



**Strengthening families, promoting parental responsibility:  
the future of child maintenance  
Response to Department for Work and Pensions Green Paper**

**1. Executive summary and recommendations**

- 1.1. We focus our response on two key areas – the use of HM Revenue and Customs data in child maintenance calculations, and advice to separating couples.
- 1.2. In the context of using HMRC data, we recommend that detailed consultation is undertaken between the relevant Departments and interested stakeholders, such as ourselves. LITRG participated in a working group in 2008, raising a number of potential problems as to the use of HMRC data which were left unresolved when the group ceased to meet. This detailed consultation should consider:
  - income assessment and data issues for the self-employed;
  - how to deal with cases where HMRC data might be inadequate – for example, whether employment benefits in kind should be included in maintenance calculations in order to truly reflect ability to pay (and, if so, how this data can be obtained);
  - how unearned income features in the basic maintenance calculation, and what can be done to address manipulation of income (particularly now that the parent with

care will face charges if they feel that the basic calculation using HMRC data does not reflect the non-resident parent's true ability to pay and that it should be varied);

- the processes surrounding the use of HMRC data, the parties giving consent for their data to be accessed and shared, and how calculations can be checked and queried;
- the potential for errors in HMRC data and the knock-on effects;
- testing of IT systems to ensure that the interface is robust before launch.

- 1.3. Advice to separating couples needs to include guidance and signposting to further help on both tax and tax credits issues which could arise as a result of the relationship breakdown. We raise below particular tax credits problems we have seen which could be avoided if full and joined-up advice were to be given. We recommend that the design of support services and guidance is consulted on in detail with interested voluntary sector groups.

## **2. Introduction**

### **2.1. *About us***

- 2.1.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.
- 2.1.2. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

### **2.2. *Our interest in this Green Paper***

- 2.2.1. While the Child Maintenance Act 2008 was in development, LITRG sat on a DWP working group examining child maintenance variations. Amongst other things, this looked at the issues surrounding use of data from HM Revenue and Customs in the child maintenance assessment process.
- 2.2.2. LITRG continually raised various issues in this group, for example the problems of timing delays surrounding tax information for the self-employed and pointing out the possibilities of income manipulation (for example through using corporate vehicles) for non-resident parents to 'get around' the rules.
- 2.2.3. Unfortunately, this group ground to a halt in late 2008 and, despite us pursuing the matter thereafter, it was not reconvened as far as we are aware. Most of the issues we had put forward were left unresolved.

- 2.2.4. It is with this background that we comment on the Green Paper, and also focus on the need for joined-up guidance for separating couples who are tax credits claimants. We do not comment on any perceived advantages or disadvantages of family-based arrangements in terms of personal welfare in the event of relationship breakdown. These are outside our remit and will no doubt be commented on extensively by other voluntary sector groups.

### **3. Using HMRC data**

#### **3.1. *General points***

- 3.1.1. As noted above, in the past we have outlined our concerns about how HMRC data will be used in child maintenance calculations – issues which were not resolved before the working group ceased. Now the HMRC landscape is changing still further, with the prospect of PAYE ‘real-time information’ being introduced in the not-too-distant future. Whilst this potentially allows child maintenance calculations to be based on more up-to-date information than the previous tax year data currently held, there will continue to be gaps. Examples include:

- determining earned income details of the self-employed
- taking into account unearned income (particularly for those not filing a self-assessment tax return) to arrive at a full assessment of ability to pay
- dealing with non-resident parents who have the ability to manipulate their income (for example directors of limited companies using perfectly legitimate tax planning).

#### **3.2. *The self-employed***

- 3.2.1. Similar problems arise in child maintenance assessments for the self-employed as for the calculation of Universal Credit for the same group.
- 3.2.2. Tax data may well be several years out of date, especially for an individual with an accounting year end which falls early in the tax year and who files their self-assessment tax return close to 31 January after the end of the year. We submitted a paper<sup>1</sup> to the Public Bill Committee outlining our thoughts, some of which may be of relevance here. For instance:
- Will the self-employed individual’s taxable profit be used for child maintenance calculations, unadjusted?
  - How will the newly self-employed be dealt with, ie those who have yet to file a self-assessment tax return to HMRC? And how will the issue of basis periods for the newly self-employed be tackled, which can create initial ‘overlap profits’ (ie double taxation)?

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<sup>1</sup> See <http://www.publications.parliament.uk/pa/cm201011/cmpublic/welfare/memo/wr20.htm>

- Will losses be relieved against profits in the same way as for tax purposes?

3.2.3. We recommend further detailed consultation on these issues.

### 3.3. *The process of using HMRC data*

- 3.3.1. We cannot as yet understand from the Green Paper how HMRC data will be used in producing child maintenance calculations and how parents will be able to understand the basis of the calculation and work out whether it is right or wrong. Even in ongoing relationships, one spouse will find great difficulty in getting HMRC to talk to them about their partner. So how will information be shared in the event of a relationship breakdown?
- 3.3.2. For instance, Chapter Two, paragraph 12 of the Paper says that parents will be able “to apply for, and the State provide, a maintenance **calculation for information only** without it creating any liability on the part of a non-resident parent”. It goes on to say “This will be designed to help any set of parents that wish to make a maintenance arrangement between themselves and want an authoritative figure based on all factors as set out in legislation”. So far, this sounds like a good theory.
- 3.3.3. But what happens then? What will the calculation show? Will it show the non-resident parent’s income on which the calculation is based – per HMRC records, we presume – and how that income is made up? If the parent with care is provided with this calculation, presumably the non-resident parent will have to have given consent in the application process.
- 3.3.4. There are potential problems, such as:

- *Not giving sufficient income detail for the calculation to be checked.*

We have seen that HMRC’s own ‘P800’ (PAYE tax calculations) issued in the last year have been deficient on detail and explanation as to how they are made up. And estimated figures have been used in them without that being made clear to the taxpayer and the source of the estimate. If such problems have been identified with calculations direct from HMRC, how can we have confidence that they will not be repeated when one Department is making use of another’s data?

- *The potential to breed mistrust between the separating parties.*

For example, if a calculation comes through which shows incorrect income details for the non-resident parent which they have not had an opportunity to check and, if necessary query or correct it before the parent with care receives it, this could foster discord between the parties. The parent with care will naturally assume that figures sourced direct from HMRC are correct, but we fear there are many reasons why that may not be the case. Even if the non-resident parent can then get the calculation corrected, the seed of doubt will already have been sown in the mind of the parent with care.

- *The potential for under-assessment of child maintenance as against ability to pay.*

Following on from the above point, there is a converse danger for the parent with care if they place 100% reliance on a calculation using HMRC data. As alluded to above, HMRC's details of a non-resident parent's income might not be a true reflection of their ability to pay if tax planning has resulted in a lower taxable earned income figure. As we said in our submissions to the 2008 variations working group, the extent to which unearned income is taken into account in the maintenance calculation therefore needs further review. Similarly, we understood that employment benefits in kind are not included in existing calculations and again will not be in future, which could result in manipulation of income which in turn reduces the child maintenance calculation.

3.3.5. We therefore recommend that detailed consultation is undertaken as to the exact process of using HMRC data. This should be done through a working group of the relevant government Departments, plus stakeholders such as ourselves with expertise and experience in cross-cutting work. This might look at, for example:

- the circumstances in which it will be used. Paragraph 2 of Chapter Three states that data will 'usually' be 'accessed directly from HMRC' – it will be important to identify where that will not be possible or appropriate (perhaps for instance in the case of someone who is newly self-employed);
- how and with whom it will be shared;
- the opportunities for the taxpayer to check and correct it (and with whom – are queries about the income calculation directed to HMRC or the child maintenance service?);
- how it can be substituted for more up-to-date details where there has been a change in circumstances.

#### 3.4. ***Errors in HMRC data – further knock-on effects***

3.4.1. We are also concerned that a process will need to be put in place to resolve errors which occur when couples are within the new scheme (having failed to make family-based arrangements) and incorrect HMRC data is used to assess child maintenance payments.

3.4.2. For example, what happens where there is an error in the assessment due to an HMRC error in passing information across? Or perhaps where an individual's employer has made an error and incorrect information has been given to HMRC and then passed on for the purposes of child maintenance?

3.4.3. There will need to be a mechanism in place for adjusting both the maintenance calculations and any charges which have been calculated based upon them, for example in the context of the suggestion at Chapter Two, paragraph 27 of the paper (that collection surcharges will be calculated as a percentage of maintenance).

- 3.4.4. And will the non-resident parent be responsible for checking the calculation on which the maintenance assessment is based and notifying any errors? How will issues be resolved if discrepancies are found? Fairness suggests that the individual should not be penalised as a result of an error, the circumstances of which are beyond their control and which he or she cannot reasonably be expected to check accurately.
- 3.4.5. We recommend that the process of using HMRC data is considered carefully to ensure there are mechanisms in place to resolve such problems or queries.
- 3.5. ***Testing of the IT interface with HMRC***
- 3.5.1. HMRC have experienced numerous problems in recent times on converting their former 'COP' PAYE system to a single IT platform – the National Insurance and PAYE Service (NPS). Problems with data have meant that the system has produced variable results in taxpayers' PAYE Codings and reconciliation of their taxes after the year end. HMRC is undertaking a stabilisation programme to address these issues, but change continues apace with the proposed introduction of real-time information.
- 3.5.2. In view of this, we feel that launch of the new scheme in 2012 (Chapter Three, paragraph 5 of the Paper refers) is ambitious – particularly in view of the need to build an IT system without having yet put in place regulations covering the calculation of child maintenance under the new scheme (paragraph 7, first bullet).
- 3.5.3. We therefore recommend that there is an adequate period of consultation on the draft regulations and that stakeholders are involved in discussions early on to help identify where there might be problems with the interface.
- 3.6. ***Manipulation of income – charges for the parent with care who challenges the basic assessment***
- 3.6.1. Whilst it does make apparent sense on cost efficiency grounds to avoid using the statutory system wherever possible, we follow on from our comments at 3.3.4 above (bullet 3) with a concern about fairness for parents with care who wish to challenge the standard calculation of maintenance (based upon HMRC data).
- 3.6.2. For instance, a parent with care might be aware that the non-resident parent takes income in various forms from a company of which they are director – by way of, say, dividends or benefits in kind. If the child maintenance calculation does not assess that income (which, from participating in the 2008 working group, we understood it would not), the parent with care will know it does not reflect the non-resident parent's true means to pay. The non-resident parent, however, will be able to point to an 'official' calculation of maintenance (referred to in Chapter Two, paragraph 14 of the Paper which says: 'The additional advantage of the calculation will be the fact that it will have been produced independently by the Government').
- 3.6.3. If the non-resident parent is not prepared to accept any deviation from that 'official' figure, the parent with care will have to go to the expense of using the statutory scheme which

presumably will be able to vary the basic assessment as the variations process does now. This hardly seems 'fair' and reinforces our recommendation above that more thought needs to be given to tackling these issues through the basic assessment.

#### **4. Guidance for separating couples**

4.1. The Paper asks questions surrounding integration of information, advice services and support to assist families in making child maintenance arrangements for themselves.

##### **4.2. *Tax and related issues***

4.2.1. When a couple separate, there could be tax consequences. For example, although there is not usually a capital gains tax charge on disposal of the family home, issues could arise on separation, particularly if there is a delay between one of the partners moving out and a sale of the property or transfer of their interest in it.

4.2.2. Couples might also need to reorganise savings and reconsider their position on death or permanent ill-health, revisiting their Wills and insurance provision, with associated tax considerations. As a minimum, we recommend that basic guidance on these issues should be available, with signposting to where further advice can be obtained.

##### **4.3. *Tax credits***

4.3.1. Available information and guidance must include helping separating couples to determine their tax credits situation. For example, LITRG has seen an increasing number of tax credits interventions by HMRC compliance staff questioning claimants about their status as a couple (normally questioning claimants making a single claim as to whether there is an undisclosed partner and if they should be making a joint claim with that partner, and therefore whether they have been incorrectly claiming tax credits individually).

4.3.2. It is therefore imperative that couples are advised as soon as possible that their tax credits claim might be affected if they are considering, or going through, separation. They will need to take prompt action to notify a change in circumstances to HMRC and if necessary end a joint claim and submit new individual claims.

4.3.3. The consequences of getting it wrong include the added stress of an HMRC compliance intervention at an already difficult time. This can be coupled with a tax credits overpayment – debts of often significant sums – which will place added pressure on families and ultimately add to child poverty.

4.3.4. These cases can be extremely complex with the result that other voluntary sector organisations have turned to us for advice. The cost of dealing with them could be minimised or removed altogether if the claimant were instead to receive advice at the earliest possible opportunity, thus averting the problem before it arises.

4.3.5. We therefore recommend that detailed consultation on the proposed guidance and support services is undertaken to ensure that tax credits issues are covered, with participation from

interested voluntary sector organisations. We would be pleased to take part in such consultation.

LITRG  
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