The Government's Response to Consultation on Draft Regulations

The Child Support Maintenance Calculations Regulations 2012

And

The Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012

July 2012

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Introduction

1. The Child Maintenance and Enforcement Commission ("the Commission") is responsible for child maintenance policy. Its operational arm, the Child Support Agency, provides a statutory maintenance service. Under the Child Support Act 1991 and the Child Maintenance and Other Payments Act 2008 the Commission is required to ensure that parents meet their obligation to maintain their children even when they cannot live together, by:

    - Promoting the financial responsibility that parents have for their children;
    - Providing information and support on the different child maintenance options available; and
    - Providing an efficient statutory child maintenance service.

2. The Government launched a public consultation on the draft Child Support Maintenance Calculation Regulations 2012 and The Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012, between 1 December 2011 and 23 February 2012. The consultation document, along with its supporting documents such as the draft Regulations, Impact Assessment and Equalities Impact Assessment were made available on the Commission's website and the Department for Work and Pensions website. The Commission informed its main stakeholders of the consultation exercise. A stakeholder meeting took place in January 2012 where Maria Miller MP, Minister for Disabled People, members of the Commission Executive and key stakeholders met to discuss the initial thoughts of stakeholders regarding the changes proposed in the consultation.

3. The Commission received thirty six responses to the consultation. A list of respondents is at **Annex A**. The Commission is grateful for the contributions received. The final Regulations will be laid before Parliament in July 2012 and subject to Parliamentary approval will come into force later in the year.

This document sets out the main points made by respondents and provides the Government's response. This should not be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a Court.

The final Regulations and accompanying explanatory memorandum will be available on the Office of Public Sector information's website at:
hhtp://www.opsi.gov.uk/si/si-2012-index

This document is available on the Commission website at:
http://www.childmaintenance.org/en/publications/consultations.html

4. There were 36 responses to the consultation. Respondents supported some proposals, were opposed to others and gave their approval to others with provisos. Two proposals have been changed in light of the comments made by respondents. However, in relation to the other proposals, the Government is not dissuaded from the view that the proposals for the statutory scheme, working in conjunction with other support networks for separating and separated families, will provide a stable platform for the new scheme of child support maintenance.

Consultation – Specific Questions

5. The Commission asked ten specific questions on proposed amendments to legislation as part of the consultation. Comments on the Consultation questions and the Government's responses are presented below.

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

6. In the current (2003) statutory child maintenance scheme, non-resident parents who are students currently have an automatic nil liability regardless of their income. A significant number of students work while studying and in some cases earnings can be relatively substantial. Therefore, it seemed no longer valid to make a decision on liability based on an assumption that students generally do not work.

7. The consultation proposed to remove students from the nil rate groups and for their liability to be assessed on their relevant gross weekly income. This would mean they would be treated in the same way as most other non-resident parents.

Respondents' views

8. Those who responded overwhelmingly supported the proposal.

9. However, two stakeholder organisations Families Need Fathers and Gingerbread, who both favoured the change, also raised some concerns.

- Families Need Fathers said “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”.

- Gingerbread said “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 HMRC) fluctuates significantly at different points of the year”.

The Government’s response

10. To remove students from the nil rate and to use income information provided by HMRC will mean that parents with care will now benefit from a more effective service and increase the numbers of children who are financially supported by the parent who does not live with them.

Conclusion

11. The Government intends to introduce the amendment proposed in the public consultation document.

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

12. Where parents cannot agree on the level of shared care of their children, it is proposed to give caseworkers, who will make a decision in such cases, the ability to assume a level of shared care and apply that assumption to the calculation. The assumption will be appropriate where the caseworker has grounds to believe that shared care is or will be taking place, but cannot reasonably arrive at a decision about how much care there is. The assumption will be that shared care is of a level equivalent to an average of one night a week – the most common amount of care reflected in current scheme calculations – and will continue to apply until parents come to an agreement about the actual level of shared care.

13. Consequently, in future, it is proposed that shared care adjustments will be based on agreements the parents have made (formally or informally) rather than based on evidence of past shared care arrangements. Where parents do not agree or have evidence which is inadequate (so that a case worker cannot make a decision as to the level of shared care) a caseworker will be able to assume a level of shared care equal to one night a week. The assumption will apply until parents reach agreement.

Respondents' views

14. Stakeholders did not support the proposal. Generally speaking, stakeholders concluded that the proposal is not the right action to take and will not address the problems that often arise when parents are in dispute. There is a fear that the assumption could result in more parents with care receiving reduced maintenance amounts inappropriately. Some critical comments were based on a misunderstanding that the proposed amendment to shared care regulations will be applied generally rather than in the more specific circumstances intended.

- Gingerbread believes that making decisions based on agreements of care will result in some parents with care facing unreasonable reductions in maintenance. It suggests that shared care is routinely checked as part of the annual review.

- Families Need Fathers think it will provide an incentive for parents with care to restrict the non-resident parent access to their child.

- NACSA considers there is a bias within the Child Support Agency of favouring the parent with care in cases of dispute and believes that the proposal could not work within that climate.

- Both Resolution and NACSA believe that the proposal will have little positive effect on the number of appeals in this area.

The Government's Response

15. Shared care will always have the potential to be a difficult area where parents do not agree. The difficulty is made greater by the absence of any means of recording what care has been provided that does not have the potential for abuse. Even a court order agreement may not be followed exactly and this may result in disputes at the end of the year if parents do not have the same recollections of the amount of shared care. Evidence of agreed shared care is therefore likely to be more reliable and is the preferred method of assessing such care.

16. The Government does not consider that the comments raised by the consultation give any cause not to proceed with the proposal as planned. However, we note respondents' concerns about the way these cases could be dealt with by the Commission and will look at whether there is scope to improve the guidance given to caseworkers who will make decisions in such cases.

Conclusion

17. The Government proposes to enable a caseworker, in the absence of an agreement by the parents or acceptable evidence of a pattern of shared care, to assume a level of one night's shared care on the part of the non-resident parent where the fact that there will be shared care is not in doubt but parents cannot agree on the actual amount.

Consultation Question 3: Do you think the periodic current income check adds value to the review process?

18. The intention is for maintenance calculations to be based, as far as possible, on a non-resident parent's historic income data as supplied by Her Majesty's Revenue and Customs (HMRC). Current income (as supplied by the non-resident parent or their employer) will only be used where it differs significantly from HMRC figures or where income information from HMRC is unavailable.

19. Each year HMRC will supply the Commission (on request) with new historic income information as details for the latest available tax-year become available. Where the existing calculation is based on a non-resident parent's current income, the figure supplied by HMRC will be compared to that amount. If current income remains significantly different then it will continue to apply.

20. To ensure current income remains up to date, it will be checked again once it has been in place, unchanged for a total of 11 months. This is known as a Periodic Current Income Check (PCIC). This will require the non-resident parent to provide fresh evidence of their current income to see if it continues to significantly differ to the HMRC figure obtained at the last annual review.

Respondents' views

21. The majority of Stakeholders were in favour of the Periodic Current Income Check.

- The Family Law Bar Association commented that "Periodic review adds value, in that it relieves the parent with care from the responsibility of chasing the Commission".

- Resolution gave a cautious welcome to this proposal but raised a concern that "yearly reviews proved to be an unrealistic target in the past" and may continue to be unmanageable.

- Families Need Fathers welcomed the intention to introduce a periodic current income check, however, they also added "We would, however, question whether the required 25 per cent threshold for the use of current rather than historic income is an appropriate level. If a non-resident parent's income was to fall (by up to 24 per cent), 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".

The Government's response

22. The Periodic Current Income Check will ensure that calculations based on current income are kept up to date. This will mean that parents with care will no longer have to pursue the Commission to review a maintenance liability nor will cases remain on the same liability for years on end with no review.

23. In order to maintain stable maintenance calculations which are not subject to regular fluctuations a non-resident parent's current income must differ by 25 per cent from HMRC historic income. Except for major changes such as redundancy the expectation is that a maintenance calculation will remain the same for that year, allowing parents with care to budget and non-resident parents to be aware what child support payments will be required for the year.

Conclusion

24. The Government will introduce a Periodic Current Income Check to ensure that current income is always at least 25 per cent different to the latest historic income information supplied by HMRC.

Consultation Question 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?

Consultation Question 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?

25. Variations allow us to look at some circumstances which are not covered by the basic maintenance calculation rules. If agreed to, a variation can lead to an adjustment to the maintenance calculation. Additional income cases (available to parents with care) can increase the maintenance calculation and special expenses (available to non-resident parents) can decrease the maintenance calculation.

26. Under the current scheme the grounds available to parents with care include Assets, and Lifestyle Inconsistent with Declared Income, both of which determine a notional income figure. These grounds have proved difficult to administer and are difficult for clients to understand. Currently, there are limited ways successfully to determine a non-resident parent's assets and many lifestyle applications are unsuccessful due to insufficient information from the parent with care who must support the claim with substantive evidence.

27. In the new statutory scheme the income produced by an asset will be accounted for in an annual return to HMRC and, through variations, can be used to calculate a maintenance liability. This will allow the Commission to capture actual income rather than notional. The expanded unearned income variation will allow the Commission to gather a wider range of unearned income than is currently the case.

28. Lifestyle inconsistent variations will be removed as this variation can only ever take account of other income which a non-resident parent uses to fund their lifestyle. In theory this means that if a non-resident parent has fully disclosed their income there should be no need for a variation on this ground. Applications for this type of variation are currently processed by the Central Appeals Unit, of which a very small number see a positive outcome but nevertheless incur administrative costs.

29. In the new scheme we aim to make best use of income information provided by HMRC which will result in faster, more transparent variation decisions. We have therefore opened up our definition of income to deal with almost all the additional sources of gross income captured by self-assessment. We refer to this as unearned income. This captures income from property, savings and investments and other miscellaneous income.

Respondents' views

30. Stakeholders welcomed the new unearned income ground encouraging wider access to a non-resident parent's income streams.

- Families Need Fathers "agrees that the new approach to unearned income removes the necessity for the assets and lifestyle inconsistent with declared income grounds".

31. However, the majority of stakeholders have strong concerns with the removal of the assets and lifestyle grounds, although they generally agree with the proposal to capture the income generated from an asset.

- Gingerbread expressed concern regarding "non-resident parents who possess an asset which is capable of producing an income which they choose not to take full advantage of".

- The Law Society of Scotland "Abolition of these grounds would make calculations simpler for CMEC but would make life very much easier for the legally-advised wealthy non-resident parent".

The Government's Response

32. Income from assets will be gathered directly from HMRC. This information will have factored in other considerations such as depreciation and costs and removes the necessity of taking such factors into account as is currently the case when trying to establish a notional income.

33. This amendment will reduce the number of such variations which are referred to Appeals, which will result in savings in costs, time and resources.

34. Lifestyle inconsistent with declared income is administratively contentious and resource intensive. We recognize that some parents with care will continue to be adversely affected by those non-resident parents whose inconsistent lifestyle is supported by a third party or by working in the informal economy; however, we are confident that the new variations scheme is an improvement on existing schemes.

Conclusion

35. This proposal will amend Variations legislation in line with the drive to simplify and speed up the process of calculating child maintenance. We will continue with the proposal to remove these grounds on the basis that they are difficult to administer, are complex for caseworkers and clients to understand and that actual income information obtained from HMRC will be more meaningful to parents.

36. This supports the rationale of introducing 'unearned income' to capture a wider range of income types.

Consultation Question 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?

37. A relevant other child is one who normally lives in a non-resident parent's household and for whom the non-resident parent or their partner receives Child Benefit. Child maintenance does not distinguish between a relevant other child who is the non-resident parent's own child or a child of a current partner.

38. Having a relevant other child ultimately means the non-resident parent pays less statutory maintenance. For basic rate cases (where the non-resident parent is assessed as earning £200 or more of gross income a week), this is achieved by reducing the non-resident parent's income by the same percentages which are applied when calculating child maintenance for qualifying children.

39. Using the same percentages implicitly allocates a greater share of a non-resident parent's income to the relevant other child than to the qualifying child. The consultation proposed a lower set of percentages for relevant other children in order to give more equal "allocation" of income.

Respondent's views

40. Most responses support the principle of treating all children more equally.

- NACSA stated "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".

The Government's Response

41. The Government has considered several options for changes to the rates applied to relevant other children. The recommended option will provide more equal treatment for children in the non-resident parent's first and current households.

Conclusion

42. The Government proposes to introduce an amendment to reduce the rates for relevant other children at the rates below:

    1. 11 per cent for one child
    2. 14 per cent for two children
    3. 16 per cent for three or more children

Consultation Question 7: Do you agree with the proposal to increase flat rate maintenance?

43. The flat rate of maintenance applies when a non-resident parent receives a specified benefit or has weekly income of under £100. It was set at £5 a week in 2000 and has not increased since. The Child Maintenance and Other Payments Act 2008 increased the flat rate to £7 for the new statutory scheme of child maintenance.

Respondents' views

44. There was a general recognition that the current flat rate of £5 has not changed in more than 10 years and an increase to £7 was not considered to be unreasonable. There was some support from key stakeholders for an increase beyond £7; however, stakeholders mostly considered that such an increase would place an excessive burden on the poorest non-resident parents.

- Resolution said "For a poor NRP, a higher figure would be punitive rather than helpful in terms of their positive engagement with their children".

- Gingerbread stated "we would oppose any further increase beyond £7 given the very limited means of non-resident parents on benefit".

- Families Need Fathers pointed out "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".

45. However, both the Law Society of Scotland and the Family Law Bar Association were in favour of a further increase.

- The Family Law Bar Association stated that "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."

The Government's Response

46. The Government notes stakeholders' concerns. However, to bring the flat rate deduction more in line with the percentages applied to non-resident parents who are working, we propose the flat rate maintenance will be set at £10 per week when the new scheme opens to all applicants. Until then it will remain at £5.

47. A flat rate of £10 is intended to reflect the higher costs of bringing up a child, the effects of inflation and to bring flat rate child maintenance in line with the percentages used in a maintenance calculation for a non-resident parent who is employed.

48. The flat rate has not been updated since it was set at £5 in 2000. In 2003/4 the flat rate of £5 represented 9 percent of the weekly contributions-based Jobseeker's Allowance (for single over 25s). In 2012/13 the flat rate of £10 will represent approximately 14 percent of weekly single person's Jobseekers Allowance.

49. This increase in the flat rate will further increase the amount of money flowing to children and reflects more closely the maintenance which non-resident parents in work, but not on flat rate, are required to pay. An employed non-resident parent earning £200 per week and under £800 will pay 12 per cent of their gross weekly income for one child, 16 percent for two children and 19 per cent for three or more children. A non-resident parent (over 25 years old) paying £10 child maintenance from their Jobseekers Allowance will be paying 14 per cent of their benefit for all of their children.

Conclusion

50. The flat rate will be set at £10 when the new scheme is open to all new applicants.

Consultation Question 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?

Consultation Question 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)?**

51. Non-resident parents are more likely to report downward changes in income than upward changes. To better balance this, we propose, in the new scheme, to compel employed non-resident parents to notify the Commission within seven days when they see a 25 per cent difference in their current income. This could be as a result of a new job, a pay rise or a change in working hours.

52. We will not compel those non-resident parents who are self-employed or who have an element of unearned income to report increases in income as they are unlikely to know what their profits will be until the end of the financial year.

Respondents' views

53. The majority of stakeholders agree with this proposal, but there was a consensus that the time limit of seven days is unrealistic.

54. Some stakeholders also objected to the proposal to exclude those non-resident parents who are self-employed or have an element of unearned income.

- NACSA have highlighted that "the self-employed non-resident parent has the greater potential for manipulating income".

- Resolution feels that "the proposal will simply allow the self-employed non-resident parent to legitimately reduce child support liabilities".

- The Family Law Bar Association agrees that "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".

The Government's Response

55. The Government is of the view that a compulsion on non-resident parents to inform of upward changes in their income is an integral part of keeping an up-to-date maintenance liability in place for a parent with care and so ensuring the right amount of money reaches children.

56. It was originally agreed that in-year changes from non-resident parent's who are self-employed, or have an element of unearned income, would not be accepted unless they can show evidence of a complete tax-year. Therefore it would be unreasonable to compel these non-resident parents to report increases in income, in the same way as we will not accept a decrease in income from self-employed non-resident parents unless supported by evidence of a complete tax-year.

Conclusion

57. Consideration has been given to the timescales in which such a change should be reported. Seven days was chosen to align with the timescale used for the duty on non-resident parents to report a change of address. However, the Government agrees with stakeholders that a seven day timescale to report an upward change in income for these circumstances is impractical and recommend changing this to fourteen days to align with timescales for requesting information.

58. The Government also proposes that the amendment to compel non-resident parents to advise of changes of 25 per cent in current income should be applied. This compulsion will not apply to self-employed non-resident parents or non-resident parents who have an element of unearned income.

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

59. A Default Maintenance Decision is made when there is insufficient information about a non-resident parent's circumstances to make a full calculation. This will mainly apply if it is not possible to establish the non-resident parent's income.

60. The current weekly amounts of £30 for 1 qualifying child, £40 for 2 qualifying children and £50 for 3 or more qualifying children were set in 2000 and have not increased since.

Respondents' views

61. Consultation responses broadly supported an increase in line with inflation. Critical remarks tended to recommend extra efforts by the Commission to establish actual non-resident parent income or to use data from sources such as the Department for Work and Pensions' Annual Survey of Hours and Earnings (ASHE) to estimate income.

- NACSA "believes that the current scheme does not make sufficient distinction between an inability to provide income information and a refusal to do so".

- Resolution, while not objecting to the increase, made points similar to NACSA , adding 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".

- Gingerbread supported the increases, but "recommended that where a non-resident parent has consistently paid Default Maintenance for a period of 12 months, the Commission carry out an investigation".

The Government's Response

62. Access to HMRC income information will reduce the numbers of cases where a default maintenance decision will be required. Effective use of Department for Work and Pensions' Annual Survey of Hours and Earnings (ASHE) to estimate income will also reduce the numbers of cases where a default decision is in place.

63. The Government recommends that the default maintenance rates should be increased with periodic reviews of the amounts thereafter. This will encourage non-resident parents to provide evidence of their income where none is held by HMRC. It will also ensure that more money flows to children

Conclusion

64. The Government intends to increase the default maintenance rates to £39 for one child, £51 for two children and £64 for three or more children.

Annex A – List of Respondents to the Consultation

Gingerbread
Families Need Fathers
Low Incomes Tax Reform Group
Matchmothers
The Law Society of Scotland
Resolution
National Association for Child Support Action (NACSA)
Women's Support Network
Rights of Women
Low Incomes Tax Reform Group
Anne Redstone Barrister and Professor of Tax Law
Morton Fraser LLP
UKFRM
The Law Society
FLBA
Chartered Institute of Payroll Professionals (CIPP)
20 Individual responses