Department for Work & Pensions

Correction of accidental errors

Public consultation

November 2014

Contents

Introduction

This consultation is seeking comments on a proposal to introduce a new procedure for correcting simple administrative errors, known as accidental errors, in decisions made in relation to a child maintenance calculation under the Child Support Act 1991.

This change would mean that where the Secretary of State corrects an accidental error in such a decision at the request of a party to that decision (a “client”), the decision could be corrected under the new procedure. A client would be required to apply for a revision of the corrected decision before an appeal could be made to the First-tier Tribunal. Under the current procedure, in this scenario, the client could immediately appeal the corrected decision, without first having to request a revision (because the correction action is undertaken as a revision).

About this consultation

Who this consultation is aimed at

This consultation is open to comment from voluntary and community sector organisations and clients of the statutory child maintenance schemes, as well as to members of the general public.

Purpose of the consultation

The purpose of this consultation is to seek views on a proposal to change the way in which certain child maintenance liability decisions are corrected, for reasons of efficiency leading to improved client service.

Scope of consultation

This consultation applies to England, Wales and Scotland.

Duration of the consultation

The consultation period begins on **17/11/14** and runs **until 29/12/14**.

How to respond to this consultation

Please send your consultation responses to:

Error correction consultation

Child Maintenance Group

Calculation Policy Team

Department for Work and Pensions

PO Box 239

Leeds LS11 1EB

Email: consultation.errorcorrection@dwp.gsi.gov.uk

Please ensure your response reaches us by **29/12/14**.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

Queries about the content of this document

Please direct any queries about the subject matter of this consultation to the postal or email addresses given above.

How we consult

Freedom of information

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.

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.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team
Caxton House
Tothill Street
London
SW1H 9NA

Freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information

Consultation principles

This consultation is being conducted in line with the new Cabinet Office Consultation Principles. The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be ‘digital by default’, but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

We will aim to publish the Government response to the consultation on http://www.dwp.gov.uk/consultations

The report will summarise the responses.

Background

The Child Maintenance Group (CMG), as part of the Department for Work and Pensions (DWP), has oversight of the statutory system of Child Maintenance in Great Britain. Appeals against maintenance decisions of the Secretary of State are administered by HM Courts and Tribunals Service (HMCTS), in the first instance at a First-tier Tribunal (a "tribunal").

The statutory child maintenance system operates three schemes under legislation that determines how cases are managed. The older "legacy" schemes, also known as the 1993 and 2003 schemes of maintenance, are administered by the Child Support Agency. The new scheme, established in 2012, is administered by the Child Maintenance Service.

Before 28 October 2013, decisions made in relation to a child maintenance calculation could simply be appealed to the tribunal by a party to a case (a client). There was no requirement for a client to request a revision of such a decision before applying for an appeal. This was the position for many years.

From 28 October 2013, a client who is dissatisfied with a decision in relation to a child maintenance calculation is required to ask the Secretary of State to revise it (known as a mandatory reconsideration) before they may appeal against it. The request to revise the decision must be made by a party to the maintenance case (broadly, one of the child's or children's parents) within legally prescribed timescales (normally one calendar month from the date of notification of the decision for 1993 and 2003 scheme decisions, and 30 days from the date of notification for 2012 scheme decisions).

We are considering amending the legislation so that the Secretary of State may correct an accidental error in a decision in relation to a child maintenance calculation made by the Secretary of State under the Child Support Act 1991, rather than accomplishing that change by revising the decision. A client would then have to apply for a revision of the corrected decision before it could be appealed.

Note: An "accidental error" means an error that has been made as a result of clerical error, for example, transposing digits in a multiple digit number or having recorded or determined a specific value for an element of a maintenance calculation, then incorrectly using another value.

Current practice and outcomes

Where the CMG (acting on behalf of the Secretary of State) becomes aware of an accidental error in a decision in relation to a child maintenance calculation, the CMG will correct the erroneous element, revise the decision of its own initiative and then notify all parties of it. Either client (parent) would be required to apply for a revision of the decision before the decision could be appealed. This is because the revision was not carried out as a result of a request by a party to the decision.

However, when a client contacts the CMG, requesting that such a decision be looked at again, and the basis for that request results from an accidental error in the decision, the client will be able to appeal the corrected decision to the tribunal. They would not need to apply for a further revision of the corrected decision as any action taken in the first place to amend the decision will be a client-driven revision, which leads to a right of appeal.

It is anomalous that, where such a decision is corrected because of an accidental error, whether or not a client must request a revision of that decision before they may appeal is based purely on whether or not the client informed the CMG of the error. This is particularly the case when such matters could be dealt with simply and administratively without need of the client making an appeal.

Proposed practice and outcomes

The CMG is considering creating a new procedure for correction of an accidental error or errors in a decision in relation to a child maintenance calculation of the Secretary of State made under the Child Support Act 1991. These errors could be corrected at any time. This procedure would be available in relation to all three child maintenance schemes.

This would mean that, where such a decision is corrected as a result of an accidental error reported by a client, before that corrected decision could be appealed an application would have to be made by a client to revise it.

If such a decision were corrected under this procedure, the parties to the decision would be given written notice of the corrected decision as soon as practicable. The corrected decision would take effect from the same date as the original decision (unless the basis for the correction is the effective date itself). The parties to the decision would be given the normal period of time in which to apply for a revision, namely 30 days from the date of notification of the corrected decision in a 2012 scheme case, and one month from the date of notification in a 1993 or 2003 scheme case.

This proposed change would mean that the procedure for the correction of an accidental error reported by a client would be the same as the procedure where an accidental error is identified by the CMG.

Where any request made by a client to look at a decision in relation to a child maintenance calculation includes both an accidental error and grounds for revising the decision on a substantive matter, this new process would not apply. The decision would be revised in its entirety and the client could then appeal the decision to the tribunal.

Additionally, where a client requests that such a decision be changed and it is not **immediately** clear whether the issue they have raised is a result of an accidental error, the new process would also not apply. The decision would be revised in its entirety and the client could appeal the decision to the tribunal thereafter. This is what happens at present.

This new procedure will change the terminology used by the Secretary of State in relation to the correction of accidental errors in scenarios other than that just described. However, it will not change the process for clients and so those changes are not set out in this consultation.

It should be noted that a similar provision to the one proposed here already exists within Social Security (i.e. “benefit”) legislation.

Examples of how any new provision would be applied to statutory maintenance cases is given at **Annex B**, with examples of how the current legislation is applied held in **Annex A**.

Consultation question

Q1 ***Do you agree with our proposal to create a new procedure for correction of an accidental error or errors in a decision of the Secretary of State in relation to a child maintenance calculation made under the Child Support Act 1991?***

Annex A - Current provisions

For the purposes of the examples in this Annex, the basis of the scenarios is that there is a statutory maintenance case which includes a Parent With Care with one Qualifying Child and one Non-Resident Parent who earns £350 per week.

The following abbreviations are used in the examples:

Secretary of State	SofS
Parent With Care	PWC
Non-Resident Parent	NRP
Qualifying Child	QC

Example 1 – Where the SofS becomes aware of an error, with no contact from either the PWC or the NRP:

- A maintenance liability decision is made, based on the NRP having income of £350 per week but, when input into the computer systems, £**53**0 per week is recorded in error;

- The SofS notices (based on the original decision maker's notes, recorded at the time they made the decision), with no prompting from either the NRP or PWC, that the figure used as the NRP's income has had the numbers transposed; an "accidental" error;

- The SofS will correct the error in the income figure (from £530 to £**35**0) and revise the decision (known as an "own initiative" or "anytime" revision), and notify both the PWC and NRP of the revised decision;

- **The PWC or NRP would need to request a revision of the corrected decision before they could appeal to the tribunal** (within the appropriate legal timescales – normally one month from notification of the new decision for 1993 and 2003 scheme decisions, 30 days from notification for 2012 scheme decisions).

Example 2 – Where the PWC or NRP reports an error to the SofS, which can immediately be seen to be an "accidental" error:

- A maintenance liability decision is made, based on the NRP having income of £350 per week but, when input into the computer systems, £**53**0 per week is recorded in error

- The NRP contacts the SofS to advise that the level of their income is "wrong" and the SofS can immediately see that this is as a result of an accidental error (based on the original decision maker's notes, recorded at the time they made the decision);
- The SofS will revise the decision, having amended the NRP's income figure to £**35**0 per week, and notify both the PWC and NRP of the revised decision;

- **The PWC and NRP will have a right of appeal against the revised decision.**

Annex B - Proposed provisions

For the purposes of the examples in this Annex, the basis of the scenarios is that there is a statutory maintenance case which includes a Parent With Care with one Qualifying Child and one Non-Resident Parent who earns £350 per week.

The following abbreviations are used in the examples:

Secretary of State	SofS
Parent With Care	PWC
Non-Resident Parent	NRP
Qualifying Child	QC

Example 1 – Where the SofS becomes aware of an error, with no contact from either the PWC or NRP:

- A maintenance liability decision is made, based on the NRP having income of £350 per week but, when input into the computer systems, £**53**0 per week is recorded in error;

- The SofS notices (based on the original decision maker's notes, recorded at the time they made the decision), with no prompting from either the NRP or PWC, that the figure used as the NRP's income has had the numbers transposed; an "accidental" error;

- The SofS will correct the error in the income figure (from £530 to £**35**0) , and notify both the PWC and NRP of the corrected decision;

- **The PWC or NRP would need to request a revision of the corrected decision before they could appeal to the tribunal** (within the appropriate legal timescales – normally one month from notification of the new decision for 1993 and 2003 scheme decisions, 30 days from notification for 2012 scheme decisions).

Example 2 – Where a PWC or NRP reports an error to the SofS, which can immediately be seen to be an "accidental" error:

- A maintenance liability decision is made, based on the NRP having income of £350 per week but, when input into the computer systems, £**53**0 per week is recorded in error;

- The NRP contacts the SofS to advise that the level of their income is "wrong" and the SofS can immediately see that this is as a result of an accidental error (based on the original decision maker's notes, recorded at the time they made the decision);

- The SofS will correct the decision, having amended the NRP's income figure to £**35**0 per week, and notify both the PWC and NRP of the corrected decision

- **The PWC or NRP would need to request a revision of the corrected decision before they could appeal to the tribunal** (within the appropriate legal timescales – normally one month from notification of the new decision for 1993 and 2003 scheme decisions, 30 days from notification for 2012 scheme decisions).

Example 3 – Where a PWC or NRP reports an error in a decision to the SofS, which can immediately be seen to be an accidental error, in addition to a further, substantive issue they believe is incorrect with the decision:

- A maintenance liability decision is made, based on the NRP having income of £350 per week but, when input into the computer systems, £**53**0 per week is recorded in error. The decision also includes an allowance for the NRP's care of the QC, equivalent to one night per week.;

- The NRP contacts the SofS to advise that the level of their income is "wrong" and the SofS can immediately see that this is as a result of an "accidental" error (based on the original decision maker's notes, recorded at the time they made the decision);

- The NRP also states that "I have care of my child for 2 nights per week, not one";

- Based on the original decision maker's notes, recorded at the time they made the decision, the SofS determines that the calculation as made correctly included only 1 night of shared care, as the evidence available at the time of making the decision indicated that was the correct level.

- Therefore, the NRP's contention that the decision should be calculated to allow for two nights of shared care is a substantive issue which they believe to be incorrect, and has not resulted solely from an "accidental" error.
- The proposed measure will not apply. The SofS will reconsider the whole decision, not just the element in which there was an "accidental" error (the NRP's income). The SofS will correct the error in the income level but also investigate the shared care arrangements, and revise the decision as appropriate (i.e. either just correcting the income level or, additionally, altering the level of shared care). The revised decision will be notified to both the PWC and NRP;

- **The PWC and NRP will have a right of appeal against the revised decision.**