**DWP Response to key points in submissions**

**Affordability**

“in seeking new sanctions to deal with non-payment, the government have failed to first properly address whether the demands being made are affordable to the paying parent who also has to live … to what extent are current assessments of Child Maintenance impossible to pay? A consequent question must then be, what might be the consequences to both parents and to their children if such assessments are unaffordable and sanctions are then applied?”

“The current rate of compliance of NRPs using the CMS is 57% and has remained roughly static for the past two years.” Many parents find that they just cannot pay the amounts demanded by the CMS. ‘Non-compliance’ is not a choice but a consequence of the legislation.”

Q1: How does DWP respond to the implication that many assessments are unrealistic?

A:1 The Government’s primary objective is to support separated families to have sustainable child maintenance arrangements. We are aware of the concerns around affordability and officials have had the opportunity to discuss the issue with relevant stakeholders, and gather their views.

The current method for calculating a child maintenance liability is designed to be affordable for the Paying Parent, while still ensuring that they contribute a proportion of their income to support children they no longer live with. There is no evidence to suggest that it is the method of calculation which is the driver of non-compliance.

As well as using information about a Paying Parent’s income provided by HMRC, or by the parent if this is more up to date, our calculation method takes into account a range of additional factors, including: the number of qualifying children; any other children that the Paying Parent is responsible for and; the number of nights the Paying Parent has care of the qualifying children.

Any statutory system needs to operate a broad set of rules which are objectively reasonable, and it is never possible to create a system that meets everyone’s individual and changing needs, or which everyone thinks is fair. A Paying Parent is free to report a change in their income at any time, and if the change is significant enough, we will amend the maintenance calculation accordingly.

As the wider child maintenance reforms bed in we are keeping policy issues under review, and remain open to discussing the issue of affordability and exploring any appropriate action at a later date.

**Interaction between Child maintenance assessments and Universal Credit.**

“In January 2018 DWP[1] accepted that the figures upon which we [Fathers Need Families] base our views are correct and that there is a significant issue that needs to be investigated, particularly in the interaction of Child Maintenance with Universal Credit (UC), as this is being rolled-out. Child Maintenance payments are not included in UC and this has resulted in many paying parents experiencing excessive marginal tax rates of 80%-100% or even more.

For these parents, not only does work not pay, but they are also placed in untenable financial positions. The same applies to those who are not yet on UC and this explains some of the historic arrears”.

The Government’s response to the consultation on compliance and arrears strategy which informed this SI include this important statement:\[2\]:

“We are grateful to a stakeholder for raising the potential issue of the interaction between the UC taper rate and child maintenance calculation. We have committed to investigate this, working closely with the stakeholder group concerned.”

Q2: Both submissions indicate that DWP acknowledges that there is a difficulty in relation to Child Maintenance payments and Universal Credit and that DWP is investigating the problem: what is the current position in relation to the investigation?

A2: This question has no bearing upon the draft Regulations being considered by Parliament, however it is correct that the Department is investigating the issue. Officials have had the opportunity to meet with an academic who raised this issue, and have enjoyed an open and constructive dialogue. In the course of these discussions we have acknowledged that an issue exists, but we believe it applies only in limited scenarios to a very small proportion of the child maintenance caseload. We are currently performing analysis to confirm the scale of this complex issue, which in turn will inform our approach to addressing it. We have committed to sharing the results with interested stakeholders once completed.

Trigger for recalculation
“Also CMS will not allow re-assessments to take into account variations in income unless they exceed 25%. We propose that this variation threshold should be no more than 7% to 10%, for low-income paying parents.”

Q3: Is it correct that the NRP’s payment can only be re-assessed if it varies by more than a quarter? What is DWP’s response to the proposal to reduce that threshold?

A3: Again, this question has no bearing upon the draft Regulations currently being considered by Parliament, however we are happy to answer it. The default method of calculating a child maintenance liability under the 2012 scheme is to use information provided by HMRC about the most recent full tax year for which they hold information. This is known as ‘historic income’ and is used to ensure the calculation process is quick and transparent.

Where a Paying Parent’s income varies from the historic income figure by 25%, either up or down, it is possible to use information about their income based on evidence they provide. This is known as ‘current income’.

One of the primary criticisms of the schemes administered by the Child Support Agency is that calculations were complex, and subject to frequent changes if the Paying Parent’s income fluctuated. Stable calculations provide certainty to both parents and allows for effective family budgeting.

For the vast majority of parents, income does not vary greatly over the course of a year. We believe that setting the threshold for a move to current income at 25% is a reasonable way of accounting for notable changes in income, whilst balancing the need for simplicity and transparency.

It should be noted that moving to current income is not the only way that a liability can be reassessed – variations for a range of factors such as an increase in shared care, or special expenses incurred by the Paying Parent can be considered at any time.

We believe, when considered in total, our current process provides sufficient flexibility to account for the majority of circumstances parents face. On that basis we currently have no plans to revisit the 25% threshold for a move to calculating based on current income.

This includes consideration of different threshold rates based on the level of a Paying Parent’s income. The current method of calculation already ensures that very low earners, including those in receipt of benefit, either pay a flat rate of £7 per week or have a nil liability. Above this a liability increases in line with the parent’s broader circumstances. There is no evidence to indicate that an additional safeguard in the form changes to the current income threshold are necessary.

**Parity**

“this legislation proposes to extend the value of future assessments to include unearned income of paying parents, without taking any account of income earned or otherwise received by the receiving parent.”

“we draw this Committee’s attention to the fact that receiving parents experience a measure of financial ‘protection’ in so far as they receive child related benefits, housing support, etc, which are reviewed regularly and the fact that their state benefits are unaffected by received Child Maintenance payments, regardless of whether these are £0 or £1,000 a week”

Q4: Both submissions indicate that the calculation of assets is biased towards the parent with care. Is that correct?

A4: We believe both parents have a responsibility to contribute financially towards the cost of bringing up their child, including their food and clothing, as well as contributing towards the associated costs of running a home.

While this responsibility is shared, the purpose of a statutory child maintenance scheme is to calculate and, where necessary, arrange collection of a legal liability from the person named as the Paying Parent. The calculation represents an amount of money that is broadly in line with the amount that a Paying Parent would spend on the child if they were still living with them, irrespective of the income or assets of the Receiving Parent.

**Out of date methodology**
“Additionally, we draw attention of the Committee to the fact that the £100 and £200 weekly income thresholds for paying parents, above which a % formula is applied, have not been reviewed for inflation since 1998.”

Q5: Is that correct? If so what are DWP’s plans to review the threshold

A5: Again, this question has no bearing upon the draft Regulations currently being considered by Parliament, however we are happy to answer it. Consideration was given to the thresholds of the Reduced and Basic Rates of the child maintenance calculation in 2011 and 2012, when the government was considering and consulting on the rules that would be used by the 2012 Child Maintenance Scheme. At that point the conclusion was these thresholds were considered reasonable for the purpose, and so were retained.

Any changes to these thresholds would be considered as part of the broader issue of affordability, which we are investigating in the manner described above.

Conflict with the European Convention on Human Rights

Q6: How does the amendment on passport qualification fits Article 2 re Freedom of movement,

“Everyone shall be free to leave any country, including his own.”

A6: The European Convention on Human Rights (ECHR) does not include a provision under article 2 in respect of freedom of movement: “Everyone shall be free to leave any country, including his own.”

Whilst there is no absolute or qualified right in ECHR that “Everyone shall be free to leave any country, including his own” we take the view that legislation which permits the courts to withdraw the passport of an individual who has failed to pay child support maintenance would be compatible with Convention rights and the courts will exercise this power in a proportionate manner.

This measure will be used as a last resort, where all other enforcement actions have been found to be inappropriate or ineffective. We will apply to the court to disqualify a Paying Parent from holding or obtaining a UK passport where they have consistently failed to pay, and demonstrated wilful refusal or culpable neglect to pay their maintenance, and we have exhausted all our other enforcement options. It will be for the court to decide whether to disqualify a paying parent from holding or obtaining a UK passport. The maximum period of disqualification is two years. The court also has the power to suspend the order on such conditions as the court thinks just.

Q7: How does the legislation fit with Article 8 re Right to Family Life when DWP’s Self-certified Impact Assessment[3] states (paragraph 52)

[3] See footnote
“... this additional responsibility may impact negatively on the NRP’s ability to form a new family ...”. The statement continues that DWP considers that negative impact to be justified – please can you articulate the grounds.

A7: This quote from the Government’s Impact Assessment is taken from the section of that document pertaining to the application of the Family Test on the policies under these proposals. It is with specific reference to the new powers to make deductions from jointly held personal and business accounts; an introduction that is intended to drive up compliance by ensuring Paying Parents who do not meet their obligation cannot put income out of reach of our enforcement powers. This means Paying Parents in certain circumstances would be paying more toward their legal liability than they would if they were able to put their income out of reach. In this extract we are acknowledging that this money could have been used elsewhere, possibly toward supporting another family.

We take the view that our proposals are compliant with article 8 (right to respect for private and family life). Article 8 is a qualified right. Interference with this right is justified as it is in accordance with the law; in this specific case the law being each parent of a qualifying child is responsible for maintaining the child (S.1 Child Support Act 1991). Any deductions from jointly held accounts would be exercised in conjunction with the powers conferred on the Secretary of State for Work and Pensions in s.4 Child Support Act 1991 to enforce a child maintenance liability where necessary.

We believe the exercise of this new power is justified as policy as it will only be used to collect money owed where a Paying Parent is not meeting their legal liability. To ensure this power is not used unreasonably consideration will be given to the potential effect of that action on any children, including those the Paying Parent may be currently living with as a member of a new family.

In addition where a Paying Parent has more than one bank account, we propose to target their solely held accounts first, then any jointly-held private accounts and finally business accounts, for instance if there are insufficient funds in other accounts.

Q8: My previous message also included a note that the SLSC had not fully understood the proposals for writing off past debt and wanted a clearer statement of what the policy in the legislation is, what other options were considered, costed and rejected. Your EM comments on the nugatory costs of maintaining the current position but the Committee wanted to know if there were any interim-compromise positions that might provide more income at a reasonable cost. Para 7.18 of the EM refers to the consultation document but I think the Committee is looking for a synthesis of that 27 page document which also indicates the comparative costs/benefits of the options. So – for example – para 117 of the consultation document states that the figures of £500 and £1000 which appear in reg 4 of the instrument reflect the threshold below which it is no longer cost effective to pursue an old debt – the EM does not mention this but it is key to understanding why this legislation has been framed in the way that it has. Could you please provide a clearer explanation of the rationale for framing the debt write off proposals in the way that they appear in the instrument.

A8: To assist, a more detailed outline of the policy with regards to the write off proposals is included below.
Write-off measures

Our existing write-off powers are limited and do not allow us to effectively address the £3.7 billion arrears accumulated under the CSA. Alternative options that don’t involve legislative change represent significant costs and legal risks. In addition they do nothing to increase the amount of money flowing to children, and create prolonged uncertainty for both parents as to what, if any, further enforcement steps may be taken and when this might be.

Some of the options we have considered include:

- Maintaining the historic debt on CSA IT systems. This would incur significant technology costs of around £25 to £30 million per year – an annual cost potentially lasting for decades.
- Moving all the debt to the CMS system. This would cost at least £230 million, requiring a check of the debt balance for each case before it is moved to ensure it is correct.
- Neither of these options would enable us to attempt collection of any of the debt, as they would adversely affect our funding position, leaving no resources to do anything but maintain the cases as archive records. In short, this means that not writing off would cost the taxpayer more money, and be worse for parents.

Write off approach

- Our proposed approach will end the uncertainty for families about how the historic arrears that built up on CSA cases will be treated in future, as the final CSA liabilities are brought to an end during 2018. These regulations will allow:
  - Representations to be sought from clients in cases with non-paying CSA debt about whether they would like a last attempt to collect the debt, where the case started on or before 1 November 2008 and the debt is more than £1000, and where the case started after 1 November 2008 and the debt is more than £500. Where no representations are received, or collection of the debt is not possible, the debt may be written off.
  - CSA debt in non-paying cases to be written off without seeking representations from clients, where the case started on or before 1 November 2008 and the debt is less than £1000, and where the case started after 1 November 2008 and the debt is less than £500.
  - CSA debt under £65 in non-paying cases to be written off without notice to the parties.
- Some CSA cases with debt have already been closed as a part of the ongoing CSA case closure programme, with the debt transferred to the CMS IT systems. For the purpose of this process then the cases will be treated as if they started after 1 November 2008.
- Enable debt subject to sequestration (Scottish insolvency) to be written off when the sequestration expires. This technical amendment will apply to both CSA and CMS cases, as this debt becomes legally uncollectable due to the way sequestration operates.

Policy rationale – debt below threshold

It is not cost effective to attempt collection on individual debts of less than £500 (or debts of less than £1000 where the case is ten or more years old, as older debt is harder to recover) so we propose to write off all in-scope debt below this amount. It costs on average between £500 and £1000 to investigate and take action on these cases. This includes some of the cases going forward for collection activity in our arrears teams and some cases being put through
legal enforcement processes. We feel that the thresholds based on age of case and amount of
debt provide a reasonable cut off point to ensure that we do not pursue cases at
disproportionate cost to the taxpayer.