PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT CHILD SUPPORT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2018

Monday 12 November 2018

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not later than

Friday 16 November 2018

The Committee consisted of the following Members:

Chair: Mr Virendra Sharma

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Badenoch, Mrs Kemi *(Saffron Walden)* (Con)
† Cameron, Dr Lisa *(East Kilbride, Strathaven and Lesmahagow)* (SNP)
Eagle, Ms Angela *(Wallasey)* (Lab)
† Ellman, Dame Louise *(Liverpool, Riverside)* (Lab/Co-op)
† Foxcroft, Vicky *(Lewisham, Deptford)* (Lab)
† Freer, Mike *(Lord Commissioner of Her Majesty's Treasury)*
† Graham, Richard *(Gloucester)* (Con)
† Hoare, Simon *(North Dorset)* (Con)
† Knight, Julian *(Solihull)* (Con)
† Kyle, Peter *(Hove)* (Lab)
† Metcalfe, Stephen *(South Basildon and East Thurrock)* (Con)
† Scully, Paul *(Sutton and Cheam)* (Con)
† Skidmore, Chris *(Kingswood)* (Con)
† Streeting, Wes *(Ilford North)* (Lab)
† Tomlinson, Justin *(Parliamentary Under-Secretary of State for Work and Pensions)*
† Williams, Dr Paul *(Stockton South)* (Lab)

Ian Bradshaw, *Committee Clerk*

† attended the Committee

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Monday 12 November 2018

[Virendra Sharma *in the Chair*]

Draft Child Support (Miscellaneous Amendments) Regulations 2018

4.30 pm

The Parliamentary Under-Secretary of State for Work and Pensions (Justin Tomlinson): I beg to move,

That the Committee has considered the draft Child Support (Miscellaneous Amendments) Regulations 2018.

The draft regulations were laid before both Houses on 12 July 2018. The regulations will enable the Department to make amendments to child maintenance legislation to deliver the new child maintenance compliance and arrears strategy.

A comprehensively reformed child maintenance scheme was launched in 2012. The main aim of the scheme is to encourage and support parents to take responsibility for paying for their children's upbringing. We want parents to work together following separation and, where possible, to make a family-based arrangement for maintenance, avoiding state intervention altogether. Where parents do not meet their responsibilities, the statutory scheme is there to enforce payments.

I am pleased to say that, following careful staged implementation, the new service is working well and avoiding the problems that beset the previous statutory child maintenance schemes. As we have implemented the reformed scheme, we have listened to the issues that hon. Members and external stakeholders have raised. The draft regulations address a number of those issues by closing known loopholes, updating the way in which child maintenance is calculated and introducing a new sanction to target the small minority of parents who persistently evade their responsibilities.

For many years, the old system under the Child Support Agency did not provide the right support to parents and was expensive to run. The majority of cases with ongoing maintenance have been closed in the CSA schemes. I want to provide clarity to thousands of families who have a case in the CSA with arrears. In many of those cases, the children are now adults and the outstanding debts are small. In some cases, when asked, parents have moved on with their lives and are not interested in pursuing the debt. The draft regulations will enable us finally to address all arrears that built up under the CSA, meaning that we can close the cases and end years of uncertainty for the families involved.

A small number of non-resident parents are able to lower their child maintenance liabilities, or avoid them altogether, by drawing an undeclared income from assets. Whether that is via loans against the value of bullion or the acquisition of virtual currency, the cultivation of a cash-poor but asset-rich lifestyle is a rare but growing method of evading child maintenance responsibilities. The draft regulations introduce new powers to address that problem.

Where a partner believes that the ex-partner possesses the relevant assets, the Child Maintenance Service will investigate, escalating to the financial investigation unit if appropriate. If possession of a relevant asset is confirmed, and the value exceeds £31,250, a notional income will be calculated at 8% of the asset's total value. That would be added to the total income used to calculate liability. We expect the use of the power to be appropriate only in a very small number of cases. We recognise, too, that such assets can be acquired for legitimate reasons. That is why we have protected assets in certain circumstances, including where the asset is used for business purposes or is the primary home of the parent or a child.

Some parents intentionally manage their financial affairs around joint or unlimited-partnership accounts, as those are inaccessible to our existing powers. The draft regulations seek to extend our ability to use regular and lump-sum deduction orders in relation to joint and unlimited-partnership bank accounts, and to use lump-sum deduction orders in relation to sole-trader accounts. Through that new power, we may be able to collect an additional £350,000 a year for children. I want to make it clear that we want to strike a balance between recovering money for parents who are refusing to pay child maintenance and protecting the rights of other joint account holders. To achieve that, a number of safeguards have been put in place to prevent the other joint account holder's funds being deducted.

Deductions will only be made from joint or unlimited-partnership accounts where there are insufficient funds held in the parent's solely held accounts. Before action is taken, the previous six months of account statements will be checked to establish ownership of funds. In a small number of cases where, despite investigation, it is not possible to establish how much of the funds in the account belong to the parent—for example, because no evidence is furnished as to ownership—a pro rata approach will be adopted. This will assume that the parent's share of the funds is equal to that of the other account holders.

All account holders will be notified before a deduction order is made in respect of a joint account and will be given the opportunity to make representations in relation to the funds targeted. The standard representation period will be 14 days for regular deduction orders, and 28 days for lump sum deduction orders. All account holders will have appeal rights. Further safeguards are in place to ensure businesses have enough cash flow to continue to trade. For example, a deduction would not be taken if it would reduce the account balance below £2,000. We have provided a requirement for the Department to review these provisions every five years.

I plan to commence an existing power to enable the Child Maintenance Service to disqualify a paying parent with child maintenance arrears from holding a UK passport. The regulations make further provisions in respect of this power. The measure will only be used where a parent has consistently failed to meet their financial responsibility for their children and all our other enforcement powers have failed to regain compliance. It will operate in a similar way to existing sanctions of commitment to prison and disqualifications from holding or obtaining a driving licence. Given the serious nature of the power, it will be for the court to decide whether to disqualify a parent from holding or obtaining a UK

passport. The court has the power to suspend the disqualification order on such conditions as the court thinks appropriate. Although the power will be used only in a small volume of cases, I expect it will be an effective deterrent to secure payments and maintenance as early in the case as possible.

As soon as the CSA came into existence in 1993, debt began to build up quickly. Operational improvements from 2008 onwards halted the lack of growth, but reducing the historic balance has been extremely challenging. Successive Governments have not sought to hide from it, and since 1996 have published information on the client funds accounts on the amount of debt believed to be uncollectable. The latest Child Support Agency client funds accounts for 2015-16 make it clear that £3.1 billion of CSA debt is deemed uncollectable.

Over the years, a number of strategies have been tried to collect the debt, including using external debt collection agencies and offering parents the option of making a part-payment, but none has been successful in getting money to children. The regulations include changes that help to deliver certainty to parents by attempting a final collection of their debt, where they want it and where such action is likely to be cost-effective for the taxpayer.

For a case to be in scope for the regulations, the debt must have accumulated on either the 1993 or 2003 CSA cases; it must be an arrears-only case, where no maintenance is due for a child currently; and it will not have received a payment within the past three months. Where a case started on or before 1 November 2008 and has over £1,000 arrears, was over £500 if the case started after 1 November 2008, or the arrears were accrued under the CSA but have transferred to the Child Maintenance Service system and are more than £500, we will write to the parent the money is owed to and ask if they would like us to make a last attempt to collect the debt. Parents will be given 60 days to tell us that they want us to attempt to collect their debt. If representations are not received within the 60-day period, the debt may be written off.

The regulations will enable the CSA debt to be written off without seeking representations where it falls below the prescribed thresholds. That is because it would not be cost-effective to attempt to collect the debt below these levels. There are different thresholds according to the age of the debt, as the older the debt, the harder it is to collect. Where such debt is written off, both parents will be notified. Where the debt is below the value of £65, the regulations will enable the debt to be written off without notice to either parent. That is in line with the current threshold used in my Department for debts owed to the Government.

Finally, if a case of debt subject to sequestration—Scottish insolvency—these regulations will enable it to be written off when the sequestration expires. This will apply to all child maintenance schemes if the debts become legally uncollectable due to the way in which sequestration operates.

In conclusion, the launch of the Child Maintenance Service has gone well, but we now need to build on that success. We propose to do that by first widening our enforcement powers, closing down known loopholes and sending a clear signal that we will pursue those who fail to meet their obligations to their children. Secondly, we will not back away from the hard choices. We will commit to tackling the arrears that represent the legacy of the CSA and will do so in the way that best balances the interests of parents and the public purse. I commend the regulations to the Committee.

4.40 pm

Mike Amesbury (Weaver Vale) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma. I thank the Minister for explaining the regulations. As hon. Members know, much of the detailed work of the House goes on in legislative Committees such as this one, away from the political knockabout of the Chamber. It is vital that the Opposition take the chance to scrutinise proposals and identify concerns, issues and improvements. We hope to do that today, because parts of the regulations cause concern and could be modified, but on an issue such as the one before us, it is important that we do so in a considered and constructive manner. We must not lose sight of the fact that we are talking about children and families, so when we hold the Government to account on the proposals, we do so with the sole aim and objective of ensuring that money reaches children and families in a fair and timely manner. It is right for the Opposition to highlight where the Government could make improvements and where their actions and approach have fallen short in relation to child maintenance policy.

We recognise that some of the challenges that we face have their roots in the actions of successive Governments over the years. The question is this: how do we make the system work effectively? On this issue, we do not believe that the current approach is delivering, and we and others have a number of concerns. As my good friend Baroness Sherlock has identified elsewhere, although some people believe that there is a case for writing off some historical debt and introducing new compliance measures, we have to ask the following questions. Are the proposals likely to achieve the objective of getting more money to children, and do they do that in a fair way? As the Opposition, we have further questions. First, before we consider new measures, it is incumbent on the Department for Work and Pensions to show that, in relation to current child maintenance liabilities, there is effective enforcement. If there is not, writing off historical debt risks sending a message to parents who have not paid to support their children that if they just do not pay, the Government will eventually give up.

No Government have a perfect record in this area but, like many other hon. Members in the room, I know from my own case load that many children and families are losing out as a result of the failure by some parents to pay what they owe. Arrears are rising under the new service. Only 62% of paying parents on Collect and Pay paid something in the quarter ending in June 2018, and 44% of all maintenance due under Collect and Pay still had to be paid in that quarter, so there is some way to go before we will be confident that everything that can be done is being done.

We also have concerns about parts of the proposals in relation to debt that is considered too expensive to collect. We recognise that there is some logic to this. Some debts may be perceived to be uncollectable, and others will cost more to collect than will be gained by retrieval. However, the regulations give rise to a number of concerns. For example, they allow wide discretion for caseworkers to decide whether a case is worth pursuing.

[Mike Amesbury]

They place the onus on receiving parents to make representations so that the DWP continues to try to collect the maintenance owed. The cash thresholds disproportionately affect those parents who are least well off. A sum of less than £500 may be a lot of money to someone managing on a very low income. The DWP says that it expects to collect historical debts in only 10% of outstanding cases and less than one fifth of the total amount of outstanding debt. As a result, many parents may lose out—the responsibility is not theirs but the system's. When that happens, the Minister needs to answer the following question. Will parents be able to claim compensation in cases in which the outstanding debt was due to the failings of the DWP system?

Additionally, when looking at this area, we must do more than a simple profit-and-loss calculation. As with any policy, we have to consider the message that it sends and the effectiveness of the manner in which it is applied. The explanatory memorandum says that there are uncollected arrears of £3.7 billion, of which £2.5 billion is owed to parents and £1.2 billion to Government. The Department for Work and Pensions says that it would be too expensive to try to collect it all, so there are proposals to try to split hairs and claw back some of the unpaid debt. Crucially, the benchmarks, as the Minister stated, are where there has not been a payment in the last three months or, in certain cases, where the DWP asks clients if they want to try to collect the debt. If no representations are received, or the collection of the debt is not possible, it may be written off.

As my colleague Baroness Sherlock has said elsewhere, we need to ask how representations will be sought and whether each parent to whom the money is owed will be written to individually. In addition, where there has been no payment in the last three months, the case started on or before 1 November 2008 and the debt is less than £1000, or the case started after 1 November 2008 and the debt is less than £500, or the debt was less than £65 when it started, the debt can be written off without asking the parents at all.

That is where there is concern about the three-month cut-off point. When the DWP contacts parents to notify them that a debt will be written off unless they make representations, it places the onus on receiving parents to ensure that the case is pursued. We are concerned that that risks sending a message to parents who have not paid to support their children that, if they just do not pay, the Government will eventually give up. We fear that a tiny minority of parents who deliberately refuse to comply will try their luck for three months if it means they will no longer have to pay at all. That is morally and practically wrong. I would welcome the Minister's thoughts on that.

We also note that the regulations create new powers of enforcement and extend the kinds of income taken into account when assessing the child maintenance that a parent should pay. Again, in principle, we support greater enforcement powers and a better approach to how ability to pay is defined. Many of us will know from our case load that there can be differences between declared assets, income and apparent lifestyle. When that happens, it is often children who lose out; in some cases they are living in poverty as a result. Why therefore did the Government reject reintroducing the lifestyle variation? Will the assets that will now come within the scope for calculating maintenance include just the UK, or also assets outside the UK?

Once again, we ask whether any new powers will have a major impact, since the CMS does not seem to be using its existing powers of enforcement effectively. Charities such as Gingerbread are concerned that even new regulations could leave loopholes via which people could transfer money elsewhere to avoid their responsibilities. Why would a non-payer fear enforcement action, if they are already getting away with not paying their fair share under the current system? We need to ask how much additional child maintenance the Government expect to collect as a result of these changes, and whether they will set a clear target for improving compliance. Getting the existing house in order must be a priority.

We also have concerns about the charges. These new regulations fail to address the fact that the Government actively dissuade parents from accessing CMS through charges: first, through a £20 application fee to enter the services and secondly, if the collection service is needed due to the other parent not paying. The Government believe that charges encourage compliance, but without evidence of compliance under direct payment, we cannot know. There is no information available on amounts paid under direct pay or for those who paid in full under Collect and Pay. DWP's own research published in 2016 showed that many charges are ineffective, and in cases where there is domestic violence direct pay arrangements are likely to be inappropriate.

However, charges are likely to deter parents from using Collect and Pay. The Department for Work and Pensions should be much more transparent about it, so that an informed judgment can be made about whether charges incentivise behaviour as the Government intend. In our view, there is a major question about that, and it is incumbent on the Government to answer it.

Finally, we cannot consider the proposals entirely in isolation. They come at a time when many children are feeling the effects of other changes in social security, with more to come—lone parents will be particularly affected—and they bring into sharp focus the importance of ensuring that child maintenance money goes, as intended, to the child. We believe that that must be the focus of the proposals.

We accept that the regulations are made in good faith, but much more needs to be done to ensure that there is compliance within the current system, if people are to believe that the powers will be more effective. Many others will see the writing-off of money that was destined for children, often resulting in children living in poverty, as a bitter pill when the Department is failing effectively to tackle non-payment under the current CMS. It is hard not to see that as an acceptance of failure and, worse, a failure whose consequences are borne by those who did nothing to cause it—children.

We therefore do not support the regulations, taken as a whole. There are positive steps forward, but there is a real danger that writing off historical debt without taking effective action to tackle arrears under the current system will send the wrong message. The Government should produce a strategy aimed at ensuring that more people make maintenance arrangements—that should mean addressing the issue of charges—and at increasing compliance rates. Existing collection rates are too low,

and questions remain about the effectiveness of charges and other approaches, so we cannot give the proposals unqualified support.

The Government must get their act together on collection, using existing powers more effectively, and must provide clear evidence that their charging policy works and is fair. We urge the Minister to ensure that that happens, and, in doing so, to make sure that the policy and approach work for those for whom they are intended—the children.

4.52 pm

Dr Lisa Cameron (East Kilbride, Strathaven and Lesmahagow) (SNP): It is a pleasure to serve under your chairmanship, Mr Sharma.

Further to the comments of the Minister and the hon. Member for Weaver Vale, we agree that the writing off of historical debt is an issue; the agency has had long-standing difficulties making sure that people pay the fair amount that they should for their children and look after their welfare—as they should, and as is their responsibility. However, we welcome much of what has been said about closing loopholes, trying to ensure that there are better enforcement powers going forward, and making sure that parents take appropriate responsibility for children who are no longer resident with them.

Some additional issues that have not been raised come to mind. The Minister mentioned drawing on undeclared income via assets. What is his position on that, in cases where there is not currently an income but there might be at some future point, such as where an individual owns a house in which their parents are living, and which does not produce income? The asset might become relevant in future, perhaps if the individual chose to sell it after the parents were deceased. How would such an issue be handled?

As to sole trader accounts, cash flow is not the same as profit, so how would the new scheme treat cases where companies' bank accounts—not limited companies, obviously—appear to show high cash flow, but where moneys might be owed and due to come out? How would the scheme take that into account?

On the matter of the sum of £65 or less potentially being written off without people being notified, we think that that would be a mistake, particularly given the linked issue of the Women Against State Pension Inequality Campaign. It might seem like a small amount of money, but it is significant to many people who have battled for a long time to get money they are owed. How would they feel if it were suddenly written off and they were not at least notified about that? It would be important for individuals to be notified and letters sent out to them.

I want to check with the Minister the circumstances for disqualification from UK passport holding; he mentioned that the circumstances would be limited, but what are they? They should be entirely in line with human rights legislation. Will the Minister reassure us about that? We want to ensure that we have a system that works and can collect money and support children, but is balanced at its core.

4.56 pm

Richard Graham (Gloucester) (Con): I support the draft regulations that the Minister has introduced. It is incredibly important that child support maintenance regulations reflect the realities of how some parents escape their responsibilities. Although I am absolutely enthusiastic about the new regulations on non-resident parents, would the Minister tell us about the situation for resident parents? A parent may pay CMS and possibly earn good money, perhaps as a sole trader, but not declare it all to Her Majesty's Revenue and Customs, yet his former partner will know him to be accumulating expensive cars and perhaps a new and expensive home. The Minister will have heard a similar story in his surgeries; at what stage can those assets be brought into the equation and lead to higher CMS payments, so that everyone's assets can be considered where there is a serious disagreement on the income levels?

4.57 pm

Justin Tomlinson: I pay tribute to the MPs across all parties who have engaged with me on this subject; since I became a Minister it has been probably the most popular topic. Colleagues have even sat through some of the presentations with me as we have developed the regulations. Their experience, either through individual casework or with people with a lot of knowledge in this area, have helped to shape these regulations. All the contributions recognised that the absolute priority must be the children. There is much that we agree on. It is disappointing that the Opposition do not support the regulations because they send a crystal-clear message to the tiny minority of parents who choose to avoid their responsibilities.

I will try to cover the points raised. The historical debt is about £3.1 billion. It would cost us somewhere in the region of £1.5 billion to pursue all that debt, some of which is many decades old. Estimates are that we would get back between £0.1 billion and £0.6 billion, because of the nature of that historical debt. The absolute key is that we learn the lessons. That is why the CMS was brought in, and it is making a difference. In the first five years of the CMS, about £113 million was owed; in the first five years of the CSA, £1.5 billion was owed. That is a considerable difference. In March 2015, arrears were about 17%; they were 13.3% in 2016, 12.5% in 2017 and 12.1% in March 2018. I do not want to tempt fate, but the last available statistics from June 2018 show it was down to 11.8%.

There is still much more to do, but these regulations are part of the ongoing journey. This will not be the last time that we introduce regulations that are shaped not just by cross-party MPs but by the stakeholder organisations, including Gingerbread, which the shadow Minister rightly credited for the work it does in this area. I have met Gingerbread; we listened the experience it offered. The issue of three months of no payments refers only to the CSA historical debt, not the ongoing CMS or, in effect, live case, when that would not apply.

On enforcement and, in particular, why we do not take lifestyle into account, that would be a blunt tool. This may also cover the point made by my hon. Friend the Member for Gloucester, because in some cases people might have a flash car but on investigation it is found to be fuelled by debt or is not their car. Rightly, therefore, we have brought in the financial investigation unit, so that we can investigate if receiving parents notify their caseworker if they feel that there is evidence of lifestyle inconsistency. The highly trained specialist

[Justin Tomlinson]

team from the unit will now be able to look at that and, if they find grounds for changes, they will take enforcement action.

On the specific point about passports, I must stress that use of that power is a last resort, once we have exhausted all other enforcement powers. Maximum enforcement lasts for two years, and it must be granted by the court—not by us—so there are numerous safety checks in place. We used to rely on the removal of driving licences. Not unreasonably, however, the paying parent often argued, "If you take my driving licence away, I won't be able to earn and you won't get another penny from me." We think that this might be a better way. We hope that it is a sufficient deterrent and is used only in a very small number of cases.

On assets outside the UK, yes, absolutely, they may be considered. On notional income, that would be applied at 8%, not on the primary home, because we work on the assumption that the child and the paying parent live there, but if they have another home and, for whatever reason, the paying parent decides not to charge rent on it. The example given was of an asset from parents given as a goodwill gesture. We would then attribute what we believe to be fair, which is the notional income of 8% derived from that asset. That would be added to the paying parent's total income for the year, which is used for the calculation of the child maintenance.

The point about targets has been raised with me before, and I understand why—as Governments, we set targets for pretty much everything we do. To be crystal clear, we publish all data, so that all organisations may look at the data and draw their own conclusions. We do not want to set an artificial target, however, because we do not want to create perverse incentives—if we say, "X per cent. has to be enforced", we might seek to go after easy targets, rather than some of the tricky cases, in particular those of the most vulnerable people for whom it would make a real difference. The key that drives us is to get those arrears down, to act as quickly as possible and to ensure that the child, through the receiving parent, gets the full amount of money to which that child is entitled.

On charges, too, we have had representations, and we undertook a review. What is key, however, is that in an ideal world we would never be needed—all parents would be able to find an amicable way to resolve their differences and to ensure that a fair amount is paid, because that benefits the children. We would all agree on that. The modest charges—bear in mind that my Twitter feed sometimes tells me that the fees are a hugely profitable exercise—cover about 2% or 3% of our total costs. They are a nudge exercise to encourage people to find an amicable way to agree. That can happen—time heals—and we want that in place.

One of the changes that we have made is to go the other way. For example, given those points made about whether Direct Pay always works, we now proactively contact those on Direct Pay through text messages to say, "If you are having problems, contact us, and we can look to change that to collect and pay." We are ensuring that people, the less confident in particular, are not left without receiving the money that they should be. We can act far quicker than in the past.

On domestic abuse, I am very proud that I have ensured that Women's Aid is helping to develop training for all our staff, so that they can identify those who might be victims of domestic abuse, which comes in all forms. The administration fee would be waived, and we may take people's word for it—this is not something that has to be proved strenuously. Through the training, where appropriate, we will then signpost and even—if this is felt to be the right thing to do—contact the police, to alert them to what is happening.

On sole traders, we have trained staff who may use their discretion. I absolutely understand the point about cash flow not necessarily being profit, so they will look into a business not being made unsustainable, which would remove the ability to pay income in future.

We have introduced the measures to continue to build on the success of the reformed child maintenance scheme. Their introduction will send a clear message to parents who go to great lengths to avoid financial responsibilities to their children. Now that the reforms are embedded, it is right to take action to address the historical arrears, allowing us to draw a final line under the problems of previous child support systems and to focus on controlling arrears under the Child Maintenance Service so that they never reach the levels seen in the CSA schemes. The draft regulations will give us the opportunity to offer parents a final chance at collection, where cost-effective to do so and we can be reasonably certain that action would be successful. I commend this statutory instrument to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Child Support (Miscellaneous Amendments) Regulations 2018.

5.6 pm

Committee rose.