

Child Support

Research Paper 94/20

31 January 1994



On 2 February the Draft Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations 1994 will be debated. The aim of this paper is to provide a background briefing on the new system as well as to describe the proposed changes and the controversies which led up to them.

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I. Background

A. Introduction

A new system of maintenance for children, known as child support maintenance, was introduced in the UK on 5 April 1993.¹ It reaffirms the principle that biological parents are financially responsible for their children regardless of whether they have ever lived together, whether the relationship between them has broken down, or whether new relationships have been formed.

The new system applies this principle more stringently than in the past. It is being phased in over four years and will eventually deal with most child maintenance cases. It will thus largely replace the discretionary powers of the courts and of the Department of Social Security with new administrative machinery, whose central features include:

- the application of a precise formula set out in legislation for calculating the level of child maintenance; and
- a Child Support Agency for assessing, collecting and enforcing the maintenance payments.

Voluntary agreements between two parents who live apart will continue to be possible and, in some cases, could be chosen as an alternative to a payment which is set and enforced by the Child Support Agency. However, if the parent with the child claims certain social security benefits, or lives with a new husband or partner of the opposite sex who does so, it will generally be compulsory for that parent to use the Child Support Agency. *[Fuller details of the new system are provided in part II section B]*

Around three quarters of lone parent families now receive one of the relevant benefits and lone parents as a whole make up about one in five of all families with children.² In addition to the children of lone parents, those who live with a parent who is remarried or 'cohabiting' may also be due child support maintenance through the Child Support Agency.

¹ This was the day that the major provisions of the Child Support Act 1991 came into force.

² General Household Survey 1992 OPCS HMSO 1994

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A substantial proportion of all children is therefore potentially affected by the new system, either because one of their parents chooses to use the Agency or because s/he is required to do so. Indeed, demographers have estimated that around half of all children born since the beginning of the 1980s is likely to spend some time growing up in a family that does not consist of both their biological parents.³

The principles of the Child Support Act 1991, which introduced this new system, had all-party support at the time the Bill was debated in Parliament but the new rules have in practice been controversial. Between April 1993 and January 1994 the Department of Social Security headquarters and the Child Support Agency headquarters received 10,750 written representations about the new system.⁴

The Act has also generated many letters of complaint to Members, prominent articles in the press, including reports of well-publicised court cases, and protests from interested organisations. In response to these, the Social Security Select Committee examined the scheme and made several detailed proposals for reform.⁵

Following the criticisms and the Committee's report, Alistair Burt, Minister at the Department of Social Security, announced that there would be several changes to the system, most of which would reduce the amount of maintenance that some absent parents have to pay.⁶ If approved by both Houses, draft Regulations⁷ would bring these changes into effect on 7 February 1994.

The impact of the new system has undoubtedly taken many by surprise. But however unexpected the impact was, the **White Paper, *Children Come First***,⁸ which announced the changes did not arrive in a vacuum. The social issues which provoked it had been publicly debated for at least quarter of a century even if there were different views about the nature of the reforms that were considered necessary. What were these issues?

³ K Kiernan & M Wicks *Family Trends and Future Policy* Family Policy Studies Centre 1990

⁴ HC Deb 25 January 1994 c 181W

⁵ Select Committee on Social Security *The Operation of the Child Support Act* 1 December 1993 HC69 of 1993-94

⁶ Department of Social Security Press Notice 93/229 22 December 1993

⁷ The Draft Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations 1994

⁸ *Children Come First: The Government's Proposals on the Maintenance of Children* Cm 1264 vols 1 and 2 October 1990

B. Lone Parents

The growth in the total number of lone parent families and the rising proportion dependent on social security benefits were undoubtedly major forces behind the changes. Although hardly mentioned in the White Paper itself, they found expression in Government speeches and reports which immediately preceded it⁹ and were emphasised by Peter Lilley, Minister for Social Security, at the launch of the Child Support Agency.¹⁰

Although the total number of lone parent families more than doubled during the 1970s and 1980s - to 1.3 million in 1991,¹¹ the recognition of lone parents as a distinct group with distinct problems was already leading to public concern in 1969 when the Finer Committee was set up by Richard Crossman, then Secretary of State for Social Services. The Finer Committee produced a substantial and influential report which was published in 1974.¹² It is still the only official, source of information about lone parents families which attempts a comprehensive examination of the issues to which they give rise.

Although issues relating to lone parent families are of long-standing, there have also been forces which have made them difficult to deal with, as the Finer Report explained:

"...we have not found our task a simple one. We have had to investigate and form conclusions about many matters which are the subject of moral, religious and social controversy; to explore the interaction between law, social security and social administration, and the no man's land between their managing institutions; and to concern ourselves with human relationships at personal, sexual and familial levels."¹³

Nevertheless the report made recommendations for improving the financial position of lone parent families, including the creation of a new social security benefit (which was never introduced) to be called Guaranteed Maintenance Allowance. This was justified on the grounds that:

"with few individual exceptions, fatherless families suffer from special financial hardship and deprivation in our society."¹⁴

⁹ Kim Greener *Child Support Bill [HL]* Library Reference Sheet 91/6

¹⁰ Child Support Agency Press Release 93/67 7 April 1993.

¹¹ Population Trends Spring 1993 OPCS HMSO

¹² Report of the Committee on One-Parent Families (chairman Sir Maurice Finer) Cmnd 5629 July 1974

¹³ Finer Report (see above) para 2.54

¹⁴ Finer Report (see above) para 4.217

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A particularly influential aspect of the Finer report was its concern, not only with the low income of the lone parent, but also with the limited income of what would now be called the 'absent parent', and his consequent inability to fully support two families:

"[the committee's enquiry] has established beyond a doubt that most one-parent families could not subsist on the proceeds of the maintenance orders, or on any amount to which it would be possible to increase them while permitting the liable relative himself to subsist without assistance."¹⁵

The relative poverty of lone parent families has been of continuing concern; it was also mentioned in a recent report commissioned by the Department of Social Security:

"Previous research has demonstrated that lone-parent families are likely to have lower incomes than two parent families, that they tend to be concentrated in the lowest part of the income distribution, that their position has deteriorated in the 1980s relative to other families with children and possibly also in real terms.

The incomes of lone parents in this sample were also concentrated at the lower end of the distribution¹⁶

Throughout the period, lone parents' relatively low standard of living has been weighed against other concerns, such as fairness towards two parent families and the desire to control public expenditure.¹⁷ The balance between different concerns has varied over time and, in recent years, increasing emphasis has been placed on the cost to the taxpayer of providing benefits for lone parent families. Indeed, one of the explicit aims of the new system of child maintenance is to shift more of the cost of children from the general taxpayer to the families of children whose parents live apart.¹⁸

C. Family Law

The extent to which changes in family law have followed or have encouraged demographic changes - or both - is debatable but there is no doubt that over the past 25 years the reform

¹⁵ Finer Report (see above) para 4.217.

¹⁶ Jonathan Bradshaw and Jane Millar *Lone Parent Families in the UK* Department of Social Security Research Report No 6 HMSO 1991

¹⁷ For a recent example where the cost of lone parent families is specifically mentioned, see *The Growth of Social Security* Department of Social Security HMSO 1993.

¹⁸ See, for example, Peter Lilley statement, Child Support Agency Press Release 93/67 7 April 1993

family law has been a live issue and that there have been major changes to the law. At the beginning of the period, The Divorce Reform Act 1969 (now incorporated into the Matrimonial Causes Act 1973) made it easier to obtain a divorce and, in theory at least, removed the concept of fault and replaced it with irretrievable breakdown of marriage as the sole ground for divorce.

In more recent years, The Family Reform Act 1987 removed most the remaining differences between children whose parents were married and those who were not, as well as banning the term 'illegitimate' from subsequent legislation, and the Children Act 1989 (which incorporated the former) is often considered as the most comprehensive piece of legislation that Parliament has ever enacted about children.¹⁹

Children Come First was itself announced as part of a Government programme to review and reform the family justice system in England and Wales²⁰ and, most recently, in December 1993 the Lord Chancellor's Department issued a consultation paper on mediation and the ground for divorce which illustrates the desire felt by many to adapt the law further to current conditions.

A specific issue which was much debated over the years, was the fragmentary nature of the court system and the legislation dealing with maintenance for children. The Finer Report had proposed a 'family court' and, for lone parents receiving benefits, a simple administrative system for chasing the parent liable to pay maintenance. This was not the same as the proposal which has now been implemented but it does illustrate the concern with the previous system and the consideration of an administrative, rather than a court-based, system as a solution to the problem.²¹

In recognition of the problem, The Children Act 1989, which rationalised much of the other legislation dealing with children, also included provision for maintenance. However, as it did not abolish the old legislation, some commentators felt that it might not have achieved the same degree of rationalisation in this area.²² In any case, by the time the Children Act was implemented in October 1991, the Child Support Act which was to set up a completely different system had been passed.

¹⁹ It is referred to as such the Department of Health's guide to the act, *An Introduction To The Children Act HMSO* 1989

²⁰ *Children Come First* see above, Foreword

²¹ For a discussion of this issue, see also Lenore J Weitzman and Mavis Maclean **Economic Consequences of Divorce** Clarendon Press Oxford 1992

²² Roger Bird *Child Maintenance: the Child Support Act 1991* Family Law 1993

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The legislation covering those benefit recipients was different again and the Department of Social Security had its own system for chasing relatives liable to pay maintenance under this legislation. However, ultimately, it, too, had to go through the courts if it could not obtain a voluntary agreement from the liable parent.

The practical problems that the new system is intended to remedy were listed by Tony Newton, then Secretary of State for Social Security, during the Second Reading of the Child Support Bill as follows:²³

"It is very widely - I might almost say universally - agreed that the present system of child maintenance is not working as it should. It is fragmented. It involves several different levels of courts, together, in many cases, with offices of my Department. It is often too slow. For example, a quarter of cases in magistrates courts take more than 70 days, or more than two months. It is unreliable. Payments not infrequently fall into arrears, the caring parent has to ask the courts to take action, and it can take weeks, or much longer, to re-establish payment. It is increasingly ineffective. In 1989, only 23 per cent of lone parents on income support received regular maintenance, whereas 10 years before the figure was some 50 percent. Lastly, it is inconsistent. People cannot predict with any certainty what their liabilities will be, and some variations in the levels of awards appear to have no systematic relationship to differences in circumstances."

Research published with the White Paper showed wide variation in the maintenance awards made for children. It also showed that these did not appear to be related to the families' income in any obvious and consistent way.²⁴ However, under the old legislation the courts were supposed to take into account a wide range of factors, including, for example, the financial needs, obligations and responsibilities of the parents and it is not clear how these may have influenced their decisions.

D. Family Values

The changes in patterns of behaviour and in family law have also been accompanied by debates about family values. Notable among these has been the recent emphasis on the idea of parental responsibility which lies behind several recent pieces of Government legislation. One example is The Criminal Justice Act 1991 which came into force on 1 October 1992. It has been described by Michael Jack, Minister at the Home Office as follows:

²³ HC Deb 4 June 1991 c178.

²⁴ *Children Come First* (see above) Volume Two Chapter 4

"[The Act] strengthened the powers of the courts to make parents more accountable. Courts can now bind over the parents of juvenile offenders to look after their children properly where they are satisfied that this would prevent further offending; and, order parents to attend court with their children and to pay their children's fines."²⁵

Another example is The Children Act 1989 which explicitly defines the concept of parental responsibility as all the rights, powers, authority and duties of parents in relation to a child and his property. The Department of Health's guide to the Act refers to the value of this concept which, it says, more accurately reflects the fact that the true nature of most parental rights is of limited powers to carry out parental duties.²⁶

In this broad sense the child support White Paper's opening statement that:

"Every Child has a right to care from is or her parents"

fits into a general trend although the definition of a parent and the philosophy behind the idea of parental responsibility is not necessarily the same in all the legislation. For example, The Children Act rests on the belief that parental agreement and cooperation are preferable to court orders and compulsion by public authorities whereas the Child Support Act is based on the belief that the government needs to intervene in order to ensure that parents take financial responsibility for their children.²⁷

The employment of mothers and the extent to which it might conflict with their parental responsibilities has also been an issue. Within this was the concern over the fact, apparent at the time the White Paper was published, that the level of employment of lone mothers with children was a good deal lower than the level of employment of married mothers.²⁸ The government's view, expressed in the White Paper *Children Come First*, is that:

"Families with children have to make decisions about how best to combine work with responsibilities for caring for their children. For lone parents the choice available are more restricted because they must undertake the childcare responsibilities themselves. The choice is, and must be, a personal one. Children whose parents work certainly gain some advantages. The income of the household is higher. The family's dependence on Income Support is reduced or eliminated. Income Support provides an essential income for people

²⁵ HC Deb 15 April 1993 c724W

²⁶ An Introduction to the Children Act 1989 Department of Health HMSO 1989

²⁷ See also part II section B of this paper

²⁸ The issue of lone parents and employment was discussed in a research a paper commissioned by the Social Security Advisory Committee : *Joan Brown Why Don't They Go To Work? Mothers on Benefit* HMSO 1989; and in Jonathan Bradshaw and Jane Millar *Lone Parent Families in the UK* Department of Social Security Research Re[port No 6 HMSO 1991

who are, for the time being, unable to provide an income for themselves. It is not intended as a normal way of life for a period of many years for people of working age. And if the period of dependence on Income Support is reduced, then the children themselves are likely to gain a more positive attitude to work and independence. Most important of all, most lone mothers say they wish to work either now or at some time in the fairly near future, commonly once their children are established at school."

The White Paper therefore included separate proposals intended to help lone parents choose employment although there is some controversy about the effectiveness of these measures.²⁹ The child maintenance proposals themselves are also intended to help those receiving Income Support who wish to return to work by providing "portable" income which continues to be paid to the lone parent when in work.

E. International Influences

There has been increasing interest in the social issues and policies of other countries and interest in the "divorce revolution" is no exception.³⁰ In its research prior to publication of the *White Paper Children Come First*, the Department of Social Security surveyed the literature on child support provision in several other countries and supplemented this with visits to Australia and to Wisconsin in the USA.³¹ It is therefore worth noting some of the features of these systems.

One of the major issues raised by the Wisconsin system, which had also been raised in the UK by the Finer Report, was the appropriate balance between a judicial system treating each case uniquely and a more 'bureaucratic' or 'administrative' system characteristic of taxation and social insurance systems. A new system introduced in the State of Wisconsin in the 1980s brought in a State-wide formula for calculating child maintenance and collection by immediate deduction of the relevant amount from the wages of the non-custodial parent. This shift towards an administrative system is having an influence on policy in the rest of the United States and was taken into account by the Australian reforms at the end of the 1980s.³²

²⁹ See, for example, part II section C

³⁰ See, for example, *Economic Consequences of Divorce: the international perspective* Ed. Lenore J Weitzman and Mavis Maclean

³¹ *Children Come First* (see above) vol 2 chapter 7: Overseas Maintenance Systems

³² Irwin Garfinkel *Child Support Trends in the United States* chapter 10 in Weitzman and Maclean (see above)

The Australian scheme arose out of considerations very similar to those which preceded the reforms in this country. It was designed to address the following four problems: inadequate levels of child maintenance; too few people covered; difficulties of enforcing the maintenance; and the need to integrate the child support system with the social security system. It was introduced with bi-partisan support by the Child Support Act 1988 and the Child Support (Assessment) Act 1989 and came into operation in two stages. It has features which resemble, but also some important differences from, the UK system.³³

Stage 1 came into force on 1 June 1988, with the following features: a Child Support Agency within the Australian equivalent of the Inland Revenue whose task was to collect the child support awarded by the courts through a system similar to PAYE; amendment of the Family Law Act 1975 so that, when setting child maintenance, the courts no longer take account of the custodial parent's eligibility for benefit; and amendments to the social security law which include a requirement that, where reasonable, custodial parents should take action to obtain child maintenance from the non-custodial parent (the requirement may be waived, for example if there is fear of violence from the non-custodial parent).

Stage 2 came into effect on 1 October 1989: the Child Support Agency calculates the amount payable under a formula which is set in legislation (and collects it as above); and the Child Support Agency also collects payments for people who do not wish to make their own arrangements for direct payment between the two parents. Stage 2 was not retrospective and applied only to parents who separated after 1 October 1989 or had a child after that date. Accordingly, a large number of families remain permanently outside Stage 2.

A Child Support Evaluation Group set up to monitor the changes did recommend extending the Stage 2 system to all children (but on a voluntary basis for Stage 1 custodial parents and with some entitlement to object for Stage 1 non-custodial parents). However, the Government did not adopt the recommendation and, in doing so, confirmed its intention that administrative assessment be entirely prospective. This has now been confirmed by a decision of the Full Court of the Family Court of Australia.³⁴

Other features include: for the non-custodial parent - the possibility of reduced maintenance payments in exchange for property, asset or other lump sum transfer; and, for the custodial parent receiving a means-tested benefit - the right to keep some of the maintenance before it is taken into account as income. There are limits to lump sum deals, however: if the

³³ Details of the Australian system were obtained from the Australian High commission and from the Australian Child Support Agency

³⁴ Stage 1 case of Beck and Sliwka [FLC 92-296]

custodial parent applies for a social welfare benefit, 75% of the usual child maintenance is guaranteed regardless of any transfers previously made and reductions agreed. In practice, this appears to have deterred non custodial parents from entering into such arrangements as the Child Support Agency has not yet had any cases where previous agreed reductions have had to be overturned.

A recent development in Australia is the extension of private payment arrangements to custodial parents on benefit. They are given a once and for all opportunity at the start to have payments made to them direct by the non-custodial parents outside of the Child Support Agency collection system. But if payments are not made on a regular basis, the custodial parent is then required to register with the Child Support Agency.

Another recent development is the introduction of the Child Support Review Office to allow reviews of assessments made under the formula to be undertaken through an informal, cost free administrative process if strictly limited grounds exist. Before, anyone who was aggrieved by the outcome of a child support application assessment had to apply to a court for a review which was a costly process.

II. From Announcement To Implementation

A. The New System Emerges

The debates described above tended to reflect the concerns of different sets of interest groups and to be the province of different government departments. For example, the poverty lobby and the Department of Social Security were concerned with the debates about poverty and increasing public expenditure on lone parents whereas the legal profession, the Home Office and the Lord Chancellor's Department were more likely to be concerned with the issues relating to the courts.

Even now, the new system of child maintenance can be viewed from different angles. From one, it is an extension of the old rules for people receiving state benefits; from another, it introduces a standard formula for the settlement of private disputes in place of the discretionary powers of the courts. But, taken as a whole, the novelty of the new proposals was the attempt to pull together the various approaches and the results have been described as, "the most far reaching social reforms to be made for forty years."³⁵

³⁵ Select Committee on Social Security, *The Operation Of The Child Support Act*, 1 December 1993, HC 69 1992-93.

The first substantive indication of the Government's plans³⁶ was given on 18 July 1990 when Mrs Thatcher, then Prime Minister, gave the Pankhurst Lecture to the 300 Group. She said that:

"- We will set up a new child support agency which will have access to the information necessary to trace absent parents and make them accept their financial obligation.

- We will move to assessing maintenance through a standard administrative formula which will take account of the parent's ability to pay, of the cost of bringing up a child - and the right of that child to share in their parent's rising living standards. Complicated cases may still have to be referred to the courts but the existence of such a formula will help in these cases too.

These proposals will help lone parents - who are often overwhelmed by the sheer scale of the task of making absent parents face up to their responsibilities. The whole process will be easier, more consistent and fairer. Our aim is to give the lone parent back her morale and her confidence. Then she will be able the better to use and develop her own abilities for the benefit of her children and herself. She can then break out of the cycle of loneliness."

Within a year, the proposals for a new system of child maintenance had reached the statute book. The details of the proposals and the principles behind them were set out in a White Paper, *Children Come First*,³⁷ published in the Autumn of 1990, whose contents are summarised the first part of this paper. The rest of the timetable was as follows:

CHILD SUPPORT BILL [HL] 1990-91

Lords stages:

First Reading 14 Feb 1991

Second Reading 25 Feb 1991

Committee 14, 19, 21 Mar 1991

Report 25, 29 Apr 1991

Third Reading LH 16 May 1991

Commons Stages:

First Reading 17 May 1991

Second Reading 4 Jun 1991

Committee SC A 11 Jun - 2 Jul 1991

Report and Third Reading 18 Jul 1991

Commons Amendments in the Lords

22 Jul 1991

ROYAL ASSENT: 25 Jul 1991, CAP 48 1991

³⁶ See *Child Support Bill(HL)*, Library Reference Sheet No 91/6, 22 May 1991.

³⁷ *Children Come First: the government's proposals on the maintenance of children*, Cm 1264 vols I and II, October 1990.

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The principle of the Bill had cross-party support. For example, on Second Reading in the Commons, Archie Kirkwood, Liberal Democrat said:

"The concept behind the Bill - which is that parents should be responsible for their children's maintenance - is entirely unexceptionable. It is only right and proper that we should support it. No father should escape his responsibilities. However, perhaps the Department has adopted a somewhat knee-jerk approach" ³⁸

and Joan Lestor, summing up for the Labour Party said:

"Nobody has objected to the principle, which is, wherever possible, to make parents financially responsible for their children. The reservations and objections that have been expressed have dealt with the application of that principle and the way in which it is felt to inhibit and adversely affect certain sections of the people to who it might be applied."³⁹

However, there were heated controversies about certain aspects of the proposals and Opposition support was largely conditional.⁴⁰ In particular, Michael Meacher put forward a reasoned amendment on behalf of the Labour Party which set out a list of problems facing lone parents and which criticised the Bill for failing to deal with them.⁴¹

One of the most controversial issues was the penalty for lone parents receiving certain state benefits if they refused to allow the Agency to pursue the other parent on their behalf or if they refused to supply information which would enable the Agency to trace the other parent. The penalty for refusing to supply information was removed by the Lords⁴² and then reinstated at the instigation of the Government during the Bill's passage through the Commons.⁴³ The Government then introduced amendments which exempt claimants from these requirements if there is a risk that the claimant, or any child living with her(him), would suffer harm or undue distress as a result of the requirement.⁴⁴

³⁸ HC Deb 4 June 1991 c212

³⁹ HC Deb 4 June 1991 c234

⁴⁰ For reactions to the Bill and issues raised during its passage through the Lords, see Library Reference Sheet 91/6, Child Support Bill by Kim Greener, 22 May 1991.

⁴¹ HC Deb 4 June 1991 c 194

⁴² HL Deb 19.3.91 c546

⁴³ SC Deb 2.7.91 c236

⁴⁴ SC Deb A 13.6.91 cc 42-46

Other issues which resulted in concessions included extra payments for disabled children and the formula for better-off parents (which was criticised for being too lenient). The Government responded to the former by bringing in an amendment to allow the courts to make orders for extra maintenance towards expenses related to a child's disability⁴⁵ and to the latter by announcing that the proportion of income to be deducted would be raised from the proposed 15% to 25%⁴⁶ (but see latest changes).

Many other issues were raised, mostly with little or no success. They included the treatment of the family home, the powers of inspectors, the right of appeal to a court, the availability of legal aid, the possibility of exemption for parents receiving Disability Working Allowance, payments to be made by a parent claiming Income Support and the formula's treatment of second families.⁴⁷

More fundamentally, the Bill was opposed on the grounds that it was a taxing rather than a child support measure⁴⁸ and the formula was considered incomprehensible.⁴⁹ The Bill was also called was a 'legislative skeleton' with too many regulation making powers, of which only a small number were subject to the affirmative resolution procedure.⁵⁰

The Act came into force on 5 April 1993 and was followed by numerous Regulations. At its launch Peter Lilley, Secretary of State for Social Security made a statement about why it was needed:

"There has been a vast increase in the number of lone parent families.

Twenty years ago there were 570,000 lone parents bringing up 1 million children.

Now there are 1,300,000. And they are bringing up over 2 million children. But fewer than one in three receive any regular maintenance.

As a result, more lone parents are dependent on benefits. Seven out of ten now depend on Income Support, compared with less than four out of ten, twenty years ago.

⁴⁵ SC Deb A 18 June 1991 cc87-8

⁴⁶ SC Deb A 18 June 1991 c 95

⁴⁷ See Library Reference Sheet 91/6 *The Child Support Bill* by Kim Greener 22 May 1991 for debates in the Lords and reactions to the Bill..

⁴⁸ See, for example, Lord Houghton's speech in which he criticised it as a taxing, rather than a child support bill

⁴⁹ See, for example, Lord Simon 25 February 1991 c817

⁵⁰ Lord Mischcon, Opposition Spokesman HL Deb 25 February 1991 c 780

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The total cost to the taxpayer of supporting lone parent families reached almost £5 billion last year. Many taxpayers meeting this bill are themselves bringing up their own children on modest incomes. They resent paying out to support children of parents who may have higher incomes than themselves. "

The policy therefore had three objectives:

- "- to give children the right to support from both parents
- to reduce the burden on taxpayers
- to reduce the disincentive to work facing lone parents (since maintenance is retained when the lone parent returns to work, not reduced pound for pound of earnings like Income Support.)"⁵¹

B. The New System Before The Changes Due On 7 February 1994

Note: In order to avoid confusion, in this and the following sections, the terminology and conventions of the Child Support Agency are used. In particular: 'parent with care' is the term used to describe a parent who lives with a child for whom maintenance is needed - that parent is referred to as 'she'; 'absent parent' is the term use to describe a parent who does not live with the child concerned - that parent is referred to as 'he'. In practice either type of parent may be of either sex and a child may see a great deal of both parents even though they are separated.

This paper does not attempt to cover all the complexities of the Child Support Agency's powers which might affect a particular case. There are now several legal textbooks and other guides which do so. The Agency itself produces several documents containing varying degrees of detail although some Members have found that even the 72 page pamphlet does not cover many of the specific questions that their constituents have raised. This section instead attempts an overview which concentrates on relatively broad issues over which there appears to have been uncertainty or confusion.

⁵¹ Child Support Agency Press Release 93/67, 7 April 1993.

1. Jurisdiction and Timetable

The Child Support Act 1991 covers the UK and only the UK (which means that the child and each of the parents must be resident in the UK).⁵² In Great Britain, the new system is administered by the Child Support Agency and, in Northern Ireland, it is administered by the Child Support Agency for Northern Ireland. These are both government agencies, the former being the responsibility of the Department of Social Security and the latter of the Northern Ireland Health and Social Services Department.

Although Scotland has a separate tradition of family law, the new system applies there with only slight differences, the most notable of which is that in Scotland a qualifying child aged 12 or over can apply for a maintenance assessment.⁵³ Some changes to family law in Scotland have also been necessary in order to bring it into line with the child support legislation.⁵⁴

The new system is concerned with the biological or adoptive parents of a child where at least one of them is 'absent'. It therefore generally covers parents who live **apart** rather than those who live together and covers previous rather than current relationships. This definition of a parent is not the same as someone who has parental responsibility under the Children Act 1989 (which allows non-biological parents to acquire parental responsibility), although it is similar to the definition of someone who would have been liable to maintain a child under Income Support legislation. The definition of a child is also similar to the one used for Income Support (and other benefit) purposes, that is, someone under 16 years old or, if aged 16-18, someone who is in full-time secondary education.

Some situations are therefore outside the Child Support Agency's remit. In particular the setting of maintenance will still fall within the province of the courts in some cases, for instance where the 'absent parent' is abroad or where the maintenance is to 'top-up' the amount decided by the formula (eg where it is for educational expenses or for the extra costs of a disabled child), where maintenance is sought from a stepparent, and where spousal (as opposed to child) maintenance is sought. The courts will continue to deal with property settlements as these are not covered or taken into account by the formula.

⁵² Child Support Act 1991 section 44.

⁵³ The Child Support Act 1991 section 7

⁵⁴ See, for example: *Child Maintenance: The Child Support Act 1991* Roger Bird, chapter 10 on a Scottish Perspective, Butterworth 1993

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With only a few such exceptions, the Agency is intended to take over the role of the courts in setting child support maintenance by April 1997. By that date, all parents for whom child support maintenance is an issue will be able to apply to the Agency and some will be compelled to do so. In the meantime, the Agency has a timetable for taking on cases. The framework of the timetable is covered by legislation⁵⁵ and within that framework the Secretary of State for Social Security has discretion over the way that it is applied.

Those for whom the Child Support Agency is (or eventually will be) compulsory are parents with care who receive Income Support, Family Credit or Disability Working Allowance. Other parents can choose to use the Agency although, if one parent does, the other may not see the result as a matter of choice. Voluntary agreements between the parents will still be possible but once the Agency has jurisdiction over a certain type of case, parents will no longer be able to have recourse to the courts for setting their maintenance payments.

There is an exemption from the compulsory aspect of the provisions if agency staff are satisfied that pursuing maintenance would cause "harm or undue distress" to the parent with care or to any child living with her⁵⁶ (see above: **section A. The new System Emerges**). If this exemption does not apply, a reduction in benefit, often known as the 'benefit penalty' can be imposed.⁵⁷

The framework of the timetable is outlined below:

- **From April 1993:**
where there is no current court order or written agreement in force, parents may apply to the Child Support Agency; in addition, if a parent with care receiving a relevant benefit and with an existing maintenance order or agreement applies before she is due to be taken on, her case will be treated sympathetically;⁵⁸
- **Between April 1993 and March 1996:**
cases where the parent with care is receiving one of the relevant benefits will be phased in - the Secretary of State has discretion over the are phasing and, in practice, the Agency has said that it is giving priority to those cases where maintenance is already in payment.⁵⁹

⁵⁵ Child Support Act 1991 section 8,9,10; Child Support (Maintenance Arrangements and Jurisdiction) Regulations SI 1992/2645; Child Support 1991 (Commencement No3 and Transitional Provisions) Order SI 1992/2644

⁵⁶ Child Support Act section 6

⁵⁷ Child Support Act section 46

⁵⁸ Alistair Burt Department of social Security Press Release 93/190 1 November 1993

⁵⁹ See, for example: *For Parents Who Live Apart* Child Support Agency leaflet CSA 2001 January 1993

- **Between April 1996 and March 1997:**
all non-benefit cases with an existing maintenance arrangement will be phased in alphabetically according to the surname of the parent with care.

2.The Formula

The formula for calculating the amount of child support maintenance due is not discretionary and is not related to the behaviour of the parents. There is no appeal against it in the sense that it is a rigid formula which applies in all cases and it is set out in legislation.⁶⁰ However, this does not mean that there is no system of appeal against decisions of the Agency.

If someone is dissatisfied with a decision about their application or assessment, for example, he or she may apply for a review of the decision of the Child Support Officer. A different Child Support Officer will then examine the decision in question. After this there is a right of appeal to a Child Support Appeal Tribunal on a point of fact or law, then to a Child Support Commissioner, on a point of law only, and from there to the Court of Appeal (the Court of Session in Scotland). Ultimately an appeal could go to the House of Lords.⁶¹ This system closely parallels the appeal procedure in the social security benefit system.

The formula itself is complicated as it involves several stages and levels of calculation. At a basic level, it can be viewed as containing three stages. An outline is set out below for a simple case where the parent with care has no income and the absent parent is not on Income Support⁶² (Absent parents on Income Support pay £2.20 in 1993-94 unless they are exempt - e.g. they have a child living with them or qualify for one of the specified sickness and disability benefits.)

Stage 1: Maintenance Requirement for the Child

This depends on how many children there are and their ages. It is intended to represent the cost of raising a child and is based on Income Support rates. It is only the first stage in the calculation and does NOT represent the amount that an absent parent has to pay. It includes the following (where applicable) minus Child Benefit. Weekly rates shown are for 1993-94:

⁶⁰ Child Support Act section 11 and schedule 1; Child Support (Maintenance Assessment and Special Cases) Regulations SI 1992/1815

⁶¹ Reviews are covered by section 18 and appeals by section 20-25, 46 and schedule 4 of the Child Support Act as well as Regulations made under the Act: The Child Support Appeal Tribunals (Procedure) Regulations SI 1992/2641 and The Child Support Commissioners (Procedure) Regulations SI 1992/2641..

⁶² A simple outline of the formula is provided in the Child Support Agency's leaflet *A Guide to Child Support Maintenance* CSA 2008 and in the Child Poverty Action Group's *Child Support Information Pack*.

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For each child aged under 11:	£15.05
11-15:	£22.15
16-17:	£26.45
aged 18:	£34.80
Family Premium	£ 9.65
Lone Parent Premium	£ 4.90
For care of child	£44.00

Stage 2: The Proposed Maintenance

This takes into account the absent parent's income. In order to calculate proposed maintenance, it is first necessary to calculate 50% of *assessable* income.

Assessable income only takes into account the absent parent's own income. It is calculated from his net income - ie total income minus tax, and national insurance & half of any contribution to a pension scheme - from which is deducted an amount for personal expenses, known as exempt income. The latter is simply the equivalent of the Income Support adult personal allowance - £44 (plus, where applicable, severe disability premium or carer premium), reasonable housing costs, and, if any of the absent parent's own (but NOT step)children live with him, the Income Support allowances for these children.

If 50% of this assessable income is less than the maintenance requirement, then the proposed maintenance is 50% of the assessable income. If it happens to be the same, the proposed maintenance is the same as the maintenance requirement. If it is more, then the proposed maintenance is more than the maintenance requirement; it is the maintenance requirement plus 25% of remaining assessable income up to a maximum.

Stage 3: Protected Income

In many cases the result of the Stage 2 calculations will be the amount that the absent parent has to pay. However, there is a safety net level of income below which an absent parent's income is not supposed to fall. This is known as the 'protected' level of income. It is based on Income Support levels plus a small margin. At this stage the second family is taken into account. This is the only stage at which a second partner's income is relevant (except for exempt income for joint children) and the only stage at which the costs of an absent parent's new partner and stepchildren are taken into account.

Protected income is calculated by adding up the personal allowances for either a single adult or couple as appropriate, the personal allowances for all the children in the household, any relevant premium(s), reasonable housing costs, council tax liability and £8 a week (margin over Income Support). In addition, if total family income is higher than the result given by this basic calculation, 10% of any excess income is added (as an extra margin) to give total protected income.

If paying the proposed maintenance would reduce the absent parent and any new family to a level of income below the protected income, the child maintenance payable is decreased so that the absent parent is left with the protected level of income. It is sometimes assumed that the second wife's income has played a major part in the overall calculation. In fact, her income cannot raise the level of child support maintenance due above the 'proposed' amount although, by entering into the 'protected' income calculation, it can prevent the bill from being reduced.

In the outline set out above, the parent with care is assumed to have no income. This is often likely to be the case as those who receive Income Support are treated as having no income. It is also the case that such parents do not benefit directly from the maintenance payment as it is deducted pound for pound from their Income Support entitlement. For those receiving the other means-tested benefits (eg Family Credit) there is a small disregard before the payment starts to affect their benefit entitlement. According to the rules of these benefits

income is not in any case deducted pound for pound (for Family Credit eg the deduction rate is 70 pence in the pound). However, the payment is worth most to those parents with care who are outside the means-tested benefit system altogether.

3. Operation: Facts and Figures

The legislation governing the Child Support Agency gives it very little discretion in its operations. Not only is the formula laid down in the Act and Regulations but so are many of the areas which have proved controversial, such as the information about parents which it can reveal⁶³ and the date from which maintenance is due.⁶⁴ Some of the criticisms which have been made of the Agency are therefore criticism of the law rather than of its operations.

As far as the Agency's operations are concerned, it is still relatively early days. Most of its work has so far been concentrated on maintenance applications, enquiries about income and assessments, and it is over these that most of the controversies have arisen. It largely remains to be seen how its powers of collection and enforcement will be viewed. Nevertheless some facts and figures can be given which are illustrative of the Agency's targets and operations to date.

At the beginning of 1994, the Child Support Agency had 4,937 members of staff and its budget for 1993-94 was £119.8 million.⁶⁵ The targets set out in its Business Plan published in April 1993 included annual benefit savings of £530 million; to arrange maintenance for 60% of the parents with care making eligible applications to the Agency; and that 65% of clients should regard the service as satisfactory, as measured by an independent national survey.

Average payments under the formula are expected to be £45 to £50 a week as compared with average court payments prior to 5 April 1993 of £25 to £30 a week.⁶⁶ This rise partly explains the expected benefit savings, about which further information has been given in Parliamentary Answers and in statements by Ros Hepplewhite, chief executive of the Agency, to the Social Security Select Committee. In particular, she told the committee that:

⁶³ See, for example, HC Deb 31 January 1994 c603 and HC Deb 17 December 1993 c 1059W

⁶⁴ see section C below

⁶⁵ HC Deb 24 January 1994 c903W and 14W

⁶⁶ HC Deb 26.1.94 c268 W

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"We have been set a target in our first year of saving £530 million in social security benefits. That is actually a very complex calculation. It is based to some extent on the cases we inherited from the existing system - we used to pay money through the social security liable relative process. We also have a degree of savings in that figure which is notional, in the sense that it relates to people who withdraw a claim from benefit, for instance, because of the maintenance claim. We also have quite a substantial proportion which relates to receipts, actual maintenance paid under the new system. It is really a very complex arrangement to reach that £530 million total, and at the present time I can tell you that our calculated benefit savings are about £100 million."

In relation to the distribution of the £530 million savings, Alistair Burt, Minister for Social Security, told the Committee that:

"It is estimated that some £50 million of maintenance will be retained by parents with care and about £480 million will be recovered through reduced benefit payments."

By the end of December 1993 the Agency had cleared 201,400 cases, of which 121,600 were cases which had resulted in maintenance assessments. This compares with 36,000 assessments made in the period to September 1993 (the date for which information was available at the time the Social Security Select Committee conducted its enquiry) and therefore shows the increasing pace of the Agency's work. The number of maintenance application forms sent out was 710,900 and 527,000 over the two periods respectively.⁶⁷

Ros Hepplewhite told the Social Security Committee that 96% of the maintenance application forms that had been issued to parents with care at that time were to those receiving one of the relevant social security benefits and that around half had no maintenance in payment. This proportion was expected to change over a full year to about two thirds with no maintenance in payment.

According to government statements, current information about lone parents no longer living on social benefits as a result of the Agency's work is not available but in the long run it is estimated that increased payments of child maintenance under the Child Support Act will result in some 60,000 to 80,000 lone parents moving off Income Support. It is expected that the majority of these will move on to Family Credit. Of lone parents on Family Credit, it is estimated that around 10,000 will move off this benefit in the long run.⁶⁸

⁶⁷ *Child Support Agency Statistical Information*, deposited in the House of Commons Library (period covered is from 5 April 1993).

⁶⁸ HC Deb 17 December 1993 c 1058W (estimates based on 1987-89 Family Expenditure Survey data).

By the end of September 1993, there were 6,600 cases where the requirement for parents with care to cooperate was an issue and, in 4,900 of these, the Agency accepted that the parent with care had good cause not to cooperate. Of those where good cause was not accepted, 22 were referred to the Benefit Agency for the prescribed 'benefit penalty'.⁶⁹

C. Controversies

New groups have sprung up in order to campaign against the Child Support Act and several of the established charities, concerned about its impact, are actively monitoring it. The Law Society has also taken an active interest in the issue and lobbied for fundamental changes. However, the aim of this section is to give an overview of the issues that have been raised rather than to detail the views of particular groups. The views of such groups about the changes that are due to come into effect on 7 February are summarised, where available, in part III B.

It has been noted by several commentators that most of the issues raised during the passage of the Child Support Bill through Parliament were concerned with the problems likely to be faced by the parent with care, in particular lone parent families. In contrast, most of the issues raised since implementation have concerned the absent parent. Indeed, it is possible to characterise the debate as a battle between these two interest groups and the debate is sometimes polarised in this way in the press. For example:

Following a spate of prominent reports in much of the media, *The Times*, on 8 October 1993 carried an article which pitted the views expressed by divorced fathers in recent campaigns against the argument that these campaigns were obscuring the fact that, for years, single mothers and their children had borne the true cost of family breakdown.⁷⁰ However, many have also viewed the debate as a three cornered one, which was presented by one commentator in the following way:

"..the real questions must surely be, how can the Child Support Act aim to pay maintenance to the caring parent, leave the absent parent with enough to live on (particularly where there is a second family involved) and save the Treasury £480 million?"⁷¹

⁶⁹ HC Deb 5.11.93 c 583W

⁷⁰ This argument was put forward by Malcolm Wicks, Labour Member for Corydon North West and previously Director of the Family Policy Studies Centre.

⁷¹ Diana Sutton *Hitting the Softest Target* Community Care 11 November 1993

Many of the specific arguments that have surfaced were raised by the Social Security Select Committee and have been commented upon by the Social Security Advisory Committee (SSAC)⁷² even though some of the pressure groups do not consider that these committees' actual conclusions go far enough. This section therefore concentrates on the reports of and the evidence quoted by these two committees. The two are in one sense complementary as the SSAC's comments are largely raised in broad terms whereas the Social Security Committee is more specific.

SSAC's view is that such a major structural and cultural change could not be expected to be free from problems. It noted that the size of assessments under the formula provoked "something of an outcry" during the latter half of 1993 although it was argued that this came mainly from absent parents who had previously made unrealistically low payments that did not reflect the true costs of caring for a child:

"Nevertheless, the assessed amounts clearly came as a shock to some people who were faced immediately with a greatly increased demand which some appeared to find genuine difficulty in paying."

SSAC also noted that as the parent is liable for the assessed maintenance from the day that the enquiry form is issued, delays for whatever reason will mean that some people are already faced with a sizeable debt for arrears by the time they are informed of their assessment.

More difficult to gauge, according to SSAC, is the likely effect of the new procedures on family relationships. It says that long-established maintenance arrangements are being altered, reviving past disputes and, possibly, re-opening old wounds. Absent parents who have previously had little contact with their children may seek to renew relationships when required to pay, or to pay more, maintenance. SSAC concludes that, inevitably, although many families are gaining from the new arrangements, for others the application of the new rules will be stressful and disruptive.

SSAC also summarises the views of some other commentators. It refers particularly to the view that the new system is unfair on account of the formula's inflexibility - perceived most accurately where there has been a 'clean-break' settlement and because it makes no allowance for expense, such as the cost of visiting the children or school fees, and does not take account of outstanding debts from the relationship that the absent parent may still be paying.

⁷² Social Security Advisory Committee Ninth Report HMSO 1993

The SSAC's specific recommendation relates to lone parents receiving Income Support:

"Concern has also been voiced that there is no disregard of maintenance paid to those parents with care who are receiving income support. The Committee has discussed this issue in the past. We remain of the view that there is a case for such a disregard."

On the other hand, its earlier concern about the possible effect of the new requirement for lone parents claiming benefits to co-operate in naming the absent parent or face a benefit reduction had "not given rise to the anticipated difficulties", probably due to "the careful guidance and training given to staff on these matters."

Many of the issues raised by SSAC were also raised by the Social Security Select Committee. One of these concerns the 'clean break' over which there has been some confusion. In his evidence to the Committee, Alistair Burt explained the position:

"It is not, and never has been possible for parents to have a clean break from their children. It has always been possible for the parent with care to return to the courts to re-open the issue of periodical maintenance payments, or to seek an upward variation in the amount of an earlier order. We recognised that in practice such action was not often taken."

What is in practice usually meant by this term is the transfer of the matrimonial home to the ex-partner in return for a reduction in maintenance liability rather than a pure 'clean break.' The issue has been of concern because, unlike the Australian system described in part I, the formula does not directly take account of property settlements (although it does so indirectly and without any necessary equivalence by allowing for current housing costs).

It is evident from the information collected by the Social Security Committee that the most vociferous protests have come from those already paying maintenance. At the time the committee was taking evidence, it had, according to its chairman, received 400 unsolicited letters, all of which were from people already paying maintenance. It is thus the element of retrospection which is at the heart of much of the recent controversy.

The Act is not strictly speaking retrospective but it undoes previous court decisions, that is when the Agency officially takes on a case, the outcome overrules previous maintenance arrangements, including those subject to a court order. In this sense it is sometimes regarded as semi-retrospective although the new assessment in fact bites from the day that the maintenance assessment form is issued. This is in contrast with the Australian system described in part I.

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The Social Security Committee made many detailed proposals for reform but it prefaced these with a general statement of support for the principles of the new child maintenance scheme. It took the view that it was right for the Government to increase the level of financial support paid by parents who are no longer together and that it was right that the costs to the taxpayer, which might be caused when families split up leaving one partner to bring up children on a low income, should be reduced wherever possible. Its specific recommendations were as follows:

Recommendations and Conclusions of the Social Security Committee:

Ticks = in December statement

X = not among changes announced in December statement

- ✓ The Government should consider raising the £8 marginal element contained in the protected income to £20, £30 or even £40.
- ✓ ½ The scope of the modified assessment arrangements [phasing in] should be extended. The Government should consider allowing the rules to apply to assessments that are above £60, and phasing in a higher assessment over a period of time greater than one year.
- x A standard addition should be automatically made to the absent parents' exempt income if that parent is a step-parent.
- x No distinction should be drawn between stepchildren and natural children in the allowance of housing costs in exempt income.
- ✓ The Government should consider reducing the element in the Maintenance Requirement that relates to the person with care once children have reached the age of 11.
- x If the absent parent returns the Maintenance Enquiry Form within two weeks of issue, liability for maintenance should begin from the date of assessment, rather than the date of issue.
- x The Child Support Agency should make it a priority for assessments to be made as quickly as possible. The range of assessments is six to twelve weeks and every effort must be made to achieve the lower end of that range.
- x The figure of 28 days for appeals should be included in the citizen's charter for the Agency. If the appeal is decided in favour of the applicant, a reimbursement of the excess paid should be made within 5 working days. This should also be part of the citizen's charter for the Agency.
- x There should be a full explanation of the calculation of benefit savings and of the target figure of £530 million. These should be published as soon as possible by the Department of Social Security.
- x The Agency should make information [on the number of appeals taking longer than 28 days] available as soon as possible.
- x In all cases the Child Support Agency should ensure that the names of children shown on its documentation are the children's correct legal names.

- ✓ In cases where the Agency is not collecting maintenance on behalf of the parent with care, no collection fee should be payable.

III Changes Due To Come Into Effect 7 February 1994

A. Alistair Burt's Statement 22 December 1993 And The Draft Regulations

On 22 December, the Department of Social Security issued a Press Notice in which Alistair Burt, Minister for Social Security, announced changes to the new child maintenance scheme. These are due to be put into effect on 7 February if the Draft Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations 1994 are approved. These Regulations are to be debated in the House of Commons on 2 February 1994.

The main proposals, with the phrasing and in the order in which they were announced, are listed below, together with Alistair Burt's comments about them and any further detail contained in the Press Notice. The number of most relevant paragraph in the Regulations is also listed.

The Change: Phasing in, over up to 18 months, of the new amounts of maintenance for absent parents with second families who already had formal maintenance agreements under the old system, to give them time to adjust to their new liabilities.

Comment: "I accept that it may be difficult for absent parents to adapt rapidly to paying increased maintenance particularly where they have second families and they have planned their finances in the expectation that the existing maintenance agreements was fixed for the time being. That is why I have decided to extend the limited current provision for phasing in new amounts to all absent parents with second families and on existing maintenance agreements."

Further Details: Absent parents with second families and with an existing formal maintenance agreement, whose maintenance is assessed at £60 or over a week, will have their liability phased in over 18 months, in six monthly steps of £20 or 25% of the difference between the old and new liability if this is higher. Currently, help is restricted to absent parents with second families whose new liability is less than £60 a week.

Regulation: Part III.

The Change: a) Helping absent parents on protected lower incomes by a substantial increase in the minimum income they may keep after paying maintenance.

Comment: "The present formula contains a provision intended to ensure that absent parents remain better off working than relying on income support. The maintenance assessment is

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reduced to ensure that the absent parent retains a level of protected income at least some £8 a week above what he and his second family would be entitled to on income support. I propose to nearly quadruple the margin above income support to £30."

The Change: b) Increasing the additional proportion of income just above the protected minimum which absent parents may keep to strengthen work incentives.

Comment: I propose to nearly quadruple the margin above income support to £30. In addition absent parents with incomes a little above the protected income level will retain at least 15% (instead of 10% at present) of any income above protected income."

Further Details: The margins in protected income, which ensures that absent parents and their new families stay above income support levels, will be increased. The basic margin will rise to £30 above the level of the income support that the absent parent and his new family would get if he were out of work. The additional margin rises to 15% of the difference between that amount and the total family income. At present the margins are £8 and 10% respectively.

Regulation: 4 (4) and (5).

The change: Reducing the additional amounts asked of absent parents who have paid the full amount of basic maintenance, where there are only one or two children involved.

Comment: "A provision of the present formula which has led to some of the biggest increases in maintenance assessments is the 'additional deduction'. This is the requirement that absent parents whose assessable income is more than sufficient to pay the basic maintenance requirement must pay an additional amount equal to 25% of their excess assessable income. I propose to reduce this to 15% where there is only one child eligible for maintenance, and to 20% where there are two children. It will remain at 25% where there are three or more children."

Further Details: The additional payments made by absent parents who can afford to make a contribution above the basic maintenance requirement will be reduced from 25% to 15% where there is only one child and to 20% where there are two.

Regulation: 4(3)

The change: Reducing the amount paid for the care of the children as they grow older, by a quarter at 11 and a further quarter at 14.

Comment: "The maintenance formula recognises that children need adult care. But it does not at present acknowledge any reduction in the care needs as children grow up. I propose to reduce the care element by a quarter at age 11 and to half its present level at 14."

Further Details: A staged reduction as children get older, in the parent as carer element in the formula. This provides for the costs of caring for the child, rather than the costs of their food, clothes and so on. The carer element in the maintenance requirement will be reduced to 75% of the maximum when the youngest child is aged 11 and to 50% at age 14.

Regulation: 4(2)

The change: Waiving the £34 a year collection fee charged to absent parents where the parent with care is on benefit, unless the Agency is actually collecting or enforcing the maintenance.

Further Details: The Agency will no longer charge a collection fee to the absent partner of a parent with care on benefit if maintenance has not been collected or enforced.

Regulation: 5

Other Changes: Further changes include: allowing the use of deduction from earnings orders for "interim maintenance assessments" issued in cases where the absent parent refuses to give the Child Support Agency proper information to calculate maintenance; allowing the full cost of endowment mortgages (including with profits element) for mortgages under £60,000 to be set against income when new maintenance assessments are made or yearly reviews undertaken.

B. Reactions To The Changes

Although many organisations have been active in campaigning against provisions of the Child Support Act, only a few have responded to the Library's request for reactions to the changes announced in December. Those that did are listed below, starting with the Labour Party and the Liberal Democrats. The other organisations are listed in alphabetical order.

Comment by Donald Dewar Shadow Secretary of State for Social Security⁷³

".....The changes announced today by Government do not amount to the fundamental review that is required. If Ministers think that this package will allow them to close the book on the Child Support Agency problem, they are wrong. The Select Committee usefully highlighted areas of concern. I welcome the adjustments borrowed from the Report that the Government is now to introduce. In particular, the increase in Exempt Income and the alteration in the care element within the maintenance calculation will be of help. They do not, however, strike at the fundamental causes of discontent.

There are two major areas which have not been tackled and must be part of any satisfactory reform package.

Ministers have made no attempt to build flexibility into an inflexible financial formula. There is nothing here to deal with individual case where a major financial or property settlement has been made, which is simply ignored by the Agency. These adjustments offer no hope where special circumstances exist as, for example, when a parent faces substantial costs simply to exercise access and cannot do so and meet his Agency assessment.

⁷³ News Release issue by the Labour Party Campaigns and Communications Directorate

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There should be a right of appeal to a Review Officer who could if the circumstance justified it, order a departure from the standard formula. This has worked well over a number of years in Australia. It is an essential safeguard. The system need a safety valve if it is to be seen to be fair.

The other crying shame is the failure to put the interests of children first. The Government's own figures make the case. Almost all the maintenance collected is going to the Treasury. In the Agency's first year of operation, £530 million will be gathered in. Only £50 million will go to families. The harsh truth is that those most at risk are the least likely to benefit. There should be a disregard which gives the parent with care dependent on Income Support and her children at least some share in the maintenance paid. To claw back pound for pound from benefit makes a mockery of the claim that the system is there to help the child."

Press Release issued by Archy Kirkwood, Liberal Democrat Spokesman on Social Security

"These changes are welcome as far as they go, but they are too little, too late. They will not be enough to save the Act. In particular, there is no provision to allow discretion through an appeal to the courts in cases where the formula works unfairly.

This is still 'formula fetishism'. There's no case for upsetting settlements which are acceptable to both parents. The Act should not be operated except where one parent asks for it. There will be no accurate assessment of the real financial position of absent parents until their actual costs (including travel to work and access to their children) are adequately provided for.....

There is no attempt to remove the requirement that mothers name the father of their children, and no explanation of why 11,000 women have disappeared from benefit lists since this measure was introduced. We must know what has happened to those women. Until we know, we may suspect that the profession in which this Government has done most to increase employment is the oldest."

Child Poverty Action Group

"These amendments will not rectify the situation, and yet will cause a lot of extra work for the CSA. We hope that it will be possible to persuade the Government to put forward further and more far-reaching amendments. Even if a fair and effective child support scheme were to be achieved, it alone would not solve the problem of children living in poverty in this country..."

On the specific changes: the increase in protected income is welcomed; instead of reducing the 'parent as carer' element of the maintenance requirement as children get older, CPAG argues that it should have been removed completely; the use of a lower deduction rate (instead of the current 25%) once the maintenance deduction has been met is opposed on the grounds that it adds to the regressive nature of the formula; the phasing in provisions for

those with second families are welcomed but CPAG believes that the short-term transitional protection must be extended to all low income absent parents with previous agreements and that the phasing in period for second families should be extended to three years.

CPAG proposes: a small maintenance disregard for parents with care on income support in order to balanced the package and ex-gratia payments to parents with care until their benefit is re-assessed (as Family Credit is only reassessed every 6 months even if the level of maintenance falls).

It also calls for more fundamental reform: the requirement for benefit claimants to co-operate with the Agency should be abolished and the benefit penalty removed; the formula should be radically reformed so that it is no longer regressive and takes more account of the needs of second families; property settlements should be offset in part against the child maintenance assessment; and the £2.20 deduction from the income support of absent parents should be abolished.

Families Need Fathers Press Release

"These minimal reforms are so out of tune with the realities of divorced and separated families as to be risible when dealing with such a corrosive and socially damaging law. They are like trying to throw a few half-gnawed crusts of bread at major famine.....

None of the major faults of this law are addressed by these proposals. The 'clean-break' question has been wilfully neglected and the vital issues of the Act's perverse pressure to further estrange children from their non-resident parents, to push unemployed parents below subsistence income levels and to prejudice the employment prospects of non-resident parents have been dismissed without comment.....

These proposals are little more than a way of disguising the uneasy truth that the Child Support Act is, in reality, a tax on the children of divorce in which the children' welfare is of very minor concern."

The National Association of Citizens Advice Bureaux. Views provided verbally:

"The phasing in arrangements are welcome but do not go far enough because they exclude second families and voluntary informal payers.

The protected income changes are useful but because the level of Income Support is so low, it will still provide a low level of protection.

The reduction in the higher additional payments will relieve pressure on some absent parents but it continues the regressive structure of the formula.

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The reduction in the care element as children get older is logical but at a time when the costs of children go up, it will go down. In addition, the age bands proposed do not match those of Income Support.

The changes to the collection fee are logical."

National Council for One Parent Families Press Release

"NCOPF welcomed the government's announcement on changes to Child Support Regulations to raise the protected income for low income absent parents and to phase in payments for those with an existing court order. NCOPF are glad that the Government did not accept the Select Committee proposal to abolish entirely the care element in the formula for children over 11. The council argued that children over 11 still needed supervision and care and should not be left on their own. Although Government reduced the amount of money in the formula for care it still recognises an important principle."

Director Sue Slipman commented: "Although lone parents will lose out to some extent, the majority will still be better off than under the old system. However, the announcement does not deal with one of the major causes of complaint when property has been transferred in so called 'clean break' settlements."

Network Against the Child Support Agency Letter to the Department of Social Security

"...I am extremely disappointed that the Government have missed a golden opportunity to demonstrate awareness of public concern. More importantly they show disregard for the damage to the social structure of the country and total disregards for law and order.

We now have over 120 groups nationally opposed to this recent legislation, and we are also supported by many thousands of people not affected by this Act. The common theme from those not affected is initially total disbelief that the government could have introduced such a destructive and uncaring Act."