



Department  
for Work &  
Pensions

# Child Maintenance: Accelerating Enforcement

Public consultation

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2 October 2023

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## Glossary of terms

Child Maintenance Service (CMS)	Administrative body for the child maintenance scheme launched in 2012.
Child Support Agency (CSA)	Administrative body for the 1993 and 2003 schemes of child maintenance.
Liability Order	A legal recognition of debt incurred when a parent does not pay their full child maintenance liability for a specified time period.
Paying parent	The parent who does not have main day-to-day care of the qualifying children and is responsible for the payment of child maintenance. Otherwise known as the non-resident parent.
Receiving parent	The parent who has main day-to-day care of the qualifying children and should receive child maintenance. Otherwise known as the person with care.
Deduction from earnings Order (DEO)	A method to collect payments of child maintenance and/or arrears directly from a paying parent's salary. The employer deducts the amount at source and sends it to the CMS.
Act of Sederunt	Secondary legislation made by the Court of Session, the supreme civil court of Scotland, to regulate the proceedings of Scottish courts and tribunals hearing civil matters.

# Executive summary

1. Following the Child Support (Enforcement) Act 2023 receiving royal assent in July 2023, the Government proposes to bring into force existing powers that allow the Child Maintenance Service (CMS) to make an administrative liability order against a person who has failed to pay child maintenance and is in arrears. A liability order is legal recognition of the debt and is required before the CMS can take certain enforcement actions against non-compliant parents to enforce those arrears.
2. The administrative liability order will replace the current requirement for the CMS to apply to the court for a liability order, which is an outdated process and can take a long time. Introducing a simpler administrative process will enable the CMS to take faster action against those paying parents who actively avoid their responsibilities and will get money to children more quickly.
3. As part of the introduction of administrative liability orders, regulations will set out important appeal rights that paying parents will have and how to exercise those rights. This will allow paying parents to challenge a liability order where it is right for them to do so.
4. This power would only apply to paying parents living in England, Scotland or Wales.
5. In Scotland, whilst the subject matter of the Child Support Acts 1991 and 1995 is reserved, the judicial system is devolved and operates differently from England and Wales. Specific engagement will take place with officials in the Scottish Government and the Scottish Civil Justice Council on how the impacts on Scotland will be reflected in our secondary legislation, as well as on their Acts of Sederunt (court rules that set out the practice and procedures of the courts). As such, later commencement and regulation of the provisions will be necessary in Scotland.
6. The aim of this consultation is to understand public views on proposed regulations relating to administrative liability orders and in particular, the procedure for dealing with the appeals process.

## Introduction

7. The CMS was introduced in 2012 to replace the Child Support Agency (CSA) and is designed to encourage parents to make their own private family-based arrangements for child maintenance without support from government wherever possible. Not all separated parents can make a family-based arrangement, and the CMS administers an efficient and effective statutory scheme for those parents that need it.

8. The child maintenance calculation is based on income information received directly from HM Revenue & Customs and is reviewed annually. The CMS administers two 'service types': Direct Pay and Collect & Pay. In Direct Pay, the CMS makes a maintenance calculation, provides a payment schedule and parents arrange payments between themselves. In Collect & Pay, the CMS calculates the maintenance and collects it from the Paying Parent and pays it to the Receiving Parent. Parents must pay fees to use Collect & Pay.
9. We know the majority of Paying Parents want to do the right thing and support the children they no longer live with. For those who do not, the CMS can enforce payments by deducting directly from earnings, benefits and from a range of bank accounts. For those who actively avoid meeting their obligations to support their children the CMS can take stronger enforcement action which is used as a last resort. We have a range of powers that can be used to get money to children, including the use of enforcement agents (bailiffs), charging orders against property, forcing the sale of a property, commitment to prison and disqualification from holding a driving licence or UK passport.
10. As part of our commitment to improve the CMS to secure more maintenance for qualifying children, we continually review our enforcement powers to make them as effective as possible in recovering arrears from non-paying parents.
11. Taking enforcement action at the earliest opportunity is key to successful arrears recovery. The more debt accrues on a case, the harder it is to collect. The CMS has already made significant improvements to the process, speeding up action when payments first break down and targeting enforcement action more effectively.
12. Currently, the CMS must apply for a liability order to the Magistrates' Court (in England and Wales), or Sheriff Court (in Scotland) and wait for the application to be granted before it can take certain enforcement measures to collect unpaid child maintenance. From the point of application to a liability order being granted can take up to 22 weeks.
13. The Department is delivering legislative changes to further accelerate enforcement – the Child Support (Enforcement) Act 2023 recently received royal assent. This Act provides the opportunity to replace the slow and outdated court-based process to obtain a liability order.
14. We are interested to hear thoughts on the proposals in this consultation document and whether they strike the right balance between the interests of parents and children.

## **About this consultation**

### **Who this consultation is aimed at**

15. The consultation is open to voluntary and community sector organisations, as well as CMS customers and members of the general public.

## **Purpose of the consultation**

16. The consultation is to inform the Government's proposed regulations to support the introduction of administrative liability orders.

## **Scope of consultation**

17. This consultation applies to England, Wales and Scotland.

## **Duration of the consultation**

18. The consultation period begins on 2 October 2023 and runs until 24 November 2023.

## **How to respond to this consultation**

Please send your consultation responses to:

Email: [cm.consultation@dwp.gov.uk](mailto:cm.consultation@dwp.gov.uk)

or

DWP Consultation Coordinator

Second Floor

Caxton House

Tothill Street

London

SW1H 9NA

# **Background information and details of proposed regulations**

## **Administrative Liability Orders**

19. Currently where a paying parent has missed payments of child maintenance, the CMS attempts to recover the arrears via a Deduction from Earnings Order or by deductions directly from their bank accounts. Where this has not proved effective, the CMS must apply for a liability order to the Magistrates' Court (in England and Wales), or Sheriff Court (in Scotland) before it is able to take certain enforcement measures to collect unpaid child maintenance.
20. The Child Support (Enforcement) Act 2023 amended existing uncommenced powers in section 25 of the Child Maintenance and Other Payments Act 2008 that insert new sections 32M and 32N into the Child Support Act 1991. Those sections 32M and 32N will provide the powers for administrative liability orders. They will allow the CMS to make an administrative liability order against a person who has failed to pay child maintenance and is in arrears. This will allow

the CMS to proceed quickly against parents who have failed to meet their obligations to pay child maintenance.

21. Before an administrative liability order is considered we will ensure that, where appropriate, the CMS has exhausted other options to recover the arrears, either directly from the earnings of a paying parent via a Deduction from Earnings Order or directly from a range of bank accounts including certain business accounts. This will ensure that an administrative liability order will only be made where a deduction directly from the earnings of a paying parent has been unsuccessful or is not appropriate, such as where the paying parent is self-employed or they support themselves through more complex earnings structures.
22. Currently, before applying to the courts for a liability order the CMS must give a paying parent at least 7 days' notice of the intention to do so. If the parent lives overseas there is a minimum notice period of 28 days. This process has been in place for many years and has been successful in ensuring that paying parents are given warning of the proposed action before an application is made.

## **Proposals**

23. We propose that the new regulations will also require the CMS to give the same 7 or 28 day notice period to a paying parent prior to the making of an administrative liability order. This notice of intention to make an order will give details of the amount of unpaid child maintenance, to allow the paying parent time to contact the CMS and make payment or raise a dispute against the balance of arrears before a liability order comes into force.
24. Where a paying parent pays the whole amount of the arrears within the 7 or 28 day period, it is proposed that the administrative liability order will not come into force.
25. Once an administrative liability order has been made, there may be situations in which the order can be discharged. It is proposed that the regulations will allow an administrative liability order to be discharged where the maintenance calculation on which the order is based (the amount of arrears) has changed since the order was made.
26. We also propose that if an appeal against the maintenance calculation is made to the first-tier tribunal for a period covered by an administrative liability order, the order can be discharged. This prevents an order being held in place against a paying parent for a period of child maintenance which is actively under dispute. The discharge of the order will not affect the paying parents' rights to continue their appeal against the maintenance calculation and will not prevent any future order being made after the dispute is resolved.

### **Your views**

Question 1. What are your views on the proposals for giving a parent a notice period of at least 7 days (28 days if overseas) before a liability order is made, in which the liability order will not come into force if paid?

Question 2. What are your thoughts on the proposal to discharge a liability order in the circumstances set out above?

Question 3. Do you have any comments or views on other circumstances in which a liability order may be discharged?

Question 4. What, if any, unintended consequences do you think there may be as a result of any of the administrative liability order proposals?

Question 5. Do you think the proposals will allow the CMS to move quickly to get money to children where parents fail to meet their obligations to pay child maintenance?

## Appeals

27. It is important to ensure there are robust mechanisms in place to allow a paying parent to appeal the making of an administrative liability order so that they can challenge this decision where appropriate.
28. When a liability order is granted under the current arrangements, the court will consider whether the debt in question has become payable and whether it has not been paid. The jurisdiction of the court does not include consideration of the CMS calculation on which the debt is based, as appeals against the maintenance calculation are made separately to the first-tier tribunal.

## Proposals

29. We propose that the regulations for administrative liability orders will set out the paying parent's right of appeal to a court against the decision to make the order and the period within which the right of appeal may be exercised.
30. We consider that appeals against administrative liability orders should reflect the appeal rights already available to paying parents against other child maintenance enforcement measures, such as those which allow for deductions of child maintenance directly from a parent's bank account. These types of appeals have operated successfully for many years and provide a fair, independent process by which an appeal can be raised.
31. To give an example, appeals against deductions directly from a paying parent's bank account can be made to the Family Court (in England and Wales) or the Sheriff Court (in Scotland) within 21 days from the date that the order is made. These appeals are made directly to the court by completing the relevant court application form which is available both from the court and online.
32. We propose that the regulations should therefore also allow a right of appeal to the Family Court (in England and Wales) or the Sheriff Court (in Scotland) within 21 days from the date that an administrative liability order is made. As with appeals against deductions directly from a paying parent's bank account, this will mean that appeals can also be made directly to the court without a parent needing the agreement of the CMS.
33. As the jurisdiction of the appeal court does not include consideration of the CMS calculation on which the debt is based, we consider any more detailed grounds for appeal can be set out in the court procedures of the relevant court. We therefore propose not to make any restrictions upon the grounds for appeal in



child maintenance regulations, other than allowing an appeal against the making of an administrative liability order. This would maintain consistency with appeals against deductions directly from a paying parent's bank account.

34. The powers being brought into force also allow for regulations to be made with respect to the powers of the court. However, we wish to avoid making regulations that place any unreasonable restriction upon the courts. We therefore propose the regulations will confirm that the court may cancel the administrative order where it finds it appropriate to do so.

### **Your views**

Question 6. What are your views on our proposals to allow a right of appeal to the Family Court (in England and Wales) or the Sheriff Court (in Scotland) within 21 days from the date that an administrative liability order is made?

Question 7. Do you have any comments on whether the proposals provide a paying parent with sufficient protections in order to appeal the decision to make an administrative liability order?

Question 8. Do you have any comments on how reasonable the proposed appeal processes are?

## **Government response**

35. We will aim to publish the government response to the consultation on the GOV.UK website. Where consultation is linked to a statutory instrument responses should be published before or at the same time as the instrument is laid.
36. The report will summarise the responses.

# How we consult

## **Consultation principles**

37. This consultation is being conducted in line with the revised [Cabinet Office consultation principles](#) published in January 2016. These principles give clear guidance to government departments on conducting consultations.

## **Feedback on the consultation process**

38. We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator  
Second Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA  
Email: [caxtonhouse.legislation@dwp.gsi.gov.uk](mailto:caxtonhouse.legislation@dwp.gsi.gov.uk)

## Freedom of information

39. The information you send us 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.
40. 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 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.
41. To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team.  
Email: [freedom-of-information-request@dwp.gsi.gov.uk](mailto:freedom-of-information-request@dwp.gsi.gov.uk)
42. The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).