



Child Maintenance and Other Payments Act 2008

Consultation on draft regulations in relation to the
‘Power to treat liability as satisfied’, and ‘Recovery of arrears
from deceased’s estates’

Summary of responses to the consultation

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Part One – Introduction

Background to the consultation

- 1.1 The Child Maintenance and Other Payments Act 2008 (the 2008 Act) was passed on 5th June 2008. It inserted amendments into the Child Support Act 1991 to support the Government's proposals for redesign of the child maintenance system. These proposals were set out in the child maintenance White Paper, *A new system of child maintenance*, published in July 2006. A summary of responses to that consultation was published in May 2007.
- 1.2 The 1991 Act, as amended, provides the power for the Government to make regulations to enable the Child Maintenance and Enforcement Commission (the Commission) to treat liability as satisfied in prescribed circumstances and to recover from the estate of a deceased person arrears of child maintenance for which he or she was liable immediately before death.
- 1.3 The Government will introduce regulations to implement these new powers from January 2010. The regulations are made by the Secretary of State for Work and Pensions and the Commission has a role in recommending to ministers what should be included in them. The regulations will apply to the current child support scheme, introduced in 2003, and to the old child support scheme, introduced in 1993. The powers provided to the Commission by the regulations will be operated by the Child Support Agency (the Agency), which is part of the Commission.

Power to treat liability as satisfied (offsetting)

- 1.4 During their upbringing, where parents are no longer living together, a child may move from the care of one person to the other. At present, when this happens and there are arrears of child maintenance from the previous arrangement, the Commission is unable to offset the debt against the new liability. As a result, the new non-resident parent may find that he or she is faced with paying child maintenance to the parent who owes him or her arrears.
- 1.5 Similarly, a separated couple who have more than one child together may each have at least one child living with them. In such cases, either or both parents may accrue arrears of child maintenance and at present the Commission is left to pursue both sets of arrears.
- 1.6 Parents may also sometimes agree between themselves that a payment may be made to or on behalf of the parent with care separately from the normal child maintenance payments to the Commission. This may happen for example, when the non-resident parent agrees to pay an urgent utility bill on behalf of the parent with care. At present, as there is no provision to offset such payments, a non-resident parent may effectively be expected to pay twice over.

- 1.7 The introduction of offsetting in these circumstances responds to parents wishes that the Commission should be able to make sensible decisions reflecting the realities of life.

Recovery of arrears from deceased's estate

- 1.8 At present when a non-resident parent has died owing arrears of child maintenance those arrears are not pursued. The Government considers it to be in the interests of children that those arrears should be recoverable from the estate of the deceased non-resident parent.

The purpose of this consultation

- 1.9 The Government and the Commission recognise the importance of listening to, and engaging with, stakeholders when developing policy in order to benefit from their experience and expertise. The Commission conducted a six-week public consultation exercise from 29 June to 9 August 2009 on the proposals for offsetting and recovery from arrears from deceased estates. This document aims to capture the key issues and ideas raised in response to the consultation exercise.
- 1.10 The consultation document put forward a number of specific questions to help respondents frame their responses. These questions related to matters that were still in development, which could be influenced by the views of stakeholders. A list of these questions and a summary of responses is in Annex A.
- 1.11 Respondents were also invited to put forward views on any aspect of the proposals in the consultation document. A list of those received, along with the Commission's responses, can be found in Annex D.

The purpose of this report

- 1.12 As well as presenting the key issues and ideas raised in the consultation exercise, this report summarises how we have taken the responses forward. It does not include every point raised or quotes from every respondent, but every response has been read and considered to ensure this report provides a fair representation of the responses received.

Part Two – Consultation summary

- 2.1 Under the Government Code of Practice on Consultation the consultation period should normally be 12 weeks. For these regulations, ministers decided that a shorter period was appropriate because the principles of offsetting child maintenance liabilities and recovering arrears from the estate of a deceased non-resident parent had already been the subject of a 12 week consultation on the White Paper, *A new system of child maintenance*, published in December 2006. A summary of responses to that consultation was published in May 2007.
- 2.2 The consultation document for these regulations was published on the Commission’s website and hard copies of the document were available from the Commission on request. It was also advertised on the parent interest websites www.netmums.com and www.wikivorce.com.
- 2.3 There were three ways for people to respond to the consultation exercise: by post, by e-mail, or via the Commission’s website. In addition to this, members of the public were able to post their comments in the internet forums on the parent interest websites.
- 2.4 Prior notice of the opening date for the consultation period was issued to stakeholder organisations with an interest in child support issues who were encouraged to respond. A list of these organisations is contained in Annex B. In addition to some “no comments”, eight substantive responses were received from those stakeholders listed at Annex C. We are grateful to all those who responded.

What you told us

- 2.5 Stakeholders provided a wide range of views on the proposals in the consultation document. There was wide support for regulations to enable child maintenance liability to be treated as satisfied by offsetting. Respondents unanimously acknowledged the practical common sense approach to collection of child maintenance and the positive messages that these regulations will send to separated parents.

“Resolution welcome the provision of offsetting, enabling a discretionary approach to the issue of child maintenance in certain circumstances.”
Resolution

- 2.6 In response to the proposals relating to offsetting, respondents pointed out the need for the Commission to manage and monitor offsetting arrangements very carefully in order for them to be effective as a method of collection.

“It is important that, where offsetting is an issue, records are kept by the Commission of the amounts involved and the manner in which the discretion is exercised”
Justices’ Clerks’ Society

- 2.7 Responses were broadly in favour of the Commission making the decision to apply offsetting to a case without relying on the consent of either parent.
- 2.8 There was widespread agreement with the proposal to extend offsetting to cover occasional payments made between parents separately from their child maintenance payment to the Commission. Stakeholders agreed that this should only extend to payments made for specific purposes relating to the material welfare of the children, although some respondents suggested the list of reasons for which such payments might be made should be extended to cover such items as educational expenses.
- 2.9 Responses to the recovery of arrears from the estates of deceased non-resident parents were more varied. Whilst most acknowledged the logic of undertaking such action, concerns were raised about the possible negative impact on other children affected by the non-resident parent’s death. The potential for a lengthy legal process to recover child maintenance which could delay the distribution of the estate was also a matter of concern to some.
- 2.10 The following sections of this report discuss these and other issues raised in more detail.

Part Three – Power to treat liability as satisfied (offsetting)

What the consultation document proposed

- It is intended that regulations be introduced that will allow the Commission to offset liabilities on a discretionary basis. The decision whether to offset liabilities would be made by the Agency in the light of the circumstances of the individual case and with regard to the welfare of any child likely to be affected by the decision
- Offsetting is restricted to cases in which maintenance is collected by the Agency on behalf of the parent with care. Where parents have agreed to a ‘maintenance direct’ arrangement in which the non-resident parent pays maintenance directly to the parent with care, they can of course reach their own offsetting agreements and the Agency would not be in a position to monitor them.
- It is intended that the decision to offset will not require the agreement of either parent. It would be wrong to rely on the agreement of the current parent with care, who is otherwise due to receive maintenance, when arrears have accrued because he or she failed to meet their child maintenance liability in the first place.

- 3.1 Whilst stakeholders agreed that the decision to apply offsetting against a liability to pay child maintenance should be made by the Commission, it was felt there may be occasions when the wishes of the parents concerned should influence this decision:

“FNF and JUMP supports the proposals on offsetting generally speaking. Our one qualification is that we do not think that offsetting should be entirely at the Commission’s discretion”

Families Need Fathers and Jewish Unity for Multiple Parenting

“It is accepted that there have to be exceptions to the principle and in particular for instance where the (new) parent with care has extremely limited fund and not withstanding the arrears, can make out a clear need for ongoing support from the non resident parent”
Resolution

“In supporting the thinking behind these proposals, the Society would wish to stress that the interests of the child must be paramount in deciding whether to offset or recover liabilities”
The Law Society

- 3.2 There was also agreement that offsetting should only be considered where the Commission is collecting child maintenance on behalf of a parent with care:

“We acknowledge and welcome the proposal to consider offsetting only in cases which are not otherwise deemed as ‘maintenance direct’. We believe that in such cases the CSA should have no jurisdiction for the period in which maintenance direct is in place”
National Association for Child Support Action

- 3.3 Where parents agree to a payment separate from their child maintenance payment to the Commission, a number of stakeholders felt that the list of payments which the Commission would consider for offsetting should be extended:

“Where an ex-partner has caused damage to the resident parent, either physically to their home or other property, or to their or their child’s psychological well-being, the costs of these damages should also be offset against liability”
Women’s Aid Federation of England

“Parents sometimes agree that other payments are important to a child’s upbringing, for example the payment of school uniform, school dinners or school trips”. “The list should be extended to incorporate costs associated with schooling in the parent with care agrees”
Resolution

“We believe that the list of payments that could be considered for offsetting should not be an exhaustive or exclusive one. If both parties are willing to accept that payments have been made, or where appropriate evidence can be provided, and where those payments benefit the parent with care and/or qualifying child, the payment should be considered for offsetting”
National Association for Child Support Action

How we will take this forward

Offsetting parents' liabilities to pay child maintenance

- 3.4 While the decision whether or not to offset will be for the Commission, we entirely agree that the wishes of both parents should be taken into account when the decision is made. To accommodate this, the Commission will notify both parents when it is considering offsetting to invite their views. Parents will be asked to make any representation to the Commission within 14 days. After that time, any representations will be considered before the decision whether or not to offset is made and notified to both parents.
- 3.5 In addition to this safeguard, where the amount of ongoing maintenance payments is reduced to offset an amount, at any point either parent may contact the Commission and make representations to ask for the offsetting arrangement be reconsidered. In these circumstances the Commission will discuss with both parents alternative methods of collecting any outstanding child support arrears that are owed.

Offsetting payments against child maintenance liability

- 3.6 We are grateful for the suggestions from respondents for extensions to the list of payments that might be considered for offsetting against liability. However, having carefully considered the scope for this, we believe is right to limit offsetting to the list set out in the consultation document with the single addition of council tax on the qualifying child's home.
- 3.7 The intention behind the proposal to offset payments against liability is to enable the Commission to respond to unusual circumstances that separated parents occasionally face and to prevent a non-resident parent who has responded positively to those circumstances from effectively being expected to pay maintenance twice over.
- 3.8 Where parents who are using the Commission's collection service to pay and receive their maintenance agree to making more frequent or regular payments between themselves outside that arrangement, it is open to them to move to a "maintenance direct" arrangement within the statutory scheme or to establish a voluntary agreement for maintenance outside that scheme.
- 3.9 A full list of the questions regarding offsetting that were put forward by the Commission in the consultation document, and the responses received to these questions can be found at Annex A.

Part Four – Recovery of arrears from deceased’s estate

What the consultation document proposed

- Once the regulations are in force, when a non-resident parent dies and there are arrears of child support maintenance, the Commission will be able to make a claim for those arrears against the non-resident parent’s estate.
- Where the arrears are due to be paid to the parent with care, the Agency will first confirm whether the parent with care wishes the arrears to be pursued. If he or she does want a claim to be made, the Commission will consider making a claim to the non-resident parent’s executor or administrator for payment from the estate. If the parent with care does not wish to pursue the arrears no approach will be made to the estate.
- When a claim is made on the estate, it is intended that the executor or administrator should have the same appeal rights as the non-resident parent immediately before death

- 4.1 A wider variety of responses was received on the proposals to attempt recovery of child maintenance from the estates of deceased non-resident parents.
- 4.2 While most respondents supported the principle that outstanding child maintenance debt should not die with the deceased non-resident parent, there was some concern about the impact this might have on other children of the deceased:

“It needs to be remembered that the children of the deceased from a new relationship may also have financial needs. The Commission should take this into account fully in any decision on recovery”
Families Need Fathers and Jewish Unity for Multiple Parenting

“In deciding whether or not to institute a claim for arrears the Commission should have regard to each individual situation and recognise that it is an emotive time for the parent with care and the qualifying child. Further, the Commission should ensure that making a claim will not adversely impact on any other dependent children being cared for or entitled to claim from the deceased’s estate”.
The Law Society

- 4.3 Respondents welcomed the Commission’s proposals to seek agreement from the parent with care before attempting to recover child maintenance from the estate of a deceased non-resident parent:

“Women’s Aid welcomes the proposal that arrears can be claimed from a deceased parent’s estate. Women’s Aid also welcomes the proposal to confirm with the parent with care that they wish for the arrears to be pursued as further violence towards the parent with care could, potentially, be carried out by the extended family of the deceased and pose a danger to the safety of the child concerned”
Women’s Aid Federation of England

“The Society agrees the principle of recovering arrears of child support maintenance from the non-resident deceased’s estate, and further agree that arrears should not be recovered from a deceased’s estate where there is any indication that the claim would have undesirable implications for the parent with care or the qualifying child.”
The Law Society

- 4.4 Concerns were raised however, regarding the potential for the Commission to become involved in lengthy legal action to recover child maintenance from an estate, which would subsequently delay the distribution of the estate.

“The Society believes that any claim by the Commission for arrears from the deceased’s estate should be subject to a specific time limitation period. The extent of the claim and the length of time it takes for the Commission to determine whether to make a claim, taking into account the wishes of the parent with care, may have a significant impact and cause delay to the distribution of the estate. Such delay could be detrimental to the qualifying child or other dependent children who are being cared for or who are beneficiaries of the estate”
The Law Society

- 4.5 Further issues were raised concerning possible inaccuracies in calculating the correct amount of child maintenance debt that may be owed by a deceased non-resident parent:

“In view of the inaccuracies and errors for which the CSA were noted in the calculation and processing of debt and the possible consequences should doubtful arrears be taken, NACSA would not agree with the proposal of recovering arrears from the estate of a deceased non resident parent”
National Association for Child Support Action

How we will take this forward

- 4.6 Before attempting to recover child maintenance arrears owed to a parent with care the Commission will first seek the consent of the parent with care. Should the parent with care not wish to pursue the arrears the Commission will take no further action.
- 4.7 Where the arrears owed by a deceased non-resident parent are to be retained by the Secretary of State as benefit recovery, the Commission will first contact the parent with care to establish whether pursuit of the arrears is likely to have any detrimental effect on the parent with care or the qualifying child. If it appears that there may be a detrimental effect the Commission will take no further action.
- 4.8 As with any discretionary decision, in considering whether or not to pursue a claim against an estate the Commission has a statutory duty to have regard to the welfare of any child likely to be affected by its decision. When first registering a claim against an estate, the commission may be unaware of other children or the potential implications for them. If, once it has made its claim, the Commission is made aware of any potentially adverse impact on other children it will reconsider whether the claim should be pursued.
- 4.9 We are keen to avoid legal action wherever possible when attempting recovery of child maintenance debt from the estate of a deceased non-resident parent. It is certainly not the Commission's intention to delay the timely dispersal of an estate.
- 4.10 It is intended that child maintenance arrears will be treated in the same way as other debts due from an estate, for example, unpaid utility or council tax bills. In these circumstances we hope that the settlement of outstanding child support arrears will become accepted as part of the normal action to be taken by a personal representative when administering an estate.
- 4.11 Before the Commission makes a claim on an estate, the amount of outstanding debt will be thoroughly validated. This includes completing any outstanding re-assessments relating to periods prior to the non-resident parent's death. This will ensure that the case is fully updated before any recovery action is initiated and that the amount of debt to be recovered is accurate.
- 4.12 The question regarding the recovery of arrears from estates that was put forward by the Commission in the consultation document, and the responses received, can be found at Annex A.

The consultation questions (with full responses)

Question 1: Are there circumstances other than role reversal or split care in which we might consider offsetting parents' liabilities?

"We believe offsetting in both role reversal and split cases will be a positive step towards a speedier more efficient system, however we note, from para 2.5, with some concern that these new regulations are not to be debated in parliament and so it would seem, to be set in stone already.

We would express our concerns of the possible difficulties, confusion and delays that may be encountered if the calculation of debt values to offset was incorrect and further adjustments were later required. Hence any such process must be meticulous with its calculations before any offsetting is processed"
(National Association for Child Support Action)

"The Society agrees that it is appropriate to offset parents' liabilities to pay child support maintenance where role reversal occurs or split care arrangements are in place. There might also be emergency short-term arrangements, for example because of illness, in which roles are reversed which might justify some offsetting. However, there may well be others which arise where the clear justice of the case will be that one parent's contributions should be offset. The Society believes that the Commission's jurisdiction should be sufficiently flexible to take these into account.

The trigger should be that circumstances arise where one parent has been caring for a child but has not received the necessary contributions from the parent who now has care of the child. It is not necessary to prescribe the circumstances more rigidly."
(The Law Society)

"Resolution support the process of offsetting when role reversal has taken place as this represents a pragmatic solution to what would otherwise be a cumbersome process and, furthermore, has an air of fairness about it in that it would be iniquitous to ignore earlier arrears.

It is accepted that there have to be exceptions to the principle and, in particular, for instance, where the (new) PWC has extremely limited funds and, notwithstanding the arrears, can make out a clear need for ongoing support from the NRP.

It is agreed that offsetting is appropriate, for the same reasons, where there is split care.

Whilst this may be difficult to manage, offsetting may be appropriate in shared care cases, where effectively “role reversal” has occurred to a certain extent. Clearly, the situation would have to be very carefully monitored to ensure that the position was not exploited by either parent.

Consideration should also be given to cases where there has been a move by the child from one parent to another, perhaps not on a permanent basis, but for a substantial period of time.”

(Resolution)

Question 2: Are there any specific circumstances in which it might be right for us to seek the agreement of either parent before offsetting liabilities?

“Women’s Aid recommends that where there has been domestic violence in the relationship, the parents’ agreement should be sought before offsetting liabilities as it has already been highlighted that the post separation period is often a time where mothers experience an escalation of violence and fear.”

(Women’s Aid Federation of England)

“NACSA do not feel there are any specific circumstances that would require the Commission to seek the agreement of either parent and indeed having such an option may be open to abuse. However, we do believe that it would be courteous for both parents to be duly notified of any intention for offsetting and a possible right of appeal if either party disputed the action”

(National Association for Child Support Action)

“The Society does not believe that the system of offsetting liabilities would be successful if agreement was required by either parent. In many cases the parent who is to benefit from the offset would agree to the offsetting and the parent owing maintenance would be reluctant to agree. The Commission should be able to reach a decision based on the justice of the case and the interests of the child.”

(The Law Society)

“Resolution believes that, in the context of role reversal the views of the new PWC should be taken into account if the PWC can establish a prima facie case, which mitigates against the process of offsetting (i.e. where he or she can show financial hardship).

The circumstances of both parties should be considered. If the new NRP has no relevant children in their household then their views, whilst to be considered, should take second place to the views of the PWC.

Resolution believes that there would be little point in seeking the agreement of either parent in the scenario of split care before implementing the offsetting principle.”

(Resolution)

*“To clarify paragraph 3.15 of the consultation document, we understand it to mean: “ It is proposed that offsetting also be available in certain circumstances where a non-resident parent who is paying child maintenance to the Commission makes a payment to a third party directly **on behalf of the resident parent or on behalf of the qualifying child’s home.**” [additional words in bold]”*

(Families Need Fathers and Jewish Unity for Multiple Parenting)

Question 3: Is this the right list or are there other payments that might be offset against liability?

“Women’s Aid recommends that where an ex-partner has caused damage to the resident parent, either physically to their home or other property or to their or their child’s psychological well-being, the costs of these damages should also be offset against liability.”

(Women’s Aid Federation of England)

“Para 2.2 (of the consultation document) refers to situations in which the parents may agree between themselves where maintenance/arrears are repaid “in kind” and we welcome this proposal. We would assume that under such an arrangement, the decision of whether to allow the payment or not would be based upon appropriate evidence, rather than the verbal statement of one parent.

NACSA often witness cases where financial support has been offered to the parent with care, which is later disregarded by legislative definition as being deemed “maintenance”. We believe that the list of payments that could be considered for offsetting should not be an exhaustive or exclusive one. If both parties are willing to accept that payments have been made, or where appropriate evidence can be provided, and where those payments benefit the parent with care and/or qualifying child, the payment should be considered for offsetting, refer to para 2.3 (of the consultation document).

In cases where there is a disagreement of whether the payment should be used for offsetting, the Commission should use its discretionary powers to conclude, on the balance of probabilities, if the parent with care and/or qualifying child has indeed benefited from the payment. If it deems that the parent with care and/or the qualifying child has benefited from the payment, the amount should be included for offsetting again, see para 2.3 (of the consultation document)”
(National Association for Child Support Action)

“While a defined list has the advantage of certainty and will enable parents to ascertain whether offsetting will occur in defined circumstances, the Society is concerned that the list provided does not go far enough to cover relevant payments that should be offset. In the Society’s view it is unlikely to be possible or appropriate to have a complete list and doing so is likely to restrict the Commission’s ability to use discretion in individual cases.

There are a number of other examples of payment types which the Society believes should be included in any defined list such as

- *Council tax on the qualifying child’s home*
- *Child care costs for the qualifying child*
- *Educational expenditure including school excursions for the qualifying child*

However, it should be stressed that this list is not exhaustive. The Society’s view is that it is unlikely that an exhaustive list could be developed. Instead, it would be better to have criteria based on maintaining the fabric of the child’s home, contributing to the care and education of the child, together also with any other costs which are for the child’s benefit. The examples could then be illustrative. It would also be sensible to have examples of payments which would not be taken into account (for example, birthday presents).

Regard should also be had to occasions where parents have agreed that payments of certain fees or bills outside the defined list are to be offset. Such agreements will obviously not be binding on the Commission but, if satisfied that to do so would be in the interests of the child, the Commission should be able to approve and offset the payments so agreed by the parents.

The Society has reservations over the use of the word ‘exceptional’ in paragraph 3.21. The consultation paper has not clearly identified what is meant by exceptional, for example whether it is based on the nature of the payment or the frequency of payment. Further consideration needs to be made as to the definition and limits of ‘exceptional’ payments.”

(The Law Society)

“Parents sometimes agree that other payments are important to a child’s upbringing, for example, the payment of school uniform, school dinners or school trips. In this regard, whilst the stated list at paragraph 3.20 are all appropriate payments to consider, the list should be extended to incorporate costs associated with schooling if the PWC agrees. Additionally, should the parents agree that the purchase of clothes is appropriate; there may be no reason why such payments should not be offset.

It is stated that only “essential repairs” should be allowed. Where parents agree that other “payments” can be offset, there is no reason why such payments should be restricted to essential repairs. It is for the parents to agree as to the way in which financial support of a child may be provided. Resolution considers it is not the role of CMEC to indicate that such payments are inappropriate. The crucial element of this provision is that a clear agreement between the parents is documented that such payments may be considered as payments in lieu of formal child support payments. Consideration should perhaps be given to an appeals process, where one party disagrees with the way in which offsetting has been applied to their particular case.”

(Resolution)

“In general, we believe CMEC should exercise discretion. Parents may well have unusual and unavoidable costs. This list should be a guide, not definitive. Other costs that may be relevant include voluntary and other payments to the child’s school for school lunches, school equipment, school outings, and specific religious education in religious denomination school (e.g. Catholic, Jewish etc).”

(Families Need Fathers and Jewish Unity for Multiple Parenting)

Question 4: Should offsetting payments against liability be restricted to payments made by the NRP to a third party or should it also be considered where the payment is made direct to the PWC?

“NACSA would disagree with the payments for offsetting to be restricted to those made to a third party. If the payment has been made directly to the parent with care it should be considered for offsetting.”

(National Association for Child Support Action)

“The Society does not believe that offsetting should be restricted to payments made to third parties. In practice, it may well be more convenient for a payment to be made direct to the parent with care for forwarding; there is no reason why this should be prevented, since it is often likely to be in the child’s interests for such payment mechanisms to be in place, and for offsetting to apply to them.

Clearly there will need to be a proper framework for the Commission to be satisfied that payments have indeed been received and made. Guidance should be given as to the evidence needed and the extent to which consent is necessary for such payments to be made.”

(The Law Society)

“There is no reason why payments made direct to the PWC should not be considered as part of the offsetting arrangements, as long as there is a very clear understanding between the PWC and the NRP that such payments will be taken into account when child support arrears are considered.

In this regard (and for payments to a third party as above), evidence as to the agreement between the parties will be crucial, if lengthy arguments are to be avoided as to what payments have or have not been agreed for offsetting purposes. It is often the PWC that has a particular financial commitment to discharge and there is no reason why, in the payment of such liabilities, offsetting by way of a payment by the NRP should not be allowed.”

(Resolution)

“Both should be included. They both constitute a contribution to the child’s upbringing.”

(Families Need Fathers and Jewish Unity for Multiple Parenting)

Question 5: Are there any circumstances other than those outlined in paragraphs 4.2 and 4.3 in which arrears should not be pursued from a deceased non-resident parent’s estate?

“Women’s Aid welcomes the proposal that arrears can be claimed from a deceased parent’s estate. Women’s Aid also welcomes the proposal to confirm with the parent with care that they wish for the arrears to be pursued as further violence towards the parent with care could, potentially, be carried out by the extended family of the deceased and pose a danger to the safety of the child concerned”

(Women’s Aid Federation of England)

“NACSA has deliberated over this question for some time as we understand the need to ensure children receive financial support, but have concerns over the proposal to remove arrears from the estate of a deceased NRP.

The issue of debt is of particular concern to us, and forms the basis of the vast majority of complaints that we receive from the public. We see a multitude of reasons why debt has been created on the individual’s case, and yes, there are cases where the debt has accrued through dogged non compliance. It is unfortunate that we also witness an alarming number of cases where excessive debt has accrued through agency failure. Very often such debts can be in the region of £30-£50,000.

Whilst we recognise the need to satisfy the essence of the Child Support Act and its intention to provide money to qualifying children, we believe that the proposals to take arrears from an estate has many implications that could be to the detriment of the families and children of the non resident parent, particularly in cases where debt has accrued unjustly and through no fault of the non resident parent. We acknowledge how certain factors may be considered before taking the money from the estate, but this has potential to create further complication to an already complex system.

To remove any outstanding arrears from the estate of the deceased is essentially making the beneficiaries responsible for the repayment of the debt. The beneficiary may be embarking on a future of limited income from this time. To reduce the financial support that was provided through the estate, for debt that may well have accrued through no fault of the beneficiary or their partner/ spouse, we believe would be unacceptable.

Further consideration was given to the qualifying child's legal right to make any claim against the estate should they not already be a beneficiary. Consequently, the right for financial support to the child is protected within other legislation.

In view of the inaccuracies and errors for which the CSA were noted in the calculation and processing of debt and the possible consequences should doubtful arrears be taken, NACSA would not agree with the proposal of recovering arrears from the estate of a deceased NRP"

(National Association for Child Support Action)

"The Society agrees the principle of recovering arrears of child support maintenance from the non-resident deceased's estate, and further agree that arrears should not be recovered from a deceased's estate where there is any indication that the claim would have undesirable implications for the parent with care or the qualifying child.

In deciding whether or not to institute a claim for arrears the Commission should have regard to each individual situation and recognise that it is an emotive time for the parent with care and the qualifying child. Further, the Commission should ensure that making a claim will not adversely impact on any other dependent children being cared for or entitled to claim from the deceased's estate.

Finally, the Society believes that any claim by the Commission for arrears from the deceased's estate should be subject to a specific time limitation period. The extent of the claim and the length of time it takes for the Commission to determine whether to make a claim, taking into account the wishes of the parent with care, may have a significant impact and cause delay to the distribution of the estate. Such delay could be detrimental to the qualifying child or other dependent children who are being cared for or who are beneficiaries of the estate."

(The Law Society)

"Resolution are firmly of the view that arrears should be capable of recovery from the estate of the NRP.

Resolution considers that there should be an element of discretion, however, as to the extent to which a gift from NRP to the child direct should be used to discharge in whole or in part, the liability.

Resolution agrees that, in a "private" case, the wishes of the PWC should inevitably prevail in Scenario a at 4.2 (of the consultation document)

With respect to Scenario b at 4.3 (of the consultation document) Resolution agree that the PWC should be able to prevent CMEC recovering funds from an estate. Resolution would, however, wish to be informed as to the criteria which will have to be fulfilled, so far as CMEC is concerned, before the threshold of “undesirable” implications is actually met”.

(Resolution)

“If the child was now an adult and the former resident parent who had made the claim for child maintenance was no longer alive, it would be inappropriate for the arrears, or any part, to be retained by the State.

Indeed more generally we see no justification in any circumstances for the State retaining any funds from a deceased’s estate.”

(Families Need Fathers and Jewish Unity for Multiple Parenting)

Annex B

Key stakeholders invited to participate in the consultation

- One Parent Families Scotland
- Families Need Fathers
- Child Poverty Action Group Scotland
- Child Poverty Action Group
- Resolution
- Centre for Separated Families
- Independent Case Examiner
- Gingerbread England and Wales
- Parliamentary and Health Services Ombudsman
- Citizens Advice
- Ministry of Justice – Enforcement
- Ministry of Justice – Family Courts
- Department of Children Schools and Families
- Fatherhood Institute
- National Association for Child Support Action (NACSA)
- Scoop Aid (Sheffield Committee of One Parents)
- Divorce Aid
- Relate
- Women’s Aid
- Parentline Plus
- Justices Clerks Society
- National Families Mediation

- Shelter
- Magistrates Association
- Legal Services Commission
- Cafcass
- Financial Services Authority
- Step Families Scotland
- The Law Society
- Rights of Women
- NSPCC
- Women's Aid Scotland
- Save the Children
- Action for Children – Wales
- Action for Children
- Refuge
- Barnardos
- Tavistock Centre for Couple Relationships
- Family Justice Council
- National Debtline
- Advice Services Alliance (ASAUK)
- Care Group for Aggrieved Partners (CGFAP)
- Children 1st (Scotland based)
- Childrens Legal Centre
- Connexions (YP services)

- Consumer Credit Counselling Service (CCCS)
- End Child Poverty Cymru
- Family Mediation Scotland
- Federation of Small Businesses
- Jewish Unity for Multiple Parenting (JUMP)
- London Advice Services Alliance (LASA)
- Money Advice Scotland
- National Family and Parenting Institute
- One Plus One
- Scottish Law Society
- Single Parents Action Network
- Soldiers Sailors and Airmen Families Association
- www.netmums.com
- www.wikivorce.com

Annex C

Organisations who responded to the consultation

- The Office of the Independent Case Examiner
- The Justices' Clerks Society
- Women's Aid Federation of England
- National Association for Child Support Action
- The Law Society of England and Wales (Family Law Committee, Children's Law Sub-Committee, and Wills and Equity Committee)
- Resolution
- Families Need Fathers
- Jewish Unity for Multiple Parenting

Annex D

Additional questions raised by Stakeholders

Offsetting

“The Society has concerns over the lack of detail surrounding the Commission’s power to offset liabilities on a discretionary basis. The consultation fails to clearly outline the process which the Commission will follow when determining offsetting. There are a number of unanswered questions which arise from this:

- a) In what circumstances will the Commission review individual cases to determine whether to offset liabilities?*
- b) Will this be in every case of role reversal or split care, or only in certain limited circumstances- and if only in certain limited circumstances, what mechanism/s will be used to select the cases the Commission will review?*
- c) What steps are proposed for the Commission’s new powers to be clearly advertised and mechanisms put in place so that a parent may request the Commission to consider an individual case for review?*
- d) What are these procedures likely to be?*
- e) How will the Commission’s discretion be likely to be exercised?*
- f) How will relevant guidance on the operation of the Commission’s discretion be made available to parents?*
- g) What will be the factors defining the Commission’s operation of that discretion {this is developed further in answer to Question 3 below}*
- h) What steps are proposed to make decisions made by the Commission be publicly available?*
- i) How will the reasons for decisions be made available?*
- j) What appeal process will be in place for an aggrieved party to challenge a decision made by the Commission?”*

(The Law Society)

The Commission's response

We welcome these additional questions and can confirm that we have considered all these points in developing the business processes and procedures we will use relating to offsetting:

- We will design training for our staff which will help them to identify the circumstances under which offsetting may be appropriate.
- Where a case officer identifies that offsetting may be appropriate the first step will be to contact both parents to discuss this. The Commission will also consider offsetting on cases where one or both parents have contacted the Commission to request this.
- Whilst the legal provisions relating to offsetting extend to all cases, it may not be appropriate in every case. Staff will be trained to assess each case on its own merits before deciding whether to apply offsetting.
- The Commission regularly reviews its customer communication materials. As part of this process, from Autumn 2009, the Commission's leaflets will contain information relating to offsetting which will allow parents to make informed choices about methods of payment and collection of child support maintenance.
- In exercising its discretion in each case the Commission will consider; the circumstances of both parents and any child affected by the decision, the amount of child maintenance debt that is owed, and the length of time it will take to recover that debt using offsetting. Only when all these factors have been taken into account, will the Commission decide whether offsetting is appropriate to the case in question.
- The criteria used by the Commission when exercising its discretion are contained within the new regulations which will be published and available to the public on the website www.opsi.gov.uk. The regulations will come into force in January 2010.
- When both parents are notified of the Commission's intention to offset the Commission will explain why it intends to offset and how the offsetting will work.
- Both parents will then have 14 days in which to make their views as to whether offsetting should be done known to the Commission before a decision is taken and notified to both parents.
- There is no right of appeal against any decision of the Commission in relation to offsetting, other than by judicial review.

Recovery of arrears from deceased's estates

“CMEC (the Commission) needs to provide much more detail on their criteria for seeking these recoveries. For example:

If the child was now an adult would it be appropriate for the dead parent's estate to pay any money to the ex partner, who was no longer directly caring for the child? We suggest that CMEC should not seek recovery if the qualifying child is 18 years old, or 21 if in full time higher education before then.”

(Families Need Fathers and Jewish Unity for Multiple Parenting)

The Commission's response

The legal power relating to the recovery of arrears from a deceased's estate is discretionary, and we acknowledge that such action will not be appropriate in every case.

When deciding whether to pursue recovery of child support arrears from an estate, the Commission will consider the wishes of the parent with care to whom the debt is owed and the welfare of any child likely to be affected by the decision. This includes taking account of any other children of the deceased non-resident parent and not just the qualifying children.

If the parent with care wishes to have their arrears recovered from the deceased non-resident parent's estate the Commission may attempt to do this by making a claim to the executor or administrator of the estate.

Child maintenance arrears remain payable after the non-resident parent's offspring have reached the age at which they cease to be “qualifying children”. If this were not the case non-resident parents would effectively be rewarded for managing to escape their responsibilities until that time. We believe it is entirely appropriate that arrears that could be pursued when the non-resident parent was alive may be claimed from the estate.

If a parent with care dies, any money that the Commission has successfully recovered on their behalf is not retained by the state. In these circumstances, the Agency contacts the executor or administrator of the parent with care's estate to determine where this money should be paid. This will not change.

Contacts

If you have any questions regarding the contents of this document please contact:

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