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# **Child Support provisions in the *Child Support, Pensions and Social Security Bill***

**Bill 9 of 1999-2000**

This Research Paper covers the provisions on child support in the *Child Support, Pensions and Social Security Bill*, which is due to have its Second Reading on 11 January 1999. These provisions are contained in Part I of the Bill.

Pension provisions of the Bill (other than war pensions) are covered in Library Research Paper 99/109. The social security, war pension and National Insurance provisions are covered in Library Research Paper 99/108.

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## Summary of main points

The child support provisions in the Bill are the result of the Government's fundamental review of child support for parents who live apart. The results of the review were first published in a Green Paper in July 1998 and later, in slightly amended form, in a White Paper in July 1999.

The Bill is part of a package of reforms. Although it would implement many of the proposals in the White Paper and contains a few additional ones, many of the reforms in the White Paper are being or will be implemented by other means.

The reforms introduced by the Bill include:

A new formula:

- A simpler formula for calculating child support based only on the non-resident parent's income and the number of his children in basic cases but with reduced and flat rates of child support for those on lower incomes.
- Removal of many of the existing exemptions for paying child support.
- Provision for taking second families into account while retaining priority for first families.
- More flexible arrangement for parents living apart who share care of a child
- Provision for variations from the formula in exceptional circumstances but extra high travel to work costs will no longer qualify

A range of measures to ensure compliance and to enforce child support:

- Claims for Income Support and Income-based Jobseeker's Allowance by parents with care will automatically count as claims for child support.
- It will be an offence to fail to supply information in relation to child support when required to do so or to supply false information
- Where parents were married to each other between the date of the child's conception and the child's birth, paternity will be assumed unless the contrary can be proved in court
- Disqualification from driving will be a new sanction that can be used as an alternative to imprisonment

*Note: The Child Support Act 1991, under which the Child Support Agency was established in 1993, used the terms 'absent parent' and 'parent with care'. The former has gradually been replaced in practice, and now in the Bill, by the term 'non-resident parent.' This paper generally uses the term that would have applied in the period concerned. For convenience, it also follows the convention that non-resident parents are referred to as 'he' and parents with care as 'she' although the legislation does not draw a distinction according to the sex of the parent.*



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## I Background

From a relatively uncontroversial beginning in the early 1990s, the Child Support Agency (CSA) has developed into one of the most criticised government activities of recent years.<sup>1</sup> Dissatisfaction with the CSA had reached such a pitch that, soon after coming to power, the present Government decided that it must undertake a “*root and branch review*” of the system.<sup>2</sup> Part I of this Paper briefly charts the development of the CSA up to the publication of the current Bill, which is an outcome of that fundamental review.

### A. Aims and Origin of the Child Support Agency

The first definite announcement of the previous Government’s intention to introduce the Child Support Agency (CSA) was given on 18 July 1990, when Mrs Thatcher, then Prime Minister, gave the Pankhurst Lecture to the 300 Group. She emphasised the benefit to lone parents of the proposed system:

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 of Margaret Thatcher’s announcement, the proposals had reached the statute book.<sup>3</sup> Details of the proposals and the principles behind them were set out in a

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<sup>1</sup> See Part B of Part I of this paper.

<sup>2</sup> *New Ambitions for our Country: A New Contract for Welfare*, Cm 3805, page 60, March 1998.

<sup>3</sup> *Child Support Bill [HL] 1990-91* (all debates in 1991): Second Reading, HL Deb 25 February; Committee, HL Deb 14,19,21 March; Report, HL Deb 25, 29 April; Third Reading HL Deb 16 May; Second Reading, HC Deb 4 June; SC A, 11 June – 2 July; Report and Third Reading 18 July; Commons Amendments in the Lords, HL Deb 22 July; The *Child Support Act 1991* received the Royal Assent on 25 July 1991

White Paper published in October 1990.<sup>4</sup> Ensuring that biological parents were financially responsible for their children regardless of whether they had ever lived together, whether the relationship between them had broken down, or whether new relationships had been formed was to be a fundamental principle of the new system.<sup>5</sup>

Reducing lone parents' dependence on Income Support by helping them to take a job while leaving the choice up to them was another aim described in the White Paper. This was in turn linked to another aim: saving the taxpayer money. At the launch of the CSA in April 1993, Peter Lilley, then Secretary of State for Social Security said:

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.

The total cost to the taxpayer of supporting lone parent families reached almost £5 billion last year. Many taxpayers meeting this bill are bringing up their own children on modest incomes. They resent paying out to support children of parents who may have higher incomes than themselves.<sup>6</sup>

Yet another reason given by the Government for establishing the CSA was the inadequacy of the old court system for dealing with child maintenance where parents lived apart from each other. The new system replaced two pre-existing systems or sets of legislation, both ultimately dependent on the courts: the private law provisions for dealing with child maintenance, which relied on the courts to deal with disputed cases, and the "liable relative rules" of the Department of Social Security. Although the Department had its own system of obtaining child maintenance from these relatives, it was also dependent on the courts if it could not obtain a voluntary agreement.

A central feature of these court-based systems was that the powers of the courts were discretionary. In theory this meant that they could deal with the variety of individual circumstances but in practice, according to the Government, there had been many disadvantages. These were listed by Tony Newton, then Secretary of State for Social Security during the Second Reading of the Child Support Bill:

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

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<sup>4</sup> *Children Come First: The Government's Proposals on the Maintenance of Children*, Cm 1264 volumes I and II, October 1990

<sup>5</sup> *Children Come First: the Government's proposals on the maintenance of children*, Cm 1264, October 1990

<sup>6</sup> Child Support Agency Press Release, 93/67, 7 April 1993



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 per cent. 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.<sup>7</sup>

The two central changes that the 1991 Act introduced were:

- *Replacing the old discretionary powers of the courts with the application of a precise formula, set out in legislation, for calculating the level of child maintenance*
- *Setting up a Child Support Agency for assessing, collecting and enforcing the maintenance payments*<sup>8</sup>

The new system retained links with the old social security system by basing the formula on Income Support, a benefit for people out of work received by many lone parents.<sup>9</sup> This

#### **Key Elements of the Formula**

**Maintenance Requirement:** This was based on Income Support for lone parents with children. It was not the amount of maintenance payable.

**Exempt Income:** This was an allowance for a parent's personal expenses based on Income Support, housing costs and an absent parent's own children but not his stepchildren.

**Assessable Income:** This was *net income* minus *exempt income*.

**The Maintenance Assessment:** This was the amount payable unless *Protected Income* came into play. It was generally 50% of *Assessable Income* unless this 50% was more than the *Maintenance Requirement*, in which case more was payable, subject to a maximum. The *Assessable Income* of the lone parent was also taken into account and could, if high enough, affect the outcome.

**Protected Income:** This was based on Income Support and other living costs for the absent parent and any new family of his, including stepchildren and partner, plus a margin. If paying the *Maintenance Assessment* would have reduced the absent parent's income below this level, the amount payable was reduced.

**Note:** The formula did not apply to absent parents receiving Income Support. Subject to exceptions, they paid a standard rate.

was done partly because the rates for families with children were supposed to bear some relationship to the cost of raising a child (if only a minimum one) and thus provide a basis for the amount of maintenance due. The system was also designed so that the income of absent parents would not fall below Income Support levels and thus provide an incentive for some to leave their jobs and

<sup>7</sup> HC Deb 4 June 1991 c178

<sup>8</sup> *The Child Support Agency* in Great Britain under the *Department of Social Security* and the *Child Support Agency for Northern Ireland* under the *Northern Ireland Health and Social Services Department*.

<sup>9</sup> Since the CSA came into being, Income-based Jobseeker's Allowance, which is in many ways similar to Income Support, has been introduced. Most of the references in the formula to Income Support would now also include Income-based Jobseeker's Allowance.

start claiming benefit themselves. Although it is highly simplified, the outline of the formula shown in the Box gives some idea of the complexity involved. This basic framework for calculating child support has remained the same although there have been numerous additions and alterations to it since April 1993.

Other key features (not necessarily new) of the system included those listed below.

- ***UK jurisdiction***

Jurisdiction was restricted to the UK: the child and each of the parents had to be resident in the UK for the CSA to have power to deal with a case.

- ***Take-over from the courts within four years***

The system was to be phased in over four years and, except for a few situations, was intended to take over the role of the courts in setting child maintenance by 1997.

- ***Restricted role of the courts***

Pre-April 1993 courts orders continued to have effect until the CSA took over the case. But from April 1993 it was no longer possible for parents to turn to the courts for child maintenance except for a consent order (that is where parents reach a voluntary agreement and have that confirmed by a court) or in a range of limited circumstances. These included additional child maintenance in excess of the maximum payable under the CSA rules, child maintenance for the extra costs of education or training and for the extra costs of a disabled child or where one of the parents was living abroad.

- ***Previous court orders overturned***

Where the CSA did take over the case of someone who had previously been receiving maintenance under a court order, the court ruling was overturned and the CSA rules applied. This is often referred to, rightly or wrongly, as the “retrospective” aspect of the CSA.

- ***Other court powers unchanged***

The courts’ powers in relation to other aspects of relationship breakdown remained unchanged, for example in relation to contact and residence (access and custody), spousal maintenance, property division and related parentage disputes.

- ***Benefit penalty for parent with care***

Parents with care of the child receiving one of the means-tested benefits Income Support (for those out of work), Family Credit or Disability Working Allowance (for those in

work) could be required to co-operate with the CSA and could suffer a reduction in benefit if they refused unless they could show good cause for not co-operating.

- ***No gain for parents with care on Income Support***

A parent with care in receipt of Income Support (most of them at the time) did not benefit financially from child support as it was deducted at a rate of 100%, that is £ for £ from her benefit. There was a disregard of up to £15 of child support in calculating income for the other means-tested benefits, including Housing Benefit and Community Charge Benefit. As extra income received by claimants of these other benefits was withdrawn at a rate of less than 100%, these claimants did gain some financial benefit from the child support.

- ***Public Expenditure Savings***

As a result of the fact that child support was taken into account as income for the purpose of means-tested benefits, where a claimant received one of the relevant benefits, particularly Income Support, the child support payment reduced the public expenditure costs of providing the benefits. However, the overall impact on public expenditure depended on other factors as well, including the running costs of the CSA.

- ***Complexity***

Simplifying the CSA system in order to give the bare bones, as the preceding account has done, inevitably leaves what many believe to be its main feature: its complexity

## **B. Problems and Changes**

Only a few of the problems that emerged when the CSA was in operation would have been predicted from the debates on the 1991 Act as it made its way through Parliament. The Bill had a relatively easy passage, with all-party support for the principle that parents should be made financially responsible for their children.<sup>10</sup> Disagreements with the Conservative Government's approach on Second Reading were expressed in the form of a *Reasoned Amendment* rather than outright opposition although there were disagreements about some issues.

The Labour Party, with support from Liberal Democrats, concentrated on the problems of *lone parents*. In particular, the *Reasoned Amendment* put forward by Michael Meacher on behalf of the Labour Party, set out a list of problems facing lone parents and criticised the Bill for failing to deal with them. The Amendment said:

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<sup>10</sup> See, for example, Archy Kirkwood (Liberal Democrat) HC Deb 4 June 1991 c 212 and Joan Lestor (Labour Party) HC Deb 4 June 1991 c 234

This House declines to give a Second Reading to a Bill which, while providing that absent parents should contribute to the support of their children, leaves lone parents on Income Support not one penny better off, makes lone parents worse off where they receive maintenance just above Income Support levels and thus lose access to passported benefits, allows maintenance payments to be disrupted if the absent parent defaults, does not take account of property settlements which could lead to an increase in orders for the home to be sold, leaves unclear in which cases the lone parent will be exempt from the requirement to help the agency trace the absent parent and therefore from the penalty of loss of benefit imposed on the caring parent, and does not tackle more serious problems facing lone parents and their children, notably the provision of better child care facilities.<sup>11</sup>

Within less than a year of the CSA's coming into force, the Government of the day was proposing a range of measures in response to the flow of complaints that had arisen from *absent parents* about the new system.<sup>12</sup> Some of these complaints had reached the *Social Security Advisory Committee (SSAC)* and the *Social Security Select Committee* and each of these bodies produced reports raising the problems of the CSA before the end of 1993.<sup>13</sup> These were just the start of a tide of protests, some fundamentally challenging the existence of the CSA; others calling for specific changes; others simply documenting the problems. Not least among these were the CSA's own annual reports, which documented the extent to which it was meeting, or failing to meet, the targets set by government, including the eventual abandonment of the benefit savings target.<sup>14</sup>

That the CSA did provoke angry protests was clear from the early reports. For example, SSAC said that the size of the assessments under the formula provoked "*something of an outcry*" during the latter half of 1993 although it 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.

The Select Committee's evidence showed that the most vociferous protests came from those already paying maintenance. At the time it was taking evidence for the report, it had, according to its chairman, received 400 unsolicited letters, all of which were from people already paying maintenance. This suggested to many people that it was the "retrospective" element of the system, that is the overturning of previous court decisions, to which many objected.

The general direction of the first set of changes, announced in December 1993, was to reduce the costs of the system to the absent parent. These implemented some but not all

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<sup>11</sup> HC Deb 4 June 1991 c 194-5

<sup>12</sup> Department of Social Security Press Release 93/229, *Alistair Burt announces help with Child Support Agency bills*, 22 December 1999

<sup>13</sup> Social Security Advisory Committee, *Ninth Report*, HMSO 1993; Social Security Select Committee, *The Operation of the Child Support Act*, HC 69 of 1993/94, December 1993

<sup>14</sup> See Appendix I for a select bibliography.

of the changes suggested by the Social Security Committee. Many of the changes were very detailed and it would require detailed knowledge of the system to understand them. They included, for example, help for absent parents on lower incomes by an increase in the margin above Income Support used for calculating *Protected Income* (see Box).

Criticisms of the CSA on account of administrative delays and other administrative problems, whether attributed to the policies that it was implementing or faults in its organisation or the interaction between the two, soon multiplied. The volume of such complaints to the *Parliamentary Commissioner for Administration* led him to produce two reports specifically on the CSA. He was particularly concerned not only at the inefficiencies of the CSA but also at the difficulties people were having in obtaining redress from the Agency when the shortcomings had been admitted. Eventually, in 1997 an independent case examiner began to deal with complaints about the CSA.<sup>15</sup> But in the run-up to the appointment, Ann Chant, head of the CSA said that it was receiving 200 complaints a week from MPs alone.<sup>16</sup>

A second set of both policy and administrative changes was announced in a White Paper, *Improving Child Support*, published in January 1995.<sup>17</sup> The *Child Support Act 1995* and Regulations followed, incorporating other changes announced around this time as well. Some of the other changes were introduced by administrative means. Like the first set of changes, many of these were very detailed and many were mostly, but not exclusively, designed to reduce pressure on the absent parent although there were also changes designed to help the parent with care.

Among the many measures announced in the 1995 White Paper or around this time were:

- A system of discretionary *departures* from the formula, to deal with some of the special circumstances of individual cases. For example, a property or capital settlement made before the introduction of the CSA or extra high travel-to-work costs might reduce the amount of child support due. *Departures* also enabled a parent to challenge an assessment on the grounds that the other parent's declared income was inconsistent with that parent's lifestyle.
- The introduction of a *cap of 30% of net income* on the amount of maintenance that an absent parent could be assessed to pay (33% in the case of arrears).
- The introduction of a *Child Maintenance Bonus* (that is a credit of maintenance that parents with care could build up while out of work, which would be paid as a lump sum if they started work of at least 16 hours a week). This was a step in the direction

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<sup>15</sup> Social Security Select Committee, as above pp 24-25

<sup>16</sup> HC 95/96 330-I para xi Minutes of Evidence 1 and 5

<sup>17</sup> *Improving Child Support*, presented to Parliament by the Secretary of State for Social Security, Cm 2745, January 1995

of introducing a disregard of child support for those receiving Income Support but it was only available when the parent with care stopped receiving Income Support.

- *Indefinite deferral* of CSA jurisdiction over cases with a pre-1993 court order unless the parent with care was in receipt of one of the relevant benefits. This meant the abandonment for the time being of the aim that the CSA would be able to cover virtually all child support cases.
- Access to reduced rate *DNA tests* in order to help deal with cases where paternity was contested.
- *Changed procedures for reviews*, including the abandonment of automatic yearly periodic reviews in favour of two yearly reviews.

These changes were introduced at different dates. For example, the Departures system was not introduced until December 1996 but by the General Election of 1997 these and many other detailed changes had been introduced. Specific changes, such as the abandonment of automatic periodic reviews from December 1998 (apart from those in the pipeline), continued to be introduced under the present Government even before the proposals for overhauling the system currently before Parliament.

But the criticisms continued, not only in letters to Members of Parliament but in the media as well. On 2 November 1997, the Sunday Mirror carried an article typical of many, which began: “*Since the Child Support Agency was set up in April 1993, it has become one of the most hated institutions in Britain.*” The article’s headline ran: “*The CSA Hounds Innocent Dads, Wrecks Families And Has Caused 40 suicides...So Why The Hell Is It Still Here?*”

Groups had sprung up to campaign against the CSA in principle and to encourage parents not to co-operate with it in practice. One of the most active, the National Association for Child Support Action (originally the Network Against the Child Support Agency), at one time had a website that contained tips on avoiding CSA payments. It included suggestions for parents to collude. For example, as the threat of violence towards the parent with care was likely to be taken by the CSA as a good reason for it not to chase the absent parent, the website suggested providing in evidence damage to an ex-partner’s house, such as a broken window.<sup>18</sup>

In 1998, Anne Parker, the Independent Case Examiner, criticised the CSA for being largely unresponsive to customers’ complaints. In her first annual report, she said that delay in processing all aspects of the agency’s work had been an endemic feature of almost all the cases examined. She blamed this partly on the complexity of the system

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<sup>18</sup> ‘Can Labour Finally Get The CSA To work?’ *The Independent*, 23 June 1997

that CSA staff had to work with and commended the CSA for those improvements that it had made.<sup>19</sup>

The Benefit Fraud Inspectorate (BFI)<sup>20</sup> published a report in July 1999 that said that the CSA was giving anti-fraud work too low a priority. It blamed this on a number of causes, including the complexity of the system and the need for staff to spend time dealing with backlogs as well as the fact that there was no offence in child support law of misrepresenting circumstances to the CSA.<sup>21</sup> (It defined fraud as someone deliberately misrepresenting their circumstances, with the intention of either avoiding or paying less maintenance, or receiving more than is due.)

The most recent catalogue of failures appeared in November 1999 in another of the many reports of the Social Security Select Committee on the subject of the CSA.<sup>22</sup> Drawing partly on faults listed in the present Government's White Paper on the CSA, published in July 1999, and other official evidence, it listed the failures of the Child Support system in terms of some of the aims that its makers wanted it to achieve:<sup>23</sup>

- ***Failure to increase the proportion of lone parents on Income Support receiving maintenance***

One of the key aims behind the original introduction of child support was to reverse the declining number of lone parents on benefit who were in receipt of child maintenance. In 1979, 50 per cent of lone parents on Supplementary Benefit (the forerunner of Income Support) received child maintenance. By 1989 the proportion of lone parents on Income Support in receipt of child maintenance had fallen to 23 per cent. Nine years later, and five years after the Child Support Agency began its work, the proportion of lone parents on Income Support receiving maintenance for their children had not increased.

- ***Failure to ensure that parents honour their legal and moral responsibility to maintain their own children***

The intention of the child support scheme was 'to ensure that parents honour their legal and moral responsibility to maintain their own children whenever they can afford to do so'. By May 1999, almost a third of non-resident parents assessed to

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<sup>19</sup> Independent Case Examiner for the Child Support Agency News Release ICE/001/98, *Child Support Agency: "Must Do Better"*, 2 September 1998

<sup>20</sup> A separate unit of the Department of Social Security responsible to the Secretary of State

<sup>21</sup> Benefit Fraud Inspectorate, *Securing Child Support*, July 1999, from the DSS Internet site: <http://www.dss.gov.uk/hq/pubs/bfi/child/index.htm>

<sup>22</sup> Social Security Select Committee, *The 1999 Child Support White Paper*, HC 798 of 1998/99, November 1999

<sup>23</sup> Social Security Committee, as above pp ix-xi. The Committee's references have been omitted here in order to simplify presentation.

pay child support were paying nothing, and a quarter were making only partial payments.

- ***Failure to raise the average level of child maintenance awarded towards levels realistically related to the costs of caring for a child***

Another of the major aims of the original child support reforms was to "produce maintenance payments which are realistically related to the costs of caring for a child." The 1990 White Paper drew attention to 'the comparatively low level' of child maintenance being awarded by the courts at that time, when average weekly awards were £15 per week in magistrates' courts; £20 per week in county courts; and £24 per week in Scottish courts. In May 1999, the average value of a full child support assessment across all income groups was £19.99 per week.

- ***Failure to allow for maintenance payments to be reviewed regularly so that changes in circumstances could be taken into account automatically***

The original child support scheme also proposed to 'allow for maintenance payments to be reviewed regularly so that changes in circumstances can be taken into account automatically'. Automatic periodical reviews were originally planned to take place every twelve months. This timetable proved impossible for the Child Support Agency, and in April 1995 the period for carrying out a periodical review was increased to two years. In December 1998, when the statutory duty to carry out two-yearly reviews was removed, there were 371,000 periodical reviews waiting to be carried out. By July 1999, there were still 350,000 outstanding periodical reviews.

- ***Failure to reduce the length of time taken to arrange maintenance***

The 1990 White Paper which led to the introduction of child support, *Children Come First*, was critical about the length of time it took the courts to arrange maintenance. At that time, half of magistrates court cases were cleared within 7 weeks and the median time for county courts was 19 weeks. In the latest full year of the Child Support Agency's operations over a third of all new maintenance applications took longer than 22 weeks to be assessed. At 31 March 1999, 47,720 maintenance applications had been outstanding for over 52 weeks, representing 32 per cent of the total number of outstanding applications at that date.

- ***Failure to produce consistent and predictable results so that people in similar financial circumstance would pay similar amounts of maintenance***

The new child support scheme was supposed to 'produce consistent and predictable results so that people in similar financial circumstances [would] pay similar amounts of maintenance, and so that people will know in advance what their maintenance obligations are going to be'. This aim has clearly failed to be achieved. The White Paper notes that 'Because the existing child support formula tries to recognise a wide range of financial and personal circumstances it can



produce widely varying levels of liability for non-resident parents at similar levels of income. For example, some non-resident parents earning between £300 and £350 a week are currently assessed to pay nothing while others are required to pay £100 per week or more'. Similarly, it notes that 'Because the formula is so complicated, non-resident parents find it difficult to predict how much they will have to pay.'

### C. The Present Government's Approach to Child Support

Almost as soon as the Labour Government came to power, it initiated a debate on the CSA, in which it reaffirmed its commitment to ensuring an effective system of child support but said that the CSA still had a long way to go before it provided a decent service. Concluding the debate on behalf of the Government, Keith Bradley, then Minister for Social Security, said that the government would "*look closely at all aspect of child support and all aspects of the workings of the agency*".<sup>24</sup>

The scale of the review being undertaken by the Government became clearer when the Green Paper on welfare reform was published in March 1998. The brief section on child support said:

Changes in society mean that parental separation is becoming less exceptional. By providing parents, children and families with greater support, our policies may help to stem the tide of family breakdown.

But children have the right to the financial and emotional support of both their parents wherever they live. The Child Support Agency (CSA) is intended to ensure that non-resident parents meet their financial responsibilities to their children, but it has failed on a number of counts. Many parents succeed in frustrating the child support scheme: almost a third of fathers who should pay through the collection service are paying nothing. To make matters worse, the complex and bureaucratic system faces opposition from both the person paying and, all too often, the parent providing the bulk of care. Currently, more than two thirds of lone mothers who claim Income Support are seeking to avoid applying for child support maintenance from the fathers of their children.

We are looking carefully at all aspects of the child support scheme to see where improvements can be made. We have already identified ways that we can improve the service offered to parents. Lone parents who claim Income Support will be assisted by Benefits Agency staff in completing the application for child support maintenance. This will ensure that they do not have to deal with two separate offices or give information more than once. Our aim is to speed up the child support assessment process. The new decision-making and appeals provisions (...) will also allow the CSA to increase the effectiveness of its work.

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<sup>24</sup> HC Deb 20 June 1991 c 595 (Debate c 523-595)

*We are conducting a 'root and branch' review of the CSA and will announce proposals for fundamental reform later this year.<sup>25</sup>*

In July 1998, the Government published a Green Paper on child support<sup>26</sup> and a year later, in July 1999, a White Paper.<sup>27</sup> The reforms proposed in the White Paper followed those in the Green Paper closely although there were a few differences as well as decisions on some of the questions posed in the Green Paper. A summary of the responses to the Green Paper consultation was also published in July 1999 and deposited in the House of Commons Library.<sup>28</sup>

According to the summary responses, there were 1564 responses. Of these, those that appeared to be written from the non-resident parent's point of view (65%) heavily outweighed those that appeared to be written from a neutral (17%) or parent with care's point of view (18%). There was overwhelming agreement that major changes needed to be made to the system but most of the specific issues raised in the Green Paper received a mention in less than 10% of replies. Even on the central issue, the proposal for a simpler formula, less than half of those who responded made a comment.

Both Green and White Papers said that Government wanted a reformed child support system to do two things:

- Support families
- Tackle child poverty

These aims were repeated in the statement on publication of the White Paper to the House of Commons by Alistair Darling, Secretary of State for Social Security on 1 July 1999. He described the Government's view of the CSA's failures: one million children were missing out on the support that they should receive from both parents; the CSA did not help parents who wanted to pay and it was not tough enough on those who would not pay; it was a bureaucratic nightmare; it spent 90 percent of its time chasing information, and only 10 per cent chasing parents who would not pay. All these failures had their roots in the complexity of the system.

The Government therefore proposed four main areas of action:

- A simpler formula

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<sup>25</sup> *New Ambitions For Our Country: A New Contract For Welfare*, presented to Parliament by the Secretary of State for Social Security and the Minister for Welfare Reform, Cm 3805, March 1998 (emphasis added)

<sup>26</sup> *Children First: A New Approach to Child Support*, presented to Parliament by the Secretary of State for Social Security, Cm 3992, July 1998

<sup>27</sup> *A New Contract for Welfare: Children's Rights And Parents' Responsibilities*, presented to Parliament by the Secretary of State for Social Security, Cm 4349, July 1999

<sup>28</sup> *Children first: a new approach to child support: the written consultation exercise: summary of responses*, DSS, Dep 99/12641999

- A decent and effective service
- Tougher sanctions
- New help for children in the poorest families

He described these measures in more detail:

Today, I can announce that we are abolishing the complex formula and replacing it with a system of simple rates that is so easy to understand that parents can work out for themselves how much they should pay. We will publish these rates - indeed, they are in the White Paper - by putting leaflets in post offices, libraries and elsewhere.

The new rates are reasonable because they reflect the amount a parent would pay if he were still living with his children. Under the new system, a father will pay a flat-rate percentage of his take-home pay. The amount will be 15 per cent if he has one child to support, 20 per cent if he has two and a maximum of 25 per cent where he has three or more children. For fathers on less than £100 a week, there will be a flat-rate payment of £5 a week.

Every parent knows that one cannot calculate the cost of bringing up a child down to the last penny. However, our proposals are fair and reasonable. The changes are fairer to fathers, because they are more reasonable and realistic. They are fairer to mothers, who will get money much more quickly. They are fairer to children, who will actually get the money they need. As the system is so simple, it will take the agency only a few days to confirm what should be paid, rather than the six months it takes now. It is fast and simple for parents and fast and simple for the agency - but, above all, it is right for children.

To do this, we need also to reform the way in which the CSA operates and to improve significantly the service that it provides. This is not going to be easy. The CSA will never be popular - it will always be doing a difficult job at a difficult and emotional time. However, by replacing the complex formula with new, simple rates, we are laying the foundations for a far better service than would ever be possible under the current system.

These reforms mark a new contract for the CSA, too - a new system in return for a radical change in culture, service and approach. The shake-up has already started. We are strengthening the agency's management and we are importing private sector know-how to work together with public sector experience to sort things out.

From next week, we are bringing in the private sector to help the agency to collect more money from more parents and get it to children. I can announce today that we will invest an extra £28 million over the next three years, but, in return, the CSA must deliver clear and tangible improvements - a better service, quicker decisions and more money getting to children than ever before.

The CSA will get new information technology, and will make more use of the phone to sort out queries quickly. It will be there at times that suit parents, so that

they can call in the evenings or at weekends from the privacy of their own homes, and not in the daytime while they are at work.

The CSA will introduce also a more effective complaints system to ensure swift and effective action if things go wrong. Parents will get a clear statement setting out what they have paid and what is due. They will receive a clear picture of where they stand, just as one would get from a bank statement. In short, the CSA will move from an organisation that is bogged down in paper to an organisation that will focus on the needs of parents, and, above all, on the need to get money to children, fast. Our new contract for child support is good news for responsible parents, who will get a better service that helps them to do what they want to do. However, it is bad news for the minority - the hard core who persistently let their children down. We will make sure they are brought to book.

I can announce that, for the first time ever, we are making it a criminal offence to fail to provide, or to misrepresent, information to the agency. If parents lie to the agency, if they try to dodge their duty or persistently pay late, they will face a fine or even time in jail. Although most self-employed parents are highly responsible, there are some who are not, so we are introducing new measures allowing us to access tax records to get a true picture of their income. That will ensure that fathers who run around in the company Porsche, but plead poverty to their children, cannot get away with it.

We are also closing a loophole that allows fathers to string out a decision by denying that they are the father of their child. In future, if a child was born while the father was married to the mother, the burden will be on him to prove that he is not the father. We shall also make sure that teenage boys who become fathers face their responsibilities. They must realise that bringing a child into the world is a lifelong responsibility; it is not something that they can ever walk away from. We shall make sure that once they can pay towards the care of their child, they do pay.

Furthermore, because we are determined to make sure that all parents meet their responsibilities, we are looking at further measures to achieve that - including taking away driving licences from fathers who persistently shirk their responsibilities. The message is simple: there is no hiding place, no excuse and no easy way out. They must realise that their child is their responsibility. Every parent has to face up to that; they owe it to their children to do so. This is our new contract for child support. We will deliver a new, fair and simple system that will help responsible parents to support their children, but, in turn, we will take tough action to ensure that the rest deliver for their children.

We are also reforming the system to make sure that it does more for children in the poorest families. Under the current system, mothers lose their income support, pound for pound, whenever any maintenance is paid; because mothers lose out, their children lose out too. So, today, I can announce significant new help for children in the poorest families, worth up to £10 a week. More than 250,000 children will gain from that change alone. That is real help from the Government

for children in the poorest families. For the first time ever, we are making sure that money goes to the poorest children, not to the Treasury.

I can announce today that, to make work pay, from October, low-paid families in work and receiving the working families tax credit will keep every pound and every penny of child maintenance paid. All those measures are delivering on our commitment to do more for those who need it most, to end child poverty and to make sure that the Government, parents and the Child Support Agency together deliver for children.

Of course, we need to make sure that those changes are introduced smoothly and successfully. We want to introduce the new scheme as soon as possible, but it is vital to get it right. The present system collapsed under its own weight because the previous Government tried to introduce reforms too quickly, and with too little thought. It is a massive task. Within a year of the millennium, the Child Support Agency will be dealing with more than 1 million cases - that is more than 2 million parents. Radical change on that scale will take time. The new system needs legislation and new computer systems, as well as a radical change of culture and working practices in the CSA itself.

We plan to introduce the new system for new cases towards the end of 2001, with existing cases coming on to the new system later, once it is up and running. However, we want to introduce some measures earlier, such as making it a criminal offence to lie to the agency, closing the loophole that allows fathers falsely to deny their paternity, and improving the administration of the CSA itself.<sup>29</sup>

The Bill currently before Parliament deals with many of these proposals although, as indicated in the above statement, some of the measures proposed in the White Paper are being introduced by administrative means. Others will be introduced by Regulations and some have already been introduced, as indeed have other measures relating to the CSA. The Bill is therefore part of a package and includes one or two measures announced separately from the White Paper, such as the decision to use removal of driving licences as a penalty (which was only raised as a possibility in the White Paper).

Some measures have already been introduced by other primary legislation and regulations made under it, for example:

- The *Welfare Reform and Pensions Act 1999* made it possible for the Inland Revenue to provide information about a self-employed parent's income to the CSA from tax records. This came into force in November 1999 when the Act was passed.

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<sup>29</sup> HC Deb 1 July 1999 cc 432-434

- The *Social Security Act 1998* made changes to reviews and appeals procedures for CSA cases, most of which came into force in June 1999, and abolished automatic two yearly reviews (except for cases in the pipeline) from December 1998.
- The *Tax Credits Act 1999* introduced provisions favourable to parents with care in the rules for Working Families Tax Credit, a benefit introduced in October 1999 to replace Family Credit.<sup>30</sup> In contrast to Family Credit, parents with care receiving this benefit are not required to co-operate with the CSA and are therefore not subject to any benefit penalty if they do not do so. However, there is a new incentive for them to use the CSA as the whole of any child support that they receive is disregarded when calculating income for Family Credit purposes. In the case of Family Credit, only £15 was disregarded.

## **II The Bill**

### **A. Overview**

The Bill is part of a package – a major part – intended to radically overhaul the CSA. This Part of the Paper describes the Bill and its contribution to the package. It attempts to outline the main changes introduced by the Bill rather than every detail.

In contrast to the old system outlined at the beginning of this Paper, the new system is intended to be simpler to understand and simpler to administer. A simpler formula for working out child support is one of the chief measures designed to achieve both these aims. The Bill makes provision for the calculation of child support to be based on a percentage of the non-resident parent's net income, depending only on the number of his children. Gone will be the multi-level calculation outlined in Part I of this Paper. In many cases non-resident parents will simply be able to look at a chart and see how much they owe.

The simpler formula has been described as “rough justice” as it will mean less attention to individual circumstances. Housing costs will be left out of the calculation, the income of the parent with care will be ignored altogether and the range of exceptions to the formula is to be reduced. However, some of these details, such as the income of the parent with care, were only relevant in a very few cases. Some of the details of the calculation, such as the calculation of income, are not contained in the Bill although it does make provision for Regulations to cover it and indications in the White Paper are that this will be simpler too.

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<sup>30</sup> A Disabled Person's Tax Credit, with similar provisions about child support was introduced by the same Act.

The package contains a host of measures that are in various ways designed to relieve the burden of work on the CSA. Some of these have a dual role. For example, measures designed to benefit parents with care financially, such as the disregard in Income Support (not in the Bill itself) would, if they increase co-operation, also ease the burden on the CSA. Measures in the Bill, designed specifically to reduce the burden of work on the CSA, include removing retrospectively the requirement to carry out those periodic reviews remaining in the pipeline.

Administrative efficiency is to be achieved not only through relieving the burden of work on the CSA but also through a “get tough” approach. The Bill reflects this by including new sanctions and offences for parents as well as closing loopholes. Most of the measures affecting the CSA directly that reflect this “get tough” approach, such as bringing in the private sector to improve administrative efficiency, are outside the scope of the Bill.

Measures in the Bill designed to encourage compliance and strengthen enforcement include: integrating claims for Income Support and Income-based Jobseeker’s Allowance with a claim for child support; extending the benefit penalty that currently applies to parents with care who refuse to make an application or provide information without “good cause” to those who refuse to take a DNA test; new rules for calculating temporary child support rates that do not backdate the real calculation if it is lower than the temporary one; a new offence and penalties for those who fail to supply information or supply false information in connection with a child support claim; tighter rules for determining paternity; disqualification from driving in certain circumstances; a new type of penalty for late payment and provision to encourage voluntary payments before a child support calculation has been completed.

The Bill amends the *Child Support Act 1991* and thus retains the old framework.<sup>31</sup> The CSA is being retained as the agency for administering the system although this is not covered by the Bill. Nor was it covered in the original legislation. The 1991 Act gave powers to the Secretary of State, as does the current Bill. In practice these have been exercised by the CSA, which is an agency of the Department of Social Security. The 1991 Act did refer to child support officers<sup>32</sup> but these were abolished by the *Social Security Act 1998* and their powers transferred to the Secretary of State.

Many of the original objectives remain and underlie the current proposals although the emphasis or balance between them may change. For example, the interests of the taxpayer have not been abandoned but there is a new emphasis on relieving child poverty. Other important aspects of the original plan that remain include: using an administrative formula rather than the discretionary court system and basing the system on the principle

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<sup>31</sup> Although it amends the 1991 Act by no means everything in the Bill is new. Particularly where it replaces a whole section or schedule, parts of the old remain.

<sup>32</sup> *Child Support Act 1991* section 13

that biological parents owe a financial duty to their children regardless of their relationships with each other or with the child.

There are modifications to some of the old principles, however. For example, in the recognition of stepchildren. The Bill provides for stepchildren to be recognised in the same way as the parent's own children in a second family although the stated intention is still on balance to favour first families. Sharing the care between two parents who live apart is recognised as something to be encouraged and the Bill introduces more flexible provisions than before. However, the taxpayer's interest is also explicitly taken into account in that the Bill provides for a contribution from one parent if the other is receiving Income Support or Income-based Jobseeker's Allowance even if they share the care equally.

The Bill does *not* contain the chief measures aimed at low income families. The measures relating to Working Families Tax Credit have already been introduced (see Part I of this Paper) and the £10 disregard on Income Support and Income-based Jobseeker's Allowance, which is to take the form of a weekly Premium, can be introduced by Regulations under Social Security legislation.

Looking at the overall package, the Government estimates that (leaving aside transitional provisions) it would benefit 85 per cent of parents with care. This is in spite of the fact that the average payment due under the new formula is expected to be lower than before. The benefits arise partly from the anti-poverty measures and from greater compliance that is expected from the reforms so that more non-resident parents are expected to make payments even though their average bill is expected to be lower. Greater compliance is also expected to keep the overall cost of the package (excluding the changes to Working Families Tax Credit) revenue neutral.

Since October 1999, parents with care claiming the new Working Families Tax Credit have no longer been required to obtain child support. This means that the CSA is now focused on parents with care who are claiming or in receipt of Income Support or Income-based Jobseeker's Allowance, that is in effect the same category of people with whom the 'liable relative' rules of the Department of Social Security used to deal before the introduction of the CSA (see Part I of this paper). The original aim of providing a service for other cases, often referred to as "private" cases is reflected in the Bill albeit in an attenuated form. The Bill makes provision for those who have had a court order for more than a year to be able to apply to the CSA as long as the order has been made after a prescribed date. The Bill does not specify the date but the Government has said that it will be after the reforms come into effect.

The rest of Part II of this paper describes the Bill in more detail.



## **B. A Simpler Formula**

**“a simpler way of working out how much parents have to pay”<sup>33</sup>**

[Clauses 1, 5,6,7, Schedules 1 and 2]

Detailed aspects of the new calculation of child support, as set out in the Bill, are described below. The Bill provides for most of these, including the basic rates, to be adjusted by Regulations.

### **1. Basic Rates**

(schedule 1)

The Bill provides for the basic calculation of child support to include only the non-resident parent’s net income and the number of his children, to which are applied the appropriate percentage rates. The basic rates (which apply unless one of the special rates or situations described below apply instead) are set out in the Bill as:

15% for one child

20% for two children

25% for three or more qualifying children

This leaves out many of the complexities of the old system outlined in Part I of this paper, including the many different stages of the calculation, each with slightly different rules as well as ignoring housing costs, the child’s and the wife’s income. The White Paper said that there was some support among those responding to the Green Paper for including the last in the calculation but it pointed out that in practice, 96 per cent of non-resident parents with earnings have former partners who earn less than £100 a week.<sup>34</sup> There is no longer a maximum payment of child support.

### **2. Second Families**

(schedule 1)

The Bill provides that if the non-resident parent has a second family (children of his own or stepchildren living with him) his net income is first reduced by the relevant basic percentage to allow for the costs of such children. The relevant basic percentage is then applied to the remaining income to cover what he owes for the children in his first family.

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<sup>33</sup> Quotations at the beginning of each Part are from the extract of Alistair Darling’s speech on 1 July 1999 reproduced in Part I C of this Paper, unless otherwise stated

<sup>34</sup> White Paper, as above, page 49

The Green Paper had proposed two possible ways of taking second families into account and left open the question whether stepchildren of the non-resident parent should be included. The method chosen is one of them. The other would have been to calculate child support for all the non-resident parent's children in both first and second families (leaving open the definition of second family) and share out the resulting amount according to the number of children in each family. This would have resulted in a lower amount of child support payable.

The option that was chosen was preferred because: *“On balance, we think the new scheme should show a slight preference to children in the first family, because non-resident parents should expect to meet these responsibilities first”*. Stepchildren were included because: *“On the other hand, it would be unfair to discriminate against step-children by only reducing maintenance liability for a parent's own children in a second family. It is not always the case that step-children receive maintenance from their own non-resident parents. So, ignoring the needs of step-children could, in some cases, lead to genuine hardship.”*

The White Paper also said that maintenance coming into the family for those children would be ignored (but as the detailed definition of income will be in Regulations, this proposal is not in the Bill): *“All children in the second family will have the same protection under our plans for reform. There will be no ‘first class’ and ‘second class’ children in the second family – those who count for child maintenance and those who do not.”*<sup>35</sup>

### **3. Reduced Rate**

(schedule 1)

This is payable where the non-resident parent's net weekly income is more than £100 but less than £200 (and the flat rate or nil rate does not apply – see below). The Bill sets these levels and provides for the reduced rate payable to be prescribed in, or determined in accordance with Regulations subject to the result not being less than £5.

### **4. Flat Rate**

(schedule 1 and clause 20)

The Bill provides for a flat rate of £5 in total to be payable where the non-resident parent's net weekly income is £100 a week or less, or where he or his partner receives any benefit, pension or allowance. The actual benefits etc are to be prescribed but the white Paper says that the Government expects most non-resident parents to pay at

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<sup>35</sup> White Paper 1999, as above, page 11



## 7. Separated parents share care of the child

(schedule 1)

The Bill includes provisions for adapting the formula in cases of ‘shared care’ (that is where the child spends some nights with the non-resident parent). These are intended to be part of an “*active family policy*”. They were given particular emphasis in the White Paper in a chapter on contact and shared care,<sup>39</sup> which defined an “*active family policy*” as one that “*integrates all activities that affect the family – including maintenance and contact*”.

One strand of criticism of the CSA has been that it totally separates arrangements for contact and financial provision (although these decisions were supposed to be separate under the court system too). This criticism has come particularly from groups of fathers, such as the pressure group, Families Need Fathers, who feel that it is unfair to be asked to pay for a child that they are not able to see. The Government’s view is that effective contact is important within the child support context because it means that proper maintenance is much more likely to be paid but also that a child’s need for financial support is not lessened simply because he or she is not in contact with the non-resident parent.<sup>40</sup>

The Government proposes to retain the separation of arrangements for contact and shared care but to encourage contact by introducing more flexible provisions for shared care than the present ones. Currently the amount of child support that a non-resident parent has to pay is only reduced if the child spends at least 104 nights a year with him. Anything less is ignored. The Bill provides for a sliding scale, that is for the amount payable under the formula to be reduced by:

Number of nights a year	Reduction
52 to 103	one seventh
104 to 155	two sevenths
156 to 174	three sevenths
175 or more	one half (plus £7)

The table above shows that even if the parents share care equally the non-resident parent still has to contribute. The White Paper said that the Government had considered reducing the maintenance payable to nil where care was shared equally but had concluded that the proposed arrangement “*acknowledges the additional cost faced by the non-resident*

<sup>39</sup> White Paper 1999, as above, chapter 7

<sup>40</sup> As above page 47

*parent, without being so severe as to make the parent with care resistant to shared care arrangements.”*

The interest of the tax payer was another consideration. The White Paper argued that where one of the parents was receiving Income Support or Income-based Jobseeker’s Allowance, “*the taxpayer has a right to expect that maintenance is paid, even if the parent who is not claiming benefit for the children has equally shared care*”.<sup>41</sup>

The reductions apply to people paying child support at either the basic or the reduced rate, subject to a minimum payment of £5.00. Where someone is paying the flat rate and care is shared for at least 52 nights a year, the amount of child support payable is nil. The Bill makes provision for rates and related measures to be changed and/or defined in Regulations.

## **8. Income**

(schedule 1)

The Bill leaves the precise definition of income to be prescribed in Regulations and the White Paper contained a section on what is likely to be included.<sup>42</sup>

## **9. Variations due to special circumstances**

(clauses 1,5,6,7 and schedule 2)

The Bill would retain most of the exceptions to the formula that were introduced under the *Child Support Act 1995* as *Departures*, although they would be renamed “*Variations*” and there would be some differences. For example, extra high travel-to-work costs are removed from the list of special expenses that are allowed for. The Bill provides for the procedures relating to them to differ. In particular, it would enable an application for a *Variation* to be made before the maintenance calculation has been completed instead of after. (The Bill also provides for applications made after the calculation has been completed by providing for rules covering this situation to be set in Regulations.)

The Green Paper had proposed that any *Variation* from the standard rates should be decided by a tribunal. The White Paper said that respondents had pointed out serious problems with this approach. The Government had therefore decided that in cases where the decision on varying the rates rested on objective facts, they should be determined by officials. This would still enable the additional expertise and independent judgement of a tribunal to be applied in cases where there were very complex issues to be considered. The Bill therefore provides for the Secretary of State (in practice CSA officials) to make

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<sup>41</sup> White Paper, as above, pages 48 and 49

<sup>42</sup> White Paper, as above, Annex Two

he decision and to be able to request that a tribunal determine an application for a *Variation* (a procedure distinct from a tribunal determining an appeal).<sup>43</sup>

## **C. Compliance and Enforcement**

**“... bad news for the minority - the hard core-who persistently let their children down”.**

[Clauses 3, 11-20]

The Bill contains a range of measures designed to improve the effectiveness of the system, both by streamlining the process to increase the flow of child support payments and by bringing in tougher sanctions:

### **1. Child support application for certain benefit claimants to be automatic**

(clause 3)

Under present rules, a claimant of Income Support and Income-based Jobseeker's Allowance is generally required to apply for child support unless there would be a risk to her or to her child of suffering harm or undue distress as a result. This means in effect a two stage process: one for benefits and one for child support. The Government has already tried to simplify these procedures, for example, using Benefits Agency staff to help parents with care make a child support application.<sup>44</sup>

The Bill provides for maintenance applications by parents with care to be fully integrated with their claim for benefit. Income Support and Income-based Jobseeker's Allowance claimants and recipients would thus be treated as if they had applied for child support. The Bill enables them to opt out by making such a request. The request (which does not have to be in writing) must be accepted but there may be serious disadvantages for the parent with care if she does so (see below).

This measure forms part of the plan to streamline the operation of the CSA. One process replaces two. In particular information supplied for one purpose can be used for to the other. It is also a measure that ties in with the tougher approach to enforcement. The White Paper says that it is designed to make clear that applying for child support is not a personal choice; it should be paid as long as that is consistent with the safety of the mother and her child.<sup>45</sup> The benefit penalty is retained (see below).

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<sup>43</sup> White Paper, as above page 42

<sup>44</sup> Green Paper, as above page 22

<sup>45</sup> White paper, as above page 24

## 2. Benefit penalty extended

(clause 18)

The Bill extends the existing benefit penalty to situations where a parent with care has refused to undergo a scientific test (such as a DNA test).

The existing system includes a sanction for parents with care who do not authorise a child support application or do not provide information in relation to that application. This takes the form of a cut in benefit that currently can last three years (with the possibility of renewal for another three years) and amounts to 40% of the full rate of Income Support for a single adult. The Bill provides for this penalty to be retained in the new system (although it will be for opting out rather than for refusing to opt in and will be called a “reduced benefit decision” rather than a “reduced benefit direction”).

As before, the penalty will not be imposed where there are reasonable grounds for believing that there would be a risk to the parent with care or any children living with her, of suffering harm or undue distress as a result. This is often known as the “good cause” provision. The benefit penalty was part of the original design of the CSA and it has in practice been increased during the lifetime of the CSA. The Green Paper had raised the possibility of strengthening the penalty further by abandoning the “good cause” provision. The White Paper said that the Government had taken note of the concern expressed by many respondents at this prospect and had therefore decided to retain the “good cause” provision.<sup>46</sup>

## 3. New rules where information is missing: Default and Interim Maintenance Decisions

(clause 4)

The Bill paves the way for new rules for calculating child support calculations when the non-resident parent has not provided enough information. At the moment there are four different kinds of interim maintenance assessment for situations where the CSA does not have enough information to make a full decision, depending on what information has not been provided. Because of the simpler formula, in future there will be just one kind, known as a *Default Decision*.

This Default Decision, like the current set of interim assessments, is designed to contain a punitive element although it will take a different form. The Bill does not say what the default rates will be but makes provision for these to be set by Regulations. The Government intends that these be set at 15 per cent, 20 per cent or 25 per cent of the

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<sup>46</sup> White Paper , as above, page 24

average non-resident parent's weekly earnings (around £200) according to the number of children, which would be £30 a week, £40 a week and £50 a week.<sup>47</sup>

In that it is based on the level of the average non-resident's earnings, the new Default Decision may result in a less punitive level of payment than many Interim Assessments, which have been difficult to enforce and have contributed to the amount of arrears built up under the current system. However, under the current system, once the final assessment is made, it is backdated to more or less to the beginning of the Interim Maintenance Assessment. The Government intends that, under the new system, child support will only be recalculated if the final rate is higher than the default one: *"This will both provide an incentive to non-resident parents to provide information quickly and avoid creating overpayments which have to be recovered from the parent with care"*.<sup>48</sup>

There will also be a new Interim Decision for situations where someone has applied for a *Variation* that has not yet been decided. In such cases the interim rate will be set in the same way as the normal maintenance calculation described in section B above pending a decision about the *Variation*.

#### **4. New offence for failing to provide information and other information collection powers**

(clauses 11-13)

The Bill creates an offence, and introduces penalties, for people who fail to supply information when required to do so or who supply false information in connection with child support. This does not specify parents so would apply to employers as well as to parents. A person guilty of such an offence is liable to a fine not exceeding level 3 on the standard scale (currently £1,000).<sup>49</sup> The Government has said that this new offence needed to be created because the sanction of the high Interim Maintenance Assessment had proved ineffective as it was practically impossible to enforce a punitive Interim Maintenance Assessment (see point 3 above).<sup>50</sup> The Benefit Fraud Inspectorate had also been critical of the fact that there was no offence specific to misrepresentation in child support law (See Part I of this Paper).

The Bill also extends the range of circumstances in which information can be required, provides for Inspectors to be appointed in a way that does not tie the appointment to an individual case, and brings their powers into line with the more general provisions for

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<sup>47</sup> *Child Support, Pensions and Social Security Bill Explanatory Notes* [Bill 9 – EN]

<sup>48</sup> Explanatory Notes, as above

<sup>49</sup> Explanatory Notes, as above

<sup>50</sup> Explanatory Notes, as above



Department of Social Security investigators.<sup>51</sup> The 1991 Act did make provision for Inspectors, who can be used to obtain information, for example, by visiting an employer's premises. But the Government reports that this power has been little used because, under the 1991 Act, they have to be appointed on a case-by-case basis to carry out visits, which has meant that the CSA has not been able to build up a team of trained inspectors to be used as required.

## **5. Paternity to be assumed if parents are married etc**

(clause 14 and clauses 61-62)

The Bill adds three new situations to the list of those in which paternity can be assumed even where the father denies it. This is a measure designed to thwart those who deny paternity simply to avoid having to pay child support. In the situations in which paternity can be assumed, the child support process can be stopped but only if the non-resident parent proves in court that he is not the child's father.

At the moment having been married to the mother between the date of the child's conception and birth is not one of the situations covered in the legislation as it applies in England and Wales (although it is under Scottish law). It will be one of the three new situations added to the list. The other two are: where the man who is named on the child's birth certificate is the child's father even if he was not married to the mother; and where an alleged parent has refused to take a DNA test or the result of a DNA test shows that he is a parent of the child but he refuses to accept it.

(In England and Wales, situations covered by the existing legislation include: where the child was adopted by the man in question; and where there is a court declaration that the man is the child's father.)

Procedures for obtaining a declaration from a court that a man is the child's father are amended by the Bill, which replaces the two existing procedures in England and Wales, one in the *Family Law Act 1986* and one in the *Child Support Act 1991*, with a single procedure for both child support and other purposes (clause 62 and schedule 6 of the Bill). The Bill also contains provisions for accrediting laboratories carrying out DNA tests (clause 61) and the Government has said that intends to bring into force provisions passed in 1981 but never brought into force to enable courts to take bodily samples other than blood (blood being allowed at the moment).<sup>52</sup> These provisions stem from a

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<sup>51</sup> Provisions in the Bill relating to DSS investigators are discussed in Library Research Paper 99/108, *Social Security, War Pension and National Insurance provisions in the Child Support, Pensions and Social Security Bill, Bill 9 of 1999-2000*.

<sup>52</sup> Explanatory Notes, as above

consultation paper issued by the Lord Chancellor's Department in March 1998 and have wider application than child support.<sup>53</sup>

## **6. Disqualification from driving**

(clause 15)

Disqualification from driving was an idea mooted in the White Paper but not definitely proposed.<sup>54</sup> The Bill now makes provision for the courts to be able to disqualify people from holding or obtaining a driving licence as an alternative to committing them to prison. Like prison, this will only apply where other measures, have failed and there has been "*wilful refusal or culpable neglect*" by the non-resident parent. These measures are to apply in England & Wales and Scotland although adapted, as appropriate, to the law of each country.

The Bill also provides for the procedure for the Sheriff in Scotland to follow if he is satisfied that it is appropriate to commit a liable person to prison. As in England and Wales the maximum period of imprisonment is six weeks (clause 16).

## **7. Late payment penalty: up to 25% of money that is overdue**

(clause 17)

The Bill will remove existing provisions for dealing with arrears of child support and replace them with a simpler system. It provides for the Secretary of State to have absolute discretion to impose a financial penalty subject to a maximum of 25 per cent of the amount owed. The charge will not be child support and will not affect the non-resident parent's liability to pay child support. It will be an administrative penalty. The Bill provides for the payments to be determined and processed according to rules laid down in Regulations.

The White Paper suggested that charging interest on overdue payments was an unnecessarily complicated approach. The interest provisions in current legislation had been suspended from April 1995 because they were unworkable, the main problem being the frequent re-assessments of liability; every time liability was recalculated, the amount overdue and the interest on that amount also had to be worked out again.<sup>55</sup> An alternative provision was introduced in the 1995 package of reforms but did not come into force.<sup>56</sup>

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<sup>53</sup> 1. *Court Procedures for the Determination of Paternity* 2. *The Law on Parental Responsibility for Unmarried Fathers*, Consultation Paper, Lord Chancellor's Department, March 1998

<sup>54</sup> White Paper, as above, page 54

<sup>55</sup> White Paper, as above page 53

<sup>56</sup> Explanatory Notes, as above.

## **8. Voluntary payments before calculation completed**

(clause 19)

The measures in the Bill relating to voluntary payments are designed to help those who do co-operate rather than to introduce sanctions on those who do not. Although they are not a sanction, they are designed to encourage the payment of voluntary child support during the period when the calculation is being made.

Liability for paying child support usually starts on the day that the non-resident parent is told that an application for child support has been made. In practice there have been long delays between this date and the date that the child support calculation is completed. Arrears can build up, which can sometimes be prevented if the non-resident parent makes voluntary payments of child support during this period. Legislation does not currently make provision for such voluntary payments. The CSA does in practice recognise some of them but the Government has said that it considers that this arrangement has not provided sufficient reassurance to parents that all cases are being treated in the same way, which, in turn, has provided a disincentive to make such payments.<sup>57</sup>

The Bill therefore gives statutory recognition to such voluntary payments and provides for Regulations to set out the circumstances in which they can be taken into account so as to offset them against any arrears that build up. It also makes provision for voluntary payments to be treated as overpayments if they exceed the child support due.

## **D. Revisions and Redress**

**“swift and effective action if things go wrong”**

[Clauses 8-10, 23, 26]

### **1. Revisions, Supercessions and Appeals**

(clauses 8-10)

New decision-making and appeals procedures were introduced in June 1999 under the Social Security Act 1998. The measures in the Bill adding to these need to be seen in the context of the changes made in that Act and are not discussed in detail here.<sup>58</sup> In brief they include measures relating to *Revisions of Decisions* (changes from the original date), *Supercessions* (changes from a later date than the original decision), and, in relation to appeals to appeal tribunals they set out the Decisions that can be appealed and the

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<sup>57</sup> Explanatory Notes, as above

<sup>58</sup> See Research Paper 97/93

circumstances in which an appeal can be brought against such *Decisions*. They also provide for Regulations dealing with appeals procedures.

## **2. Periodical Reviews**

(clause 23 and 65)

The Bill removes the requirement for the CSA to complete outstanding periodic reviews from the day that the Bill receives the Royal Assent. The Government has given an assurance that before this happens: “*the CSA will make sure that there is sufficient publicity to alert any parent who might wish to see an outstanding review completed*”.<sup>59</sup>

The original child support scheme made provision for periodical reviews of child support assessments, initially every year and subsequently every two years. The Explanatory Notes to the Bill say that this process was difficult to operate. Parents, many of whom had been unwilling to co-operate in making the first assessment, failed to reply to requests for further information. Others were unable to provide all the information that the Secretary of State required. As it was impossible clear the periodical review without this information, substantial backlogs built up. The problem became even worse as cases where a review was stalled became due for another review.

New reviews were abolished by the *Social Security Act 1998* (as mentioned in Part I of this paper). Soon after the White Paper was published, the Government announced that it would retrospectively repeal the process governing the 350,000 outstanding reviews. . It also said that the CSA would be taking forward a rolling programme over the next two years to review and update assessments from a current date. Where the parent with care was on benefit this would happen automatically. Parents who had applied voluntarily would be offered the opportunity to have the assessment brought up to date. Also, “*any parent who wants to have the periodical review completed in their case can ask the Child Support Agency to complete this action and this will be done providing the information and evidence necessary to complete the process is supplied*”.<sup>60</sup>

## **3. Compensation**

(clause 26)

The Bill puts on a statutory footing the compensation scheme introduced under the 1995 package of reforms to compensate people for delays by the CSA. It provides for many of the details to be made in Regulations.

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<sup>59</sup> Explanatory Notes, as above page 42

<sup>60</sup> HC Deb 22 July 1999 c 572W

Under the 1995 scheme, the CSA was allowed to agree not to enforce more than six months worth of arrears, provided that the non-resident parent met his responsibilities for a year. After a year, the CSA made payments to the parent with care in lieu of those she would have received had he paid in full. The scheme was only meant to be temporary and was granted by HM Treasury on a non-statutory basis, with payments approved annually in the *Appropriation Act*. Although it was intended to be temporary, as the backlogs did not disappear, the scheme was in practice expanded to include arrears arising from delayed periodic reviews and ‘change of circumstance reviews’.<sup>61</sup>

## E. Winners and Losers

**“...the effect of the reform will be to make around 85 per cent of parents with care better off at the point that they first come to the CSA than they would have been under the previous arrangements”<sup>62</sup>**

[includes Clause 22]

Most of the assessments of the financial impact of the reforms relate to the overall package of reforms rather than simply to those that are in the Bill. This is largely because the Bill does not cover, except indirectly in clause 22 which abolishes the Child Maintenance Bonus, the anti-poverty measures that have a direct effect on the finances of parents with care. Unless otherwise stated, the figures that follow therefore relate to the package of reforms.

The Child Maintenance Bonus was a measure introduced as part of the 1995 package of reforms (see Part I). Although it built up while parents with care were out of work receiving Income Support, it was not paid until they returned to or entered work and was thus designed to provide an incentive to work. The new child maintenance premium proposed for recipients of Income Support and Income-based Jobseeker’s Allowance recipients (not in the Bill) would enable parents with care to obtain the benefit of it (a proposed £10 a week) while out of work. However, the overall impact on incentives to work under both the old and new system depends on a variety of factors.

### 1. Who gains?

In so far as the aim of child support systems has been to benefit the children living with the parent with care, this has normally been measured by the amount of money received by the parent with care. The Government estimates that as a result of the package of reforms (including the disregard of child support in the new Working Families Tax Credit

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<sup>61</sup> Explanatory Notes, as above

<sup>62</sup> Written Answer, HC Deb 2 November 1999 c1553W

introduced in October 1999), 85% of parents with care will be better off at the point that they first come to the CSA than they would have been under previous arrangements.<sup>63</sup>

The broad impact of the reforms on the amount that the parent with care receives can be divided into three different elements. Firstly, the new formula reduces the amount that she receives on average by reducing the average payment due from non-resident parent. Secondly, the anti-poverty measures benefit parents with care receiving Income Support, Income-based Jobseeker's Allowance and Working Families Tax Credit by introducing or increasing disregards of child support. Thirdly, the enforcement and efficiency measures, if successful, would increase the number of non-resident parents actually paying child support rather than simply owing it in theory. Details were given in a Written Answer:

The purpose of the reforms is to get maintenance flowing more regularly to more children. Overall more than 1 million children will be better off as the changes take effect.

If all existing cases moved to the new scheme today, average maintenance liability for non-resident parents in work would fall from around £38 now to an estimated £30.50. On this basis about 350,000 parents with care, whose non-resident parent is in paid work, would have a lower maintenance assessment as a result of the new child support rates. The average reduction would be about £17 a week. 190,000 parents with care would have a higher assessment, with average increases of around £11.50 a week.<sup>1</sup> Changes will be phased in for existing cases.

But assessments bear little relationship to amounts paid. Fewer than half of those using the CSA's collection service are paying everything that is due. Overall only around 66 per cent. of maintenance due is collected. We expect this to rise to 80 per cent. or more.

In addition all parents with care who are on Income Support, for whom maintenance is being paid, will benefit from the child maintenance premium. Over time, we expect the number in this position at least to double as a result of the new simpler scheme. Parents with care receiving Working Families Tax Credit will have any maintenance payments fully ignored.

Taking these factors into account the effect of the reform will be to make around 85 per cent. of parents with care better off at the point they first come to the CSA than they would have been under the previous arrangements.

<sup>1</sup> *New scheme maintenance modelled on August 1998 five per cent scan of Child Support Computer System. Caseloads calibrated to forecast 'A' day levels, and rounded to the nearest 10,000. The average change in maintenance entitlement is rounded to the nearest 50 pence.*<sup>64</sup>

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<sup>63</sup> HC Deb 28 October 1999 c957-8W

<sup>64</sup> HC Deb 28 October 1999 c 957-8W

## 2. Financial Effects

The overall effects of the changes, other than those arising from the introduction of Working Families Tax Credit, appear to be roughly revenue neutral:

Under the new child support scheme, the increased number of lone parents receiving maintenance payments will result in reduced expenditure on social security benefits. These savings will build up from the introduction of the scheme and are expected to reach around £40 million a year after five years, taking into account the cost of the child maintenance premium and assuming compliance of 75 per cent. The reduction in spending will allow us to pay for the administrative costs of introducing the new scheme without increasing Government spending.<sup>65</sup>

The financial effects of the Bill are described in more detail in the Explanatory Notes to the Bill. These say that it is expected that:

- The proportion of lone parent families on Income Support receiving maintenance will at least double by 2005/06; the proportion of maintenance due that is collected will increase from around two-thirds to three-quarters or more by 2002/03; and that annual savings will reach £110 million in the fifth year.
- On the other hand, the introduction of the child maintenance premium for existing cases will increase benefit expenditure over the same period by £65 million in a full year; and the simpler system of rates will result in lower average liabilities for non-resident parents, which will result in an additional cost of £5 million in 2005/6 for existing cases.
- Overall, there will be cumulative savings of approximately £100 million during the first five years, with annual savings expected to peak at £40 million in the fifth year (2005/6) and then tail off in the long run.
- This is expected to cover the expenditure needed to pave the way for reform, restructuring the CSA and investing in staffing of around £100 million by 2002. The reduction in benefit expenditure will also cover the initial increase in running costs of around £3.5 million.

The Notes add that this does not include the costs of introducing a new computer system, the contract for which will be let under Private Finance Initiative terms.

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<sup>65</sup> HC Deb 19 October 1999 c 562W

### **3. Regulatory Impact Assessment**

The financial impact on business is estimated to be broadly neutral according to the Regulatory Impact Assessment on the Bill. This says that the main way in which the scheme (old and new) affects employers is through Deductions from Earnings Orders, of which there were 122,000 at the latest count. Businesses are also affected by requirements for them to provide information to the CSA about their employees or customers.<sup>66</sup>

## **F. Bringing In The Changes**

**“We need to ensure that those changes are introduced smoothly and successfully”**

[includes Clauses 2, 21, 24, 25 and Schedule 3, 65]

### **1. Jurisdiction**

(clauses 2 and 21)

Under the original proposals for child support, the CSA was supposed to be available to all parents by 1997. As described in Part I of this paper, this aim was abandoned because of the pressure of work on the CSA. Provisions in the Bill do not return to the original aim but they would enable some of those with a child maintenance order who are currently prevented from applying to the CSA, to be able to do so if the order has been in force for at least a year. The Bill makes provision for this to apply to those with orders made after a date to be prescribed in Regulations. The White Paper and Explanatory Notes say that this date will be after the current reforms have come into effect. This would still exclude the pre-1993 cases with court orders and any others made since and up to the prescribed date unless the parent with care claimed Income Support or Income-based Jobseeker's Allowance.

The Government says that these proposals are likely to encourage parents, lawyers and the Courts to come to child maintenance arrangements “*in the shadow of the CSA*”. All parties would know that either parent could turn to the CSA at a future date and that it would therefore be sensible to determine child maintenance broadly in line with CSA rates. The Courts would still be free, as described in Part I, to determine spousal maintenance, property and pension settlements for the couple concerned.<sup>67</sup>

The CSA's jurisdiction is extended in another, although relatively minor way - to non-resident parents who are not habitually resident in the UK but who are employed by an

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<sup>66</sup> *The Child Support, Pensions and Social Security Bill, Regulatory Impact Assessment, 1999*

<sup>67</sup> White Paper, as above page 55



UK-based employer. The Government has said that the numbers affected are likely to be very small.<sup>68</sup>

## **2. Transitional Provisions**

(clause 27)

The Bill makes provision for Regulations to deal with transitional arrangements and does not deal with the details. The White Paper said that the new scheme would deal with new applications first; that existing cases would be transferred at a later date; and that existing cases would be phased in.<sup>69</sup> The White Paper also said that the Government planned to keep the phasing arrangements running for five years and it set out the proposed steps for phasing in the revised amounts of child support. These revised the proposed transitional arrangements in the Green Paper.<sup>70</sup>

## **3. Commencement**

(clause 65)

Except for clause 23, which abolishes the requirement for the CSA to conduct outstanding periodical reviews, the Bill provides for the provisions on child support to come into force on such day as may be appointed by order made by statutory instrument. It also provides for the possibility of different days being appointed for different purposes. The Bill does this by listing those arrangements to which these provisions apply and, in the case of child support, clause 23 is the only one excluded. The Explanatory Notes say that the excluded measures will come into force on Royal Assent.

## **4. Regulations**

(clause 24)

The Bill contains provisions governing the Parliamentary procedures to be followed in passing Regulations relating to child support. It amends the list of Regulations subject to the affirmative procedure and makes provision for Regulations about the calculation of income to follow the affirmative procedure the first time they are made and to follow the negative procedure thereafter.

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<sup>68</sup> *The Child Support, Pensions and Social Security Bill, Regulatory Impact Assessment*, 1999

<sup>69</sup> White Paper, as above, pages 5 and 28

<sup>70</sup> White Paper, as above, page 13

## 5. New Terminology

(includes Schedule 3 (1) (2))

The reforms introduced by the Bill replace much of the old terminology so that new terms are interspersed throughout the Bill. For example, *Variation* replaces *Departure Calculation* replaces *Assessment* and *Reduced Benefit Decision* replaces *Reduced Benefit Direction*. Some of the new terms, such as *Revisions* and *Supercessions*, have already been introduced by other legislation. The term ‘non-resident parent,’ which has been widely used in practice to replace ‘absent parent,’ is used not only throughout this Bill but is substituted by the Bill into the *Child Support Act 1991* (schedule 3 (1) (2)).

## 6. Other

(clause 25 and schedule 3)

Schedule 3 of the Bill, which is introduced by clause 25, makes provision for a range of amendments (described as minor in the Explanatory Notes) in the *Child Support Acts 1991 and 1995*.

# III Responses

## A. Approaches to child support

The reforms of child support introduced in 1993 have generated not only suggestions for reforming the workings of the present scheme but also discussion of alternative schemes and studies of the way things work in other countries.<sup>71</sup> Irwin Garfinkel, who has written much about the scheme in Wisconsin in the United States, which was examined by the Conservative Government before it introduced the 1993 reforms,<sup>72</sup> has (with others) set out the framework in which the debate has taken place:

At the most general level, child support policy reflects the extent to which the support of children is a private rather than a public responsibility. Some people take the position that child support enforcement is unnecessary because the costs of child rearing are a public responsibility. They argue that if public benefits were more generous, children would not need private child support. We do not share this position, and we would point out that no country has totally socialised the costs of children. Hence, not enforcing private child support obligations implicitly means shifting more of the costs of children onto resident mothers. The public responsibility argument, in practice becomes a smoke screen for excusing non-resident fathers from their responsibilities.

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<sup>71</sup> See select bibliography at the end of this paper

<sup>72</sup> The Wisconsin system was briefly described in the 1990 White Paper (see above), volume two

Other people take the position that the support of children is purely a private responsibility. We not agree with this position either. To begin with, society has an interest in making sure that children's basic needs are met. This means, at a minimum, that government has a responsibility to enforce private child support obligations. Even more important, just as the need for private child support enforcement would not evaporate if we had a better public income maintenance system, even a perfectly efficient child support enforcement system would not obviate the need for better income maintenance, public education, healthcare, and child care. In short, we see these two system – public and private support for children – as complementing one another, and as reinforcing the social norm that raising healthy and secure children is a shared responsibility.<sup>73</sup>

Although there are people who would take either of the extreme positions described above, much of the commentary in this country reflects the central position that the authors themselves take. This has nevertheless left plenty of room for disagreement - disagreements not only about the practical details of a workable child support system but also, as suggested in the above quotation, about the types of policy that it should complement.

For example, one commentator has suggested that for child support to work, there must be far greater emphasis on helping the so-called “deadbeat dads” to find good jobs rather than castigating and punishing them as many of them are too poor to pay child support. It refers approvingly to welfare reforms the United States targeted at low-income, non-custodial fathers trapped in the inner city “sink” estates.<sup>74</sup>

The Child Poverty Action Group in its comments on the Bill, argued for a “minimum income standard” to provide an estimate of the level a family needs to live on, a higher child maintenance premium, higher disregards of child support for housing benefit and council tax benefit recipients, extra help for non-resident parents claiming benefits and suspension of the benefit penalty. Some of its suggestions are directly relevant to the Bill but many reflect wider concerns about child poverty and reforms to the social security system that would need to accompany the proposed child support reforms.

Similarly, the National Council for One Parent Families, while arguing that the benefit penalty was unnecessary and that child support should be “guaranteed” by the government so that it is received by parents with care regardless of whether the non-resident parent has paid or not, also highlighted a range of concerns outside the immediate scope of the Bill. These included the interaction of the current disregard of child support for those receiving Working Families Tax Credit with Housing Benefit and Council Tax Benefit. It pointed out that much of the benefit of the disregard would be lost

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<sup>73</sup> Irwin Garfinkel et al, *Father Under Fire: The Revolution in Child Support enforcement in the USA*, Centre for Analysis of Social Exclusion Paper 14, London School of Economics, 1998

<sup>74</sup> “The left is creating a new scapegoat: ‘deadbeat dads’,” Helen Wilkinson, *The Independent*, 1 July 1999

as the higher income received as a result would be taken into account for Housing Benefit and Council Tax Benefit purposes and thus reduce the amount received in the form of these benefits.

The Solicitors Family Law Association, which has consistently argued for a greater role for the courts, sees no argument for allowing the CSA to deal with “private” cases. It also argues that the courts will be able to deal with “private” cases more effectively if they are not working in the shadow of the CSA and have discretion to make arrangements appropriate to individual situations.

Comments on the proposals for reform reflect many different perspectives, not only different interests but also different ways of seeing and approaching problems. For example, one commentator on the CSA has described the differences between solicitors and those who are concerned with welfare rights in the following terms:

Broadly speaking, solicitors speaking from a tradition of argument and negotiation tend to be in favour of more discretion, and rights advisers speaking from a background of advocacy on legal entitlements tend to place greater emphasis on the advantages of neutrality and enforceability inherent in a formula. Debate about the relative advantages of courts and an Agency to administer the scheme tends to focus on similar issues, such as the pros and cons of judicial judgement versus bureaucratic rules, but also on practical questions such as the cost of access to the courts...<sup>75</sup>

## **B. The package of reforms**

The Library has received few responses specifically to the Bill. This is mainly because a wide range of bodies with an interest in the issue gave evidence to the Social Security Select Committee for its report on the 1999 Child Support White Paper.<sup>76</sup> This report contains oral evidence and memoranda from most of the groups who have spoken out about the scheme, academics in this country who have carried out research, officials such as the Parliamentary Ombudsman and the Independent Case Examiner as well as representatives from the Department of Social Security and the Child Support Agency itself.

The Select Committee report therefore contains a comprehensive account of responses to the overall package of reforms. Drawing on this evidence, the report says:

The Government’s White Paper proposals have been generally welcomed. There remain areas of concern, many of them highlighted in this Report, which should

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<sup>75</sup> *Child Support : Issues For The Future*, Fran Bennett, Child Poverty Action Group, 1997

<sup>76</sup> *The 1999 Child Support White Paper*, Social Security Committee, HC 798 of 1998/99, November 1999

be the subject of detailed attention as the legislation passes through its several stages in Parliament.<sup>77</sup>

In the light of the Government's Response to the Social Security Select Committee,<sup>78</sup> it appears that the recommendations of the committee that differ from the Government's proposals are the following (not all of these necessarily related to the Bill):

- That the minimum payment where the non-resident parent has dependent children and is in receipt of Income Support or Income-based Jobseeker's Allowance should not be imposed until further research has been carried out into its effect on the level of compliance and the well-being of the children in the second family.
- That the calculation of child support where there is a second family should use the approach that treats children in first and second families equally.
- That the income of parents with care should be taken into account where it is above a certain threshold (proposed at "well above average earnings"),
- That the new child maintenance premium should be brought in sooner than the Government proposes. (The Government proposes to bring it in at the same time as other child support reforms.)
- That there should be a legislative requirement for the child maintenance premium to be uprated annually in line with inflation.
- That the disregard of child maintenance for Housing Benefit purposes should be substantially increased from the present £15.
- That the benefit penalty should be suspended during a phasing-in period to assess whether the incentives alone are successful in achieving higher compliance
- That the child support proposals should have been published in the form of a draft Bill and that the Bill should be committed to a Special Standing Committee in order to enable its members to take evidence directly on the details of the legislation which they would then debate and amend (if they so wished).
- That the Government should either extend the terms of reference of the Social Security Advisory Committee to include child support or create a Child Support Advisory Committee to scrutinise secondary legislation on child support.

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<sup>77</sup> Select Committee, as above paragraph 127

<sup>78</sup> *The 1999 Child Support White Paper, Reply by the Government to the Tenth Report of the Select Committee on Social Security*, Session 1998/99 [798], Cm 4536, November 1999

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