The Child Support (Miscellaneous Amendments) Regulations 2018
Gingerbread submission to the Secondary Legislation Scrutiny Committee
(CC’d to the Joint Committee on Secondary Legislation)

About Gingerbread
1. Gingerbread is the leading charity working with single parent families. We campaign against poverty, disadvantage and stigma to promote fair and equal treatment and opportunity for single parents and their families.
2. Gingerbread is committed to improving the support given to separating parents, and was a founding member of the ‘Kids in the Middle’ coalition along with Relate, the Fatherhood Institute and Families Need Fathers. It is a longstanding goal of the organisation to help to achieve an effective UK child maintenance system, to mitigate the financial disadvantage faced by children growing up in separated households.

Submission
3. As Gingerbread has noted in its response to the government’s ‘Child maintenance compliance and arrears strategy’, the proposed regulations are welcome in their intent to ensure more calculations fully reflect parents’ ability to pay and to tackle unpaid child maintenance.
4. Since consulting with stakeholders – namely family lawyers – we have some reservations regarding the drafting of the reintroduction of the assets grounds for variation of a maintenance calculation (Part 2).
5. We also have some reservations about the fairness of the proposed write-off process, as previously outlined.
6. While we appreciate the discretion applied to providing impact assessments for regulations with more limited public spending impact, we are concerned about the lack of detail in the assessment of impact accompanying the regulations.

Part 2: Assets variation
7. As we have outlined elsewhere, we strongly regret the government’s rejection of returning to the ‘lifestyle’ variation which many would argue provides a more accessible test for further investigation into a parent’s ability to pay. This decision notwithstanding, Gingerbread welcomes the intent to bring back the assets ground for a variation.
8. However, in discussion with family lawyers from Resolution’s Child Support Committee, there are some concerns regarding the practical implication and details of regulations as drafted. For example:
   - It is not clear if the assets concerned refer only to UK assets or includes offshore/non-UK assets.
   - Regulation 69A 4(e): It is not clear whether the ‘unreasonable’ consideration referenced is only applied if the sale of the asset is required, or whether this would be
a general discretionary assessment – for instance, it would be helpful to clarify whether assets would include property which a paying parent wanted for other dependents (eg as a residence for elderly parents).

- Regulation 69A(3): This reads ‘the beneficiary’, which suggests the sole beneficiary, ignoring circumstances where the paying parent is one of a number of beneficiaries.

9. There is a sense that the drafting of Part 2 of this statutory instrument would have benefited from closer collaboration with experts before being laid before parliament to minimise ambiguity and reduce the potential for further disputes. The latter is a concern, given the existing pressures on – and resulting delays in – the tribunal system.

10. In the absence of re-drafting, it would be helpful to provide further clarity where possible in the explanatory memorandum (eg confirming whether assets held outside the UK are within scope). If doing so, it would be worth proactively consulting with family lawyers and tribunal members with relevant expertise.

Part 4: Child Support Agency (CSA) arrears write-off

11. As we have noted previously, it is positive and long-overdue to get a clear strategy for dealing with arrears-only cases where debts arose under the CSA.

12. However, as we flagged in our consultation response, the rationale is not clear for the cash thresholds used for determining the arrears write-off process (regulation 13K); inevitably, cash thresholds disproportionately affect receiving parents who are worst off.

13. Gingerbread is also concerned that parents will have very limited options regarding the collection of outstanding CSA arrears. The modelling produced alongside the government’s consultation on its proposed compliance and arrears strategy suggests that the DWP expects to write off nearly £2 billion – ie the vast majority – of CSA arrears (including the automatic write-off of debts owed to the Secretary of State). For example, there is no redress through compensation for CSA errors or through the courts.

Impact assessment

14. Section 10 of the explanatory memorandum states the very limited parameters of their impact assessment – namely deductions from accounts. However, the much more wide-reaching and substantial change in introducing the CSA arrears write-off process is not referenced as it will not have the required material impact on business.

15. From correspondence with the DWP, the department has considered the impact of the arrears write-off process as part of its public sector equality duty. While the DWP may not be required to publish this information, we would recommend details are included in the explanatory memorandum in the interests of transparency for parliamentarians and the public. The significant impact by gender, where the overwhelming majority of receiving parents owed arrears are women, in particular should be made clear.

Other notes

16. Regarding the remaining parts of the regulations, widening powers to tackle non-compliance in child maintenance, Gingerbread welcomes their intent and introduction. Our main reservations focus on their implementation and frequency of use – in summary, we would like to see wider use of more common powers, eg liability orders.