

# **CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008**

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## **EXPLANATORY NOTES**

### **SUMMARY OF MEASURES IN THE ACT**

#### *Child Maintenance*

#### *Child Maintenance and Enforcement Commission*

#### *Current position*

12. The CSA was established in 1993 to assess, collect and enforce child maintenance payments from non-resident parents. The CSA was to replace court arrangements, which were seen as cumbersome and failing children and their parents. The original scheme was introduced by the Child Support Act 1991. This was amended by the Child Support Act 1995 and the Child Support, Pensions and Social Security Act 2000. The 2000 Act introduced significant changes including the introduction of a new scheme for calculating child support maintenance (the 'new scheme'), and changes to section 6 of the Child Support Act 1991, under which the CSA could treat parents with care in receipt of prescribed benefits as having applied for child support maintenance.
13. The CSA was established as one of the Executive Agencies of the Department of Social Security. Executive Agencies were first established following Sir Robin Ibbs's 'Next Steps' Report in 1988. The intention was that they would take responsibility for, and bring a new more customer-focused approach to, individual executive (service delivery) functions within Government. This would leave their parent Departments to concentrate on policy development.
14. Executive Agencies operate as part of their parent Department under powers that are delegated from Ministers, as they do not hold statutory status as bodies corporate in their own right. Executive Agencies have a Chief Executive who reports to the Department and Minister against specific targets, and they are staffed by Civil Servants. The Chief Executive of the CSA is supported by an advisory board of executive and non-executive members.

#### *Proposed changes*

15. In the White Paper, the Government proposed that a non-departmental public body (NDPB) should be established to deliver child maintenance and replace the CSA. This Act establishes a body corporate to be called the Child Maintenance and Enforcement Commission which is referred to, in the Act and in these Notes, as 'the Commission'. The Commission will be a Crown NDPB. It will have a role in the processes of national Government but will not be a Government Department or part of one. It will operate at arm's length from Ministers in its day to day decision making. Although Ministers will set high level principles, the Commission will have full autonomy to run the child support maintenance system.

*These notes refer to the Child Maintenance and Other Payments  
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

16. The main objective of the Commission will be to maximise the number of children living apart from one or both of their parents for whom effective maintenance arrangements are in place. This objective will be supported by the following subsidiary objectives:
  - to encourage and support the making and keeping by parents of appropriate voluntary maintenance arrangements for their children; and
  - to support the making of applications for child support maintenance under the Child Support Act 1991 and to secure compliance when appropriate with parental obligations under the Act.
17. Most of the functions that fall to the Secretary of State under the Child Support Act 1991 will be transferred to the Commission. In addition to these functions the Commission will have further responsibilities for raising awareness among parents of the importance of taking responsibility for the maintenance of their children and making appropriate arrangements for the maintenance of children of theirs who live apart from them. To support this process, the Commission will also be required to provide a service that provides information and guidance to both parents for the purpose of helping to secure the existence of effective maintenance arrangements.
18. The CSA currently commissions external service providers to help enforce maintenance payments. The Commission will have more flexibility to commission external providers to carry out its functions in order to deliver services in the most efficient and effective way.
19. The structure of the Commission will consist of a Board with the following members:
  - a person to chair the Commission (the ‘Chair’), who will be responsible for setting the overarching strategic direction of the Commission, owning strategy and policy, and undertaking external stakeholder relations;
  - a chief executive, who will be known as the Commissioner for Child Maintenance, who will be responsible for the executive oversight of the organisation, for delivering the operational outcomes set by the Board through direct delivery, managing the commissioning role of the Commission and acting as the Accounting Officer;
  - executive directors; and
  - non-executive directors.
20. The Board will be able to employ staff to carry out the day to day functions of the Commission.

***Removal of compulsion for benefit claimants***

***Current position***

21. Under section 6 of the Child Support Act 1991, if a parent with care is paid or has claimed income support, or income based jobseeker’s allowance, (or one of those benefits has been claimed or is paid in respect of that parent), they are treated as though they have applied for child support maintenance.
22. Parents with care who do not wish to be treated as applying for child support maintenance need to demonstrate good cause: for example, that applying for maintenance could put them, or any child living with them, at risk of harm or undue distress. If they do not demonstrate good cause, section 46 of the Child Support Act 1991 enables the Secretary of State to make a decision to reduce their benefit.

### ***Changes***

23. The Act repeals sections 6 and 46 of the Child Support Act 1991. This will mean that parents with care in receipt of (or applying for) the prescribed benefits will not be treated as applying for maintenance, and therefore they can not be subject to a reduced benefit decision.
24. Once this change occurs existing parents with care whose application for child maintenance was made under section 6 (and was therefore compulsory) will have a choice of withdrawing from the statutory scheme should they wish to do so.

### ***Maintenance Calculations***

#### ***Current position***

25. Under the current 'new scheme' legislation, the information used to calculate maintenance includes: the non-resident parent's net weekly income, the number of qualifying children, and the number of 'relevant other children' (those living with the non-resident parent whether or not they are children of that parent). The maintenance calculation can be adjusted if a change in circumstances is reported to the CSA, although a change of less than 5% in net weekly income would not result in an adjustment.
26. For the purposes of child maintenance, net weekly income is a non-resident parent's income from employment or self employment, tax credits, or from an occupational or personal pension after deductions for income tax, national insurance, and contributions to an occupational or personal pension have been applied.
27. Once enough information is provided by the non-resident parent, a calculation is performed to establish how much maintenance is payable to the person with care. The basic rate of maintenance takes account of how many children the non-resident parent is required to pay maintenance for, and is based on a percentage of their net income, up to a maximum of £2,000 per week, which is:
  - 15% for one qualifying child;
  - 20% for two qualifying children; and
  - 25% for three or more qualifying children.
28. A flat rate is payable by non-resident parents who are in receipt of benefit or earn less than £100 a week, and is an amount up to £5 per week.

### ***Changes***

29. The Act makes several amendments to how a maintenance calculation is arrived at and maintained. Gross weekly income details from the latest available tax year will be used to calculate maintenance instead of net, and this will usually be based on information already held and made available by Her Majesty's Revenue and Customs ("HMRC").
30. Alongside this, the percentages applied for the basic rate in relation to earnings of a non-resident parent between £200 and £800 per week, will change to:
  - 12% for one qualifying child;
  - 16% for two qualifying children; and
  - 19% for three or more qualifying children.
31. New percentages will be introduced for non-resident parents whose earnings are over £800 per week. The percentages will apply in relation to earnings between £800 and £3,000 per week. They will be:
  - 9% for one qualifying child;

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- 12% for two qualifying children; and
  - 15% for three or more qualifying children.
32. Percentages for relevant other children will also change to the same level as those for basic rate.
33. The level of flat rate maintenance for non-resident parents in receipt of a prescribed benefit, or earning less than £100 per week, will also be increased from £5 to £7 per week.
34. The Act will enable restrictions to be imposed on how often a maintenance calculation is changed. Annual reviews will take place to ensure the calculation reflects any changes in income or the relevant circumstance, specifically the income figure for the latest available tax year will be updated. Between annual reviews, the calculation will be revisited only where there has been a large change in income, or a fundamental change such as a child or children moving to live with the other parent.
35. The Act also requires the Commission to investigate what information and evidence is available, and obtain more if appropriate, before considering and deciding on a variation application received from a parent with care.
36. Another change relates to cases where both parents each have at least one child of the relationship living with them. In such cases, both parents are a person with care in relation to one child, and a non-resident parent in relation to another. Currently they would both be liable to make a maintenance payment. The changes will enable one liability to be offset against the other, so that only the parent with the highest liability actually makes a payment.
37. Child maintenance obligations of a non-resident parent under certain types of private arrangement will also be taken into account when calculating the amount of child support maintenance payable under the Act.

### ***Collection and Enforcement***

#### ***Current position***

38. In the majority of cases an application for payment of child support maintenance is made by the person with care. The applicant supplies to the CSA details of the children for whom maintenance is sought, and sufficient details of the non-resident parent to enable the CSA to contact them in order to calculate a maintenance liability.
39. The CSA will then attempt to contact the non-resident parent and obtain details of income and any other relevant information. Once a calculation is made, arrangements can be set up with the non-resident parent for payment of maintenance.
40. In some cases the non-resident parent will refuse to provide enough information to the CSA, or if it has been made available and a maintenance calculation made, they attempt to avoid payment. In these instances the CSA will use enforcement powers available to it in order to collect maintenance.
41. The enforcement powers available to the CSA are as follows:
- A deduction from earnings order to recover money directly from a non-resident parent's salary at source is usually the first action to be taken. This requires the employer to deduct amounts from a non-resident parent's income and pay them to the CSA.
  - Where this is inappropriate or proves ineffective, the CSA can apply to a magistrates' court (in England and Wales) or a sheriff (in Scotland) for a liability order. In England and Wales, this is the gateway to the use of bailiffs to recover the

debt and/or an application to the county court to take further enforcement action. In Scotland, a liability order can be enforced by 'attaching' the debtor's assets and selling them, 'arresting' funds such as bank accounts and having them transferred to the CSA, and 'inhibiting' the debtor from dealing in heritable property until the debt is satisfied.

- In England, the next stage of enforcement available is an application made to the county court for a third party debt order or charging order. A third party debt order requires a third party, for example a bank or building society, to pay an amount held on behalf of the non-resident parent, for example funds in a bank account, to the CSA. A charging order secures payment of arrears from funds or property belonging to the non-resident parent.
- In Scotland, an application can be made to the sheriff for an arrestment order, which freezes a debtor's moveable assets held by a third party who are then instructed to pay the money to the creditor, or a Bill of inhibition which means that the outstanding debt can be claimed from the proceeds of the sale of land or property.
- Where the arrears remain outstanding after enforcement action, the CSA can begin proceedings against the non-resident parent in the magistrates' court in England and Wales (or in Scotland, the Sheriff), the result of which could be committal to prison for up to six weeks or disqualification from holding or obtaining a driving licence for up to two years.

### ***Changes***

42. The Act introduces several changes to enforcement powers, with both changes to existing powers and new powers introduced. Changes to existing powers include:
- regulations may provide for a deduction from earnings order to be specified as an initial method of collection unless there is a good reason not to in a particular case; and
  - liability orders will be administrative and will no longer require an application to a magistrates' court or the sheriff.
43. New powers to be introduced include:
- a regular deduction order applied to an account (including a joint account) held by the non-resident parent with a deposit-taker such as a bank, which can be used to take regular deductions to collect on going child maintenance and/or arrears;
  - a lump sum deduction order which can be used to collect arrears through a single deduction directly from an account of the non-resident parent (including a joint account), held with a deposit taker or third party such as conveyancer;
  - the ability to apply to the High Court in England and Wales (or, in Scotland, the Court of Session or the sheriff) to freeze property held by a non-resident parent, or to set aside a disposition;
  - the ability to apply to the magistrates' court in England and Wales (or, in Scotland, the sheriff) for the imposition of a curfew on a non-resident parent, which will be monitored; and
  - the ability to apply to the magistrates' court in England and Wales (or, in Scotland, the sheriff) to disqualify a non-resident parent from holding or obtaining a travel authorisation, which may be a UK passport and/or an ID card issued under the Identity Cards Act 2006 that records that the person to whom it is issued is a British Citizen.

## ***Debt Management Powers***

### ***Current position***

44. Since its inception in 1993, the CSA has collected over £5 billion in child support maintenance. At the same time, however, around £3.5 billion of debt has accumulated. The CSA has no statutory powers to write off debt.
45. Since August 2006 the CSA has held contracts with private sector debt collection agencies to pursue debt on its behalf.

### ***Proposed changes***

46. The Act introduces new powers to enable the Commission to collect and manage debt:
  - The ability to negotiate settlements where a lesser amount of money offered by a non-resident parent can be accepted as full and final settlement of the debt.
  - The ability to write off debt of a description specified in regulations, where it appears to the Commission that it would be unfair or otherwise inappropriate to enforce it. It is intended that the type of debt specified in regulations for these purposes will include:
    - debt which is owed to a person with care who is deceased, or by a non-resident parent who is deceased, where the debt can not be recovered from the estate; and
    - debt which is owed by a non-resident parent who is for example reconciled with a parent with care who has asked for the recovery action to be stopped.
  - The ability to write off debt which has arisen from fees and interest charged under regulations that were abolished in 2001.
  - The ability to apply for arrears of child support maintenance to be recovered from the estate of a deceased non-resident parent.
  - The ability to sell debt to a third party in specified circumstances.
  - The ability, in prescribed circumstances, to offset a maintenance liability and in some cases arrears where, for example, a child moves from the care of one parent to the other. Also, the ability, in prescribed circumstances, to offset money paid by a non-resident parent to a third party against the maintenance they are liable to pay. The ability to use existing and new enforcement measures to collect child support maintenance arrears that accrued or became due before 12 July 2000.

## ***Transfer of cases to new rules***

### ***Current Position***

47. There are two child support maintenance schemes in operation:
  - ‘Old scheme’ cases are applications made between 5<sup>th</sup> April 1993 (when the CSA began) and 2<sup>nd</sup> March 2003. These cases are subject to the formula for assessing maintenance as set out in the Child Support Act 1991 before it was amended by the Child Support, Pensions and Social Security Act 2000; and
  - ‘New scheme’ cases are applications made since 3<sup>rd</sup> March 2003 (when the scheme was introduced) or any old scheme cases which were converted to the new scheme because they linked to a new scheme case. These cases are subject to the method of calculating maintenance as set out in the Child Support Act 1991, as amended by the Child Support, Pensions and Social Security Act 2000.

### ***Changes***

48. The Act provides a general power enabling the Secretary of State to set out a framework for existing cases to move to the new maintenance calculation rules so far as future accrual of liability is concerned. Once the Commission comes into existence it will advise Ministers on the regulations which govern that process.

### ***Other Provisions***

49. The Act introduces powers to enable the disclosure of certain qualifying information about some non-resident parents to credit reference agencies, to be used by such agencies for the purpose of furnishing information relevant to the financial standing of individuals (determining their credit rating).
50. The Act will enable relevant information relating to certain family proceedings to be disclosed to the Commission without such a disclosure being a contempt of court.
51. A new power will be inserted into the 1991 Act, to make it an offence for a non-resident parent not to notify the Commission of a change in their address.
52. A piloting power will be introduced to enable new policies to be tested, and changes to the definition of “child” to align it with the Child Benefit Act 2005.
53. The Act introduces information gateways between the Commission and the Secretary of State, the Northern Ireland Department and HMRC.
54. The Act will prevent any further use of the social security provisions (which are now generally redundant) which provide that a person is liable to maintain their children, and that the Secretary of State may seek an order to recover amounts paid in income support where this has been paid as a result of failure to do so.
55. The Act amends the 1991 Act to clarify that Registered Maintenance Agreements in Scotland, made on or after 3 March 2003 will be treated for the purposes of child support in the same way as consent orders made on or after that date.

### ***Mesothelioma***

#### ***Current position***

56. The intention of the Pneumoconiosis etc. (Workers’ Compensation) Act 1979 (“the 1979 Act”) was to provide a reasonable level of compensation to sufferers of certain dust related diseases, or their dependants, who are unable to pursue a civil claim because their former employers have ceased to carry on business. Mesothelioma is one of the diseases covered by the 1979 Act, and only people who receive Industrial Injuries Disablement Benefit are eligible to receive a payment under the 1979 Act.
57. The Social Security (Recovery of Benefits) Act 1997 (“the 1997 Act”) provides for the recovery of social security benefits (as listed in the 1997 Act) which have been paid in respect of any accident, injury or disease to claimants who go on to receive compensation in respect of the accident, injury or disease, following a civil claim. The intention of the 1997 Act was to ensure that a person does not receive double compensation, and that the Government could recover the listed social security benefit payments it had made, from the person deemed liable for the accident, injury or disease following a civil claim.

#### ***Proposed changes***

58. The Act will enable a lump sum payment to be provided for those not eligible under the 1979 Act who:
- Have been exposed to asbestos from a relative (for example, from their overalls);

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- Have been exposed to asbestos environmentally (for example, have lived near a factory using asbestos);
  - Are self-employed; or
  - Can not trace their specific exposure to asbestos but there is nothing to suggest that they were exposed elsewhere other than in the UK.
59. In effect, the proposed new scheme will mean that all sufferers of mesothelioma, as a result of exposure to asbestos, will be eligible for a payment regardless of their employment status, provided they have not already received a compensation payment through a civil claim or a payment under the 1979 Act or new scheme.
60. In addition, the Act introduces the ability to recover payments made under the 1979 Act or the new scheme, where a person then goes on to receive compensation in a civil claim.