission will be able more accurately to report the level of arrears that are collectable and this will help us realise some level of resource savings. Writing off historic arrears where it is unfair or otherwise inappropriate to continue attempting to enforce these will allow the Commission to focus its attention on those cases where the collection of child maintenance arrears is possible and there will be a direct benefit to the qualifying children concerned from pursuing this.

Legislative Context

2.18 The powers summarised in this document are subject to the affirmative resolution procedure, meaning they will be debated in (and must be passed by) both houses of Parliament before they become law.

Section 32

2.19 Section 32 of the 2008 Act inserts a new section 41D into the Child Support Act 1991 (the 1991 Act).

2.20 Section 41D allows the Commission, in relation to any arrears of child maintenance, to accept payment of part in satisfaction of liability for the whole.

2.21 The Commission will make secondary regulations under Section 41D that will provide for how the power is to be exercised. These are explained in more detail in part three of this document.

Section 33

2.22 Section 33 of the 2008 Act inserts a new section 41E into the 1991 Act.

2.23 Section 41E allows the Commission to extinguish liability in respect of arrears of child maintenance if it appears that it would be unfair or otherwise inappropriate to enforce liability in respect of these arrears.

2.24 The Commission will make secondary regulations under Section 41E that provide the types of cases or circumstances when the Commission may exercise the power to write off arrears.

2.25 Because the write off power under section 41E is extremely limited in nature, and works essentially as a “tidying up” provision, it is proposed that the Commission would only be able to write off arrears in the circumstances listed in paragraph 2.13.

2.26 Unlike the power to accept a part payment, there is no statutory requirement under Section 33 for the Commission to obtain the consent of either parent in order to write off arrears. However, all discretionary decisions by the Commission must take into account the welfare of any relevant child, and in exercise of this discretion, the Commission will consider any representation made by either parent prior to proceeding with any write off.

Part Three - Power to accept part payment of arrears in full & final satisfaction

Background

3.1 Since 1993 the Child Support Agency (now the Commission's operating arm) has delivered the statutory child maintenance service for parents living in Great Britain.

3.2 Whilst the Child Support Agency has collected £10.7bn of child maintenance for qualifying children since its inception, it remains the case that a considerable number of non-resident parents have accrued large amounts of child maintenance arrears which have not been collected. These arrears may be owed to the parents with care concerned, or to the Secretary of State (as benefit recovery), or both.

3.3 In many of these cases the length of time over which their arrears have accrued has led to problems in enforcing the payment of the arrears owed by the non-resident parent, or to changed financial circumstances that do not allow them to pay off the significant amount of child maintenance that they owe. This results in cases with outstanding child maintenance arrears which cannot be effectively pursued.

3.4 As part of its preparations for the launch of the future statutory maintenance scheme, the Commission has re-visited many of its cases with historic child maintenance arrears owing with the aim and purpose of understanding how collectable certain types of arrears are. It is clear from this work that the Commission would benefit from having further flexibility in how it negotiates the repayment of child maintenance arrears with non-resident parents and that likewise parents would benefit from the ability to negotiate with each other and the Commission.

3.5 The Commission has on some occasions identified non-resident parents, through arrears negotiations, who have been prepared (sometimes at considerable cost to themselves and their immediate families) to offer a lump sum part payment in full and final satisfaction of the arrears they owe. Where the arrears are owed to the parent with care, the Commission gives the parent with care the opportunity to accept the offer of part payment. However the remaining arrears balance cannot currently be written off. Any remaining arrears are suspended but can be reinstated in future at the parent with care's request.

3.6 This means that currently it is legally possible for a parent with care who has accepted a part payment from their non-resident parent (which had been made on the understanding that it would be in full and final settlement of their outstanding arrears) to change their mind in the future, and ask the Commission to reinstate and pursue the non-resident parent for the remaining unpaid child maintenance arrears.

3.7 The power to accept part payment of arrears in full and final satisfaction will prevent this situation from occurring by allowing the Commission to treat the whole arrears amount (or a specific proportion of it) as legally satisfied by a part payment. Upon receipt of the agreed lump sum payment, the Commission will be able to treat

the relevant amount of arrears owed by the non-resident parent as satisfied and will inform both parents of this.

How the Commission intends to use this power

3.8 Once the power to accept a part payment in full and final satisfaction is commenced, the Commission will initially make limited use of it; this is likely to mean only using the part payment power where an offer is received from a non-resident parent or suggested by a parent with care; i.e. such offers will not be proactively solicited in the first instance. This approach would enable the Commission to understand the effectiveness of the power to accept a part payment, before using it as a proactive tool for debt negotiation.

3.9 In the longer term it is anticipated that the Commission will use the power to negotiate with non-resident parents for a part payment as part of a more proactive approach. As part of such an approach the Commission will be able to, within reason, “broker” agreements between parents. This will allow it to collect some money for children in those cases where it has previously been unable to do so. There will be, however, a legal requirement on the Commission to obtain the parent with care’s written consent before accepting any offer of part payment of their arrears.

3.10 In asking for the parent with care’s written consent the Commission will explain to them the consequences of accepting an offer of part payment (i.e. that the whole amount of their arrears will be treated as legally satisfied by the part payment and the remaining unpaid balance of the debt will be formally extinguished).

Question 1: In what circumstances do you think it would be appropriate for the Commission to negotiate with a non-resident parent for a part payment to be made as full and final satisfaction of their whole child maintenance arrears?

Question 2: Do you think it is appropriate that a part payment may only be accepted when it is paid as a lump sum?

3.11 Before accepting any offer of part payment, the Commission will investigate the circumstances of the non-resident parent in order to ensure the offer being made is reasonable. The Commission will reserve the right not to contact the parent with care with a part payment offer where it believes the offer to be clearly unreasonable given the non-resident parent’s current circumstances. In some cases the Commission may insist on the full amount of the arrears being paid where it is clear the non-resident parent has the ability to pay the full amount and there is a reasonable prospect of recovering it.

Question 3: What factors do you think the Commission should take into consideration when deciding whether or not a part payment offer is reasonable?

Question 4: Do you think it is right for the Commission not to contact a parent with care if the part payment offered by the non-resident is clearly unreasonable given his or her current circumstances?

3.12 Once the part payment arrangement has been accepted by both parents and the Commission, the agreement will be confirmed in writing to both parents with details of how and when the lump sum payment is to be paid.

3.13 The Commission will not extinguish the balance of the arrears owed until the lump sum payment has been received. Once the payment has been received, regulations will enable the remaining balance to be automatically treated as satisfied.

3.14 Should the non-resident parent fail to make the part payment, the Commission will consider that the arrangement has been breached and may cancel it.

3.15 The Commission will investigate the reason for the failure to pay, and may seek with the appropriate consent, to negotiate a further part payment arrangement. Depending on the circumstances of the case, the Commission may however choose to pursue recovery of the full amount of arrears that is owed.

3.16 A part payment arrangement once entered into, will be a legal agreement between the parties outlining how the outstanding arrears are to be finally satisfied. This means that the Commission will not be able to alter the terms of the agreement unless all parties agree to enter in to a new agreement. Providing the non-resident parent complies with the terms of the arrangement that the Commission has issued to them (the contents of which both parents would have agreed to in writing) then the whole arrears balance will be legally satisfied.

3.17 Where a non-resident parent owes arrears both to the parent with care and the Secretary of State, the Commission will set out in its written confirmation to both parents that any monies paid will be allocated first in respect of the debt owed to the parent with care with any residual monies being allocated to the debt owed to the Secretary of State. Any remaining arrears owed to the Secretary of State after the part payment has been allocated will be treated as satisfied by the Commission.

Part payments where the non-resident parent has more than one parent with care

3.18 Where a non-resident parent has liability to pay child maintenance to more than one parent with care through the Commission, the non-resident parent is directed to pay one regular amount to the Commission. This regular payment is then apportioned by the Commission between each parent with care according to the number of qualifying children each has and taking into account any time that the non-resident parent may have the qualifying children to stay with them. This means that although the non-resident parent pays one regular amount to the Commission for child maintenance, the portion allocated to each of their parents with care is not necessarily the same.

3.19 Where a non-resident parent has multiple parents with care and offers a part payment in full and final satisfaction of their child maintenance arrears they will be able to request that the Commission allocates this to one particular parent with care.

Where the parent with care concerned consents to this, the Commission will honour the non-resident parent's request on the basis that any arrears they owe to their other parents with care remain outstanding and will be pursued by the Commission.

3.20 Should the non-resident parent make no preference for which of their parents with care is to receive part payment, the Commission will calculate an apportionment between all the relevant parents with care (based on the portion of the total arrears due to each). The amount due to each parent with care will be included in any written offer sent to them by the Commission. The parents with care will know in advance how much of the part payment they will receive should they agree.

3.21 This will allow them to make an informed choice on whether to accept part payment in final satisfaction of the whole arrears amount owed to them. The Commission intends to use this as the default approach to allocating a part payment among multiple parents with care unless the non-resident parent specifically requests that the Commission allocates the part payment to a particular parent with care.

3.22 In the event that one or more of the parents with care concerned rejects the offer of part payment, the Commission will have the discretion to apportion the part payment between those parents with care who have accepted the offer, in the event that the non-resident parent is still willing to make the same or some other level of part payment. This will be on the basis that the arrears due to those parents with care who have rejected the offer remain outstanding and will be pursued by the Commission. The Commission will make this clear in its written correspondence to all the relevant parties.

Question 5: Do you think it is right for the Commission to manage part-payments in multiple cases in this way? If not, can you suggest an alternative approach?

Part Four - Power to write off arrears

Background

4.1 The Green Paper “Strengthening families, promoting parental responsibility: the future of child maintenance,” published in January 2011, detailed the government’s intention to launch the new statutory child maintenance scheme in 2012, with the process of closing existing scheme cases over time and giving clients the opportunity to make either a family-based arrangement or apply to the new scheme.

4.2 To ensure that this process operates as efficiently as possible, and to avoid a certain proportion of historic child maintenance arrears being moved across to the future statutory scheme where they are unlikely to ever be collected (i.e. because they fall within the criteria outlined at paragraph 2.13), the Commission proposes that Section 33 of the 2008 Act enabling child maintenance arrears to be written off is brought into force prior to the launch of the future scheme. The process for writing off arrears in the varying circumstances is set out in paragraphs 4.5 to 4.13 below.

4.3 The Commission anticipates no impact on non-resident parents who are presently compliant with their maintenance liability. The Commission will only write off arrears where it would be “unfair or otherwise inappropriate” to enforce payment – this is a requirement in primary legislation.

How the Commission intends to use this power

4.4 The Commission proposes to consider the write off of arrears of maintenance owed to the parent with care in the following circumstances:

4.5 **The parent with care no longer wants the Commission to collect the arrears:** The Commission proposes to contact parents with care who are owed arrears but do not receive ongoing maintenance through the Child Support Agency because (for example) they no longer have dependant children in their household or they receive maintenance directly from the non-resident parent, to see whether they want the Commission to stop pursuing those arrears. The parent with care would be made fully aware of the implication of writing off their arrears and they would be asked to confirm their consent in writing.

4.6 **The parent with care has died:** The Commission proposes to write off arrears where the parent with care has died and a next of kin is not known. In these cases, it would be futile to enforce payment of the arrears as there would be no person to pay them to.

4.7 Where the Commission is not aware of a next of kin or executor of the deceased parent with care’s estate, it will write a letter addressed to the personal representative of the deceased, that will be sent to the last address held for the parent with care. This will request that the personal representative contacts the Commission. If no response is received to this letter after a period of time, the Commission will write off the arrears owed to the deceased parent with care as it is

both unfair and inappropriate to continue to enforce payment from the non-resident parent which the Commission will not be able to pay out.

Question 6: How long do you think the Commission should wait after writing to the deceased parent with care's last known address before writing off the arrears owed to them?

4.8 **The non-resident parent has died:** From 25 January 2010, the Commission has had the legislative power to seek recovery of arrears from a deceased non-resident parent's estate. Before this legislative power existed, liability for child support maintenance was a personal liability and therefore ceased when the non-resident parent died. Where the non-resident parent died before the power to recover arrears from estates came into force, or where the Commission has attempted to recover the arrears from the estate but has been unable to do so, the Commission has no further method to pursue payment. It is proposed that arrears should be written off in such circumstances.

4.9 **Arrears accrued from an Interim Maintenance Assessment (IMA) between 1993 and 1995:** IMAs are a feature of the statutory maintenance scheme introduced in 1993. They are essentially a penalty assessment imposed because the non-resident parent failed to provide information needed to put a proper full maintenance assessment in place. IMAs were intended to encourage the non-resident parent to supply information he or she had previously failed to give.

4.10 The Commission has identified certain difficulties in recovering arrears, accrued as a result IMAs being imposed between 1993 and 1995. This is because at the point in time they were introduced, it was not always possible to legally change the IMA amount if it was found to be incorrect or if the information was supplied to allow a full maintenance assessment to be made. In the small number of cases where these circumstances apply, the Commission has already taken action some time ago to permanently suspend the collection of these arrears. The historic arrears balances from these cases still show as recoverable on its accounts, even though it would be wholly inappropriate for the Commission to re-visit these arrears or attempt collection of them.

4.11 The Commission proposes therefore that IMA arrears accrued between 1993 and 1995 may be written off, where the history of the case suggests it would be inappropriate to collect these amounts.

4.12 **The Commission has advised the non-resident parent that recovery of the arrears has been permanently suspended:** Where the Commission has previously taken the decision to permanently suspend arrears recovery action and has informed the non-resident parent of this, the new write off power will be used to extinguish the remaining suspended arrears from the Commission's records. This scenario could occur, for example, where child maintenance arrears have accrued as a result of delay by the Commission in establishing the maintenance liability, which was not the fault of the non-resident parent.

4.13 It would be both unfair and inappropriate in these circumstances, for the Commission to pursue collection as if the non-resident parent had been informed that no further action would be taken in respect of these arrears.

Question 7: Are there any other circumstances where it would be unfair or otherwise inappropriate for the Commission to enforce payment of child maintenance arrears?

4.17 Although there is no legal requirement to seek formal consent, where the Commission intends to exercise the power to write off arrears it will be required to provide written notice of its intention to write off arrears to both parents (unless either has died or cannot be traced).

4.18 It is intended that the notice issued to both parents will:

- provide details of the amount of the arrears to be written off and the period over which they have accrued;
- state the reasons why the Commission believes it would be unfair or otherwise inappropriate to enforce liability in respect of these arrears;
- invite representations from each parent as to whether the arrears should be written off; and
- explain the effect of a decision to write off arrears (i.e. that the arrears will be formally extinguished and cannot be reinstated).

4.19 It is intended that the Commission will allow 14 days for representations to be made by either parent before taking any decision to write off the arrears in question. This is in line with the time frames it already uses when inviting personal representations in the exercise of its existing debt management powers of offsetting and recovery from deceased's estates.

4.20 Any representations made will be taken into consideration by the Commission in making its final decision on whether to exercise the write off power.

Question 8: Do you think that 14 days is reasonable period to allow both parents to make representation to the Commission as to whether the arrears should be written off?

Part Five - Consultation proposals

5.1 The following proposals have been raised in this consultation document:

Part Three - Power to accept part payment in full and final satisfaction (Pages 9 to 12)

Question 1: In what circumstances do you think it would be appropriate for the Commission to negotiate with a non-resident parent for a part payment to be made as full and final satisfaction of their whole child maintenance arrears?

Question 2: Do you think it is appropriate that a part payment may only be accepted when it is paid as a lump sum?

Question 3: What factors do you think the Commission should take into consideration when deciding whether or not a part payment offer is reasonable?

Question 4: Do you think it is right for the Commission not to contact a parent with care if the part payment offered by the non-resident parent is clearly unreasonable given the non-resident parent's current circumstances?

Question 5: Do you think it is right for the Commission to manage part-payments in multiple cases in this way? If not, can you suggest an alternative approach?

Part Four - Power to write off arrears (Pages 13 to 15)

Question 6: How long do you think the Commission should wait after writing to the deceased parent with care's last known address before writing off the arrears owed to them?

Question 7: Are there any other circumstances where it would be unfair or otherwise inappropriate for the Commission to enforce payment of child maintenance arrears?

Question 8: Do you think that 14 days is reasonable period to allow both parents to make representation to the Commission as to whether the arrears should be written off?

We would welcome your views on these proposals.

Annex

Consultation draft 19 December 2011

Draft Order laid before Parliament under section 52(2)(a) and (2A)(b) of the Child Support Act 1991, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. 000

FAMILY LAW

CHILD SUPPORT

The Child Support Management of Payments and Arrears (Write off and Part Payment in Full and Final Satisfaction) Amendment Regulations 2012

Made - - - - [] 2012

Coming into force - - [] 2012

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 41D, 41E, 51(1), 52(4) and 54 of the Child Support Act 1991(1).

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 52(2)(a) and (2A)(b) of that Act.

Commencement and citation

1. These Regulations may be cited as the Child Support Management of Payments and Arrears (Write off and Part Payment in Full and Final Satisfaction) Amendment Regulations 2012 and shall come into force on [] 2012.

2. The Child Support (Management of Payments and Arrears) Regulations 2009(2) are amended as follows.

3. In regulation 2(1) (interpretation), after the definition of “the AIMA Regulations” insert—

““child in Scotland” means a child who has made an application for a maintenance calculation under section 7 of the 1991 Act;”.

4. After Part 4 (recovery from estates) insert—

(1) 1991 c. 48. Sections 41D and 41E were inserted by sections 32 and 33 respectively, of the Child Maintenance and Other Payments Act 2008 (c. 6). Section 51 was amended by section 1(2) of the Child Support, Pensions and Social Security Act (c. 19) and section 54 is cited for the definition of “prescribed”.

(2) S.I. 2009/3151.

“PART 4A

Part payment of arrears in full and final satisfaction

Interpretation of this Part

13A. In this Part—

“relevant person” means the person from whom the appropriate consent is required under section 41D(5) and (6) of the 1991 Act.

Amounts owed to different persons to be treated separately

13B. Where the arrears of child support maintenance for which a person is liable comprise different amounts that have accrued in respect of—

- (a) separate applications for a maintenance calculation (including any application by a child in Scotland); or
- (b) if they comprise amounts that have accrued in respect of one application but would, if recovered be attributed under regulation 4 (attribution of payments) between different persons with care and where relevant, a child in Scotland,

they are to be treated as separate amounts of arrears for the purpose of exercising the power under 41D(1) of the 1991 Act.

Appropriate consent

13C.—(1) The Commission may not exercise the power contained in section 41D(1) of the 1991 Act without the appropriate consent, unless one of the following conditions applies—

- (a) that the Commission would be entitled to retain the whole of the arrears under section 41(2) of the 1991 Act if it recovered them; or
- (b) that the Commission would be entitled to retain part of the arrears under section 41(2) of that Act if it recovered them, and the part of the arrears that the Commission would not be entitled to retain is equal to or less than the payment accepted under section 41D(1) of that Act.

(2) If the appropriate consent of any relevant person is required, the Commission must make available such information and guidance as it thinks appropriate for the purpose of helping the relevant person to give that consent.

Agreement

13D.—(1) Where the Commission proposes to accept an offer by the non-resident parent in exercise of its powers under section 41D of the 1991 Act, the Commission must prepare a written agreement.

(2) The agreement must—

- (a) name the parties to the agreement;
- (b) specify the amount and the period of liability to which the arrears relate;
- (c) state the amount that is agreed will be paid in full and final satisfaction of the arrears to which the agreement relates;
- (d) state how and to whom payment will be made; and
- (e) state the day by which payment is to be made.

(3) The Commission must ensure that the non-resident parent and where applicable, the relevant person, have a copy of the proposed agreement.

(4) The agreement must not take effect until—

- (a) the non-resident parent has agreed in writing to its terms; and

- (b) where applicable, the relevant person has given to the Commission their consent in writing.

Where payment is received

13E.—(1) Where the non-resident parent is complying with the terms of the agreement, the Commission must not take action to recover any of the arrears to which the agreement relates.

(2) Where the non-resident parent has made full payment in accordance with the agreement all remaining liability in respect of the arrears of child maintenance to which the agreement relates is extinguished.

(3) Where the non-resident parent fails to make a payment or only makes partial payment or otherwise fails to adhere to the terms of the agreement, the non-resident parent will become liable to pay the full amount of any outstanding arrears to which the agreement relates and the Commission may arrange to recover any of those outstanding arrears in accordance with the 1991 Act.

(4) Nothing in these regulations prevents the Commission from entering into a new agreement with the non-resident parent in respect of any of the arrears to which the previous agreement relates provided that the new agreement complies with the requirements set out in regulations 13C and 13D.

PART 4B

Write off of arrears

Amounts owed to different persons to be treated separately

13F. Where the arrears of child support maintenance for which a person is liable comprise different amounts that have accrued in respect of—

- (a) separate applications for a maintenance calculation (including any application by a child in Scotland); or
- (b) one application, but would, if recovered be attributed under regulation 4 between different persons with care and where relevant, a child in Scotland,

they are to be treated as separate amounts of arrears for the purpose of exercising the power under section 41E of the 1991 Act.

Circumstances in which the Commission may exercise the power in section 41E of the 1991 Act

13G. The circumstances prescribed for the purposes of section 41E of the 1991 Act are that—

- (a) the person with care has requested that the Commission ceases to act under section 4 of that Act in respect of the arrears;
- (b) a child in Scotland has requested that the Commission ceases to act under section 7 of that Act in respect of the arrears;
- (c) the person with care or a child in Scotland has died;
- (d) the non-resident parent died before 25 January 2010 or there is no further action that can be taken with regard to recovery of the arrears from the non resident parent's estate under Part 4;
- (e) the arrears relate to liability for child support maintenance for any period in respect of which an interim maintenance assessment was in force between 5 April 1993 and 18 April 1995; or
- (f) the non-resident parent has been informed by the Commission that recovery of the arrears was permanently suspended.

Commission required to give notice

13H.—(1) Where the Commission is considering exercising its powers under section 41E of the 1991 Act in circumstances which fall within regulation 13G, the Commission must, send by post written notice to the person with care, where relevant, a child in Scotland and the non-resident parent.

(2) The requirement in paragraph (1) does not apply where the person in question cannot be traced or has died.

(3) The notice must—

- (a) specify the parent with care or, where relevant, a child in Scotland, in respect of whom liability in respect of arrears of child support maintenance has accrued;
- (b) specify the amount and the period of liability to which the arrears relate;
- (c) state the reason why it appears to the Commission that it would be unfair or inappropriate to enforce liability in respect of the arrears;
- (d) advise the person that they may make representations to the Commission as to whether the liability in respect of the arrears should be extinguished and set out the time within which such representations must be made; and
- (e) explain the effect of any decision to extinguish liability in respect of any arrears of child support maintenance under section 41E of the 1991 Act.

(4) If no representations are received by the Commission within 14 days of the notice being received by the person with care, where relevant, a child in Scotland and the non-resident parent, the Commission may make the decision to extinguish the arrears.

(5) For the purposes of this regulation, where the Commission sends any written notification by post to a person's last known or notified address that document is treated as having been received by that person on the second day following the day on which it is posted.

Commission to take account of the parties' views

13I. Where the Commission receives representations in response to a notice given under regulation 13H, it must take account of those representations in making a decision under section 41E of the 1991 Act.

Signed by authority of the Secretary of State for Work and Pensions.

Date

Name
Parliamentary Under-Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Child Support (Management of Payments and Arrears) Regulations 2009 (“the 2009 Regulations”) and come in to force on [] 2012. Regulation 4 inserts Parts 4A and 4B into those Regulations making provision in relation to the power to accept part payment of arrears, in full and final satisfaction of any arrears of child support maintenance under section 41D of the Child support Act 1991 (“the 1991 Act”) (Part 4A) and in relation to the power to extinguish liability in respect of arrears of child support maintenance under section 41E of the 1991 Act (Part 4B).

In the inserted Part 4A of the 2009 Regulations, regulation 13B provides that where arrears of child support maintenance for which a person is liable comprise different amounts owed to different persons they are to be treated as separate amounts of arrears for the purpose of exercising the power under section 41D of the 1991 Act.

Regulation 13C provides that the Commission may not exercise the power contained in section 41D of the 1991 Act without the appropriate consent unless certain conditions apply. The meaning of appropriate consent is set out in subsections (5) and (6) of section 41D of the 1991 Act.

Regulation 13D provides that where it is proposed to accept an offer of a part payment of arrears, the Commission must set out the terms of the agreement in writing and send it to the non-resident parent, and where applicable, the relevant person (as defined in regulation 13A). This regulation also provides that the non-resident parent must have agreed to the terms in writing, and where applicable, the relevant person, must have given written consent to the Commission.

Regulation 13E provides that while a non-resident parent is complying with the agreement, the Commission must not take steps to recover the outstanding arrears to which the agreement relates. Once full payment has been made in accordance with the terms of the agreement then all remaining liability in respect of the arrears of child support maintenance to which the agreement relates is extinguished.

Where the agreement has not been adhered to, the Commission may recover all outstanding arrears. However the Commission may enter into a new agreement with the non-resident parent in respect of any arrears to which the previous agreement relates provided the new agreement complies with the requirements set out in regulations 13C and 13D.

In the inserted Part 4B of the 2009 Regulations, regulation 13F provides that where arrears of child support maintenance for which a person is liable comprise different amounts owed to different persons they are to be treated as separate amounts of arrears for the purpose of exercising the power under section 41E of the 1991 Act.

Regulation 13G prescribes the circumstances in which the Child Maintenance and Enforcement Commission may exercise the power in section 41E of the 1991 Act.

Regulation 13H sets out the requirement to notify the parties before making a decision. It also provides that if no representations are received from the parties within 14 days of the notice being received by the relevant parties, the Commission may make the decision to extinguish the arrears.

Regulation 13I provides that where the Commission receives representations in response to a notice given under regulation 13H, it must take account of those representations in making a decision under section 41E of the 1991 Act.

A full impact assessment has not been published for this instrument as it has no impact on the private sector and civil society organisations.