

Child Maintenance: Improving our enforcement powers through the commencement of curfew orders

Public consultation

July 2022

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Glossary of terms

Compliance	This measures how much maintenance has been successfully collected from the paying parent compared to the amount of new maintenance arranged via the Collect & Pay service in that three-month period
Child Maintenance Service (CMS)	Administrative body for the 2012 scheme of child maintenance.
Curfew order	An order imposed by the court requiring the person to remain for periods specified in the order at a place so specified.
Paying parent	The parent who does not have main day-to-day care of the qualifying children and is responsible for the payment of child maintenance. Otherwise known as the non-resident parent
Receiving parent	The parent who has main day-to-day care of the qualifying children and should receive child maintenance. Otherwise known as the person with care.
Sanction	A passport or driving licence disqualification, a curfew order or committal to prison. Actions of last resort for the CMS when all other enforcement options have been exhausted.

Executive summary

1. The aim of this consultation is to seek views on the proposed introduction of a new enforcement power which is intended to strengthen CMS enforcement powers.
2. While we know most parents want to do the right thing, it can be hard to gain compliance with some groups of paying parents. In this consultation, we will detail how strengthening our powers could secure more payments for children.

Curfew orders

3. We propose to bring into force existing curfew powers that require a non-compliant paying parent to remain at a specified place at specified times, for a period of up to six months. This would include an electronic tagging requirement to enable the paying parent's compliance with the curfew to be monitored.
4. This power would only apply to paying parents living in England, Scotland or Wales. As with our current powers of driving licence and passport disqualification and commitment to prison, we expect the threat of a curfew to nudge paying parents towards compliance. Child Maintenance is transferred (devolved) in Northern Ireland. The question of whether corresponding provisions will be made for Northern Ireland, will be considered by the Northern Ireland Department for Communities.

Introduction

5. The Child Maintenance Service (CMS) was introduced in 2012 to replace the Child Support Agency (CSA). The reformed scheme was designed to provide a more cost-effective, efficient and simpler service.
6. The 2012 reforms were largely based on the recommendations made in Sir David Henshaw's 2006¹ report to deliver a fundamentally different system that encourages parents to consider all their child maintenance options rather than defaulting to the statutory scheme.
7. The report identified four new principles to reform the child maintenance system. One of the principles identified was to introduce a tough and effective enforcement regime to enforce payments where compliance had broken down.
8. Enforcement action is used as a last resort when a paying parent is failing to pay their maintenance payments and arrears have begun to accrue. We have a range of strong civil enforcement powers that can be used to collect payments. Our current powers range from using enforcement agents, such as bailiffs (sheriff officers in Scotland), and charging orders, to committal to prison and disqualification of passports and driving licences.

¹ Sir David Henshaw's 2006 report:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272335/6894.pdf

9. £2.8 million² was collected between April and June 2021 through all CMS civil enforcement action.
10. As part of our commitment to improve the CMS to secure more maintenance for qualifying children, we have been reviewing our enforcement powers to make them as effective as possible in recovering arrears from non-paying parents.
11. We are interested in hearing your views on the proposal in this consultation document, and whether you believe it will be effective in securing maintenance payments for qualifying children.

About this consultation

Who this consultation is aimed at

12. The consultation is open to voluntary and community sector organisations, as well as CMS customers and members of the general public.

Purpose of the consultation

13. The aim of this consultation is to inform the Government's proposed changes to Child Maintenance legislation.
14. Depending on the outcome of the consultation and subject to parliamentary timetables, following publication we will aim to make legislative changes to commence existing curfew powers and make changes in secondary legislation to set out how the curfew power will operate.

Scope of consultation

15. This consultation applies to England, Wales and Scotland.

Duration of the consultation

16. The consultation period begins on 9 July 2022 and runs until 12 August 2022.

How to respond to this consultation

Please send your consultation responses to:

Email: cm.consultation@dwp.gov.uk

or

DWP Consultation Coordinator

3rd Floor South Zone F

Quarry House

Quarry Hill

Leeds

² Table 7.1 CMS National Statistics

[national-tables-child-maintenance-service-to-dec-2021.ods](#)

Background information and details of proposed changes

Curfew orders

17. Currently where a paying parent has missed payments of child maintenance, the CMS attempts to recover the arrears via a deduction from earnings order or directly from their bank account. Where it is not possible, we seek to recover payment of the arrears through court-based action. This is done by securing a liability order to legally recognise the debt and then using an appropriate enforcement power. Enforcement powers include taking control of goods, charging orders and order for sale proceedings.
18. If these methods fail to recover the debt, we may seek to apply to the courts for a sanction against the paying parent to recover the debt. The sanctions are:
 - Disqualify a paying parent from holding or obtaining a driving licence or passport
 - Commit a paying parent to prison and
 - Apply a curfew order against a paying parent (currently un-commenced)
19. Although we don't use these sanctions very often, they are critical in encouraging some paying parents to meet their financial responsibilities to their children.
20. We propose to commence an existing power in the Child Maintenance and Other Payments Act 2008 to enable us to apply for a curfew order against a non-compliant paying parent. This would add to our existing sanctions. This power would only apply to paying parents living in England, Scotland and Wales.
21. The curfew order would require a non-compliant paying parent to remain at a specified place at specified times for a period of up to six months. This would include an electronic tagging requirement to enable a paying parent's whereabouts to be monitored.
22. Before an application to court is made for a curfew order, we will ensure the paying parent has the ability to pay the arrears. We would also gather evidence to present to the court, that the whole or part of the arrears remains unpaid and that there has been wilful refusal or culpable neglect to pay child maintenance. The paying parent would be required to attend the court hearing.
23. If the court finds there has been wilful refusal or culpable neglect by the paying parent to pay their maintenance, it can make a curfew order. The court has the discretion to make an order which begins to run immediately or to suspend it so it begins to run at a later date. The court may suspend the order subject to the condition of payment of the outstanding arrears. The length of suspension should give the paying parent a reasonable amount of time to pay in full.
24. If the paying parent does not pay in the period specified by the court, the curfew order will automatically come into effect.

25. If the paying parent pays a proportion of their arrears, the court may review the duration and period of the curfew order or revoke the order. Where the full amount has been paid, the court will revoke the order.
26. When making a curfew order, the court should consider the following:
- That the curfew order does not specify any place outside England and Wales, and the Sheriff may not specify any place outside of Scotland.
 - The duration of the curfew order. The order must not amount to less than 2 hours or more than 12 hours in any one day.
 - The period for which the curfew order will run for. This cannot exceed 6 months.
 - That the curfew order avoids, as far as practicable, any conflict with the religious beliefs, working hours or time that the paying parent attends an educational establishment.
 - That a costs order against the paying parent must be made.
 - The court will need to be satisfied that the curfew address is appropriate, and it has the consent of any person (other than a paying parent), for example, a landlord who has consented for the equipment to be fitted at the curfew address.
 - The person must be suitable for electronic monitoring.
27. We anticipate the number of cases where we use this enforcement power would be very low. Based on the number of applications to remove passports, we expect that we would have less than 10 cases per year. This estimate assumes that the current rules allowing a suspended sentence to pay off the arrears remain. However, we believe that publicity around the introduction of this power would be an effective deterrent to encourage the payment of maintenance earlier in the case life cycle before serious enforcement action is needed.

Breaches of Curfew

28. We propose to follow a similar process for curfew orders to that used by the Ministry of Justice when imposing an electronic tag. The paying parent will be given an Accumulated Time Violation (ATV) of two hours. If the curfew order is breached by 5 minutes or more, this will result in a call or a warning letter to the person from the monitoring service. If the paying parent provides a reasonable excuse and can evidence this, this will not be added to the time violation. If the paying parent continues to breach their curfew, they may be returned to court where their curfew order will be reviewed.
29. If the paying parent consistently breaches their curfew and the court finds that they have failed to provide reasonable excuse, the court can either issue a warrant of commitment to prison against the paying parent or extend the curfew order but this cannot exceed 6 months.
30. Our intention behind the introduction of this power is to disrupt the paying parent's lifestyle rather than their earnings. We hope this will prove to be an

effective deterrent to get parents to pay. This will not impact the paying parent's ability to pay back the arrears.

31. The court will have discretion to ensure that the order does not impact the paying parent's relationship with the qualifying child(ren) or any other children they may have.
32. Enquiries will take place with police and children's social care to assist decision making as to whether it is appropriate for CMS to apply to the court for a curfew order against the paying parent.

Your views

Question 1. Do you agree that curfew orders would be an effective method of enforcement to collect arrears and regain compliance?

Question 2. Is an accumulated time period of 2 hours a reasonable amount of time before further action is taken?

Question 3. If the curfew order is breached by 5 minutes or more, a warning letter or call will be made to the paying parent. Is this a sufficient amount of time to allow before contacting the paying parent?

Government response

33. We will aim to publish the government response to the consultation on the GOV.UK website. Where consultation is linked to a statutory instrument, responses should be published before or at the same time as the instrument is laid.
34. The report will summarise the responses.

How we consult

Consultation principles

35. This consultation is being conducted in line with the revised Cabinet Office consultation principles published in January 2016. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

36. We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
3rd Floor South Zone F

Quarry House
Quarry Hill
Leeds
LS2 7UA
Email: caxtonhouse.legislation@dwp.gov.uk

Freedom of information

37. The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.
38. All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.
39. To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team.
Email: freedom-of-information-request@dwp.gov.uk
40. The Central Fol team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the Freedom of Information Act.

