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Overview

[2012/3002](#) *Part 4B of the Child Support Management of Payments and Arrears (Amendment) Regulations 2012*

The Child Maintenance and Other Payments Act 2008 gave the Department a number of new arrears management powers to allow it to manage efficiently the level of child maintenance arrears that have previously accumulated and are owed to the person with care and/or the Secretary of State (SOS). These powers came into force from 10/12/2012

NOTE: References to “person with care” can be read as “child in Scotland”.

The Child Support Management of Payment and Arrears (Amendment) Regulations 2012 enabled the introduction of the write off power and set out in detail the manner in which the Department may operate this power.

The write off powers contained in the above legislation, allow arrears of child maintenance owed to the person with care to be written off in full, in certain circumstances.

When should write off Be Considered?

These powers should only be used in the following circumstances:

- when a 2012 case is closed, in this scenario caseworkers should contact the person with care to identify if they would like the arrears pursued, if the person with care advises they do not want the arrears pursued then caseworkers should follow the write off process.
- if a client makes a request for their arrears to be written off; a person with care indicates that they no longer want their arrears to be pursued; or you identify during routine handling of a case that the relevant criteria may be satisfied, caseworkers should consider this, in accordance with the Decision Making Guidance.

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Write off

[1991/48](#) *Section 41E of the Child Support Act 1991*

[2012/3002](#) *Part 4B of the Child Support Management of Payments and Arrears (Amendment) Regulations 2012*

Child maintenance arrears can only be written off in a limited range of situations, which are prescribed in regulations.

NOTE: Caseworkers must keep in mind that this applies only to debt owed to the person with care. Any Secretary of State debt exceeding £65 must be collected.

Arrears can be written off if one of the following criteria applies and the caseworker is satisfied that it would be unfair or otherwise inappropriate to enforce collection of the arrears:

- the person with care or child in Scotland has advised they no longer require the arrears due to them to be collected and wants them written off;
- the non-resident parent died before 25 January 2010 or there is no further action that can be taken to recover arrears from their estate;
- we have previously advised the non-resident parent that we would never take any further action to collect the arrears;
- the person with care or child in Scotland has died.

Caseworkers should keep in mind that only child maintenance arrears can be considered for write off under these criteria. Other types of debt, for example DNA fees, court costs and SOS debt are not eligible for write off.

Where a caseworker is considering write off action they must:

- give both parties the opportunity to make representations; and,
- take representations into account when making the final decision about whether or not it is unfair or inappropriate to enforce the debt;
- as this is a discretionary decision, welfare of the child must be part of that decision making;
- the only circumstance where representations are not required from a non-resident parent or person with care is where that person has died (and there is no Executor), or they cannot be traced. A fully documented decision should still be made even where representations notices are not issued.

The caseworker must also make a decision in every case as to whether it is unfair or inappropriate to enforce the arrears. Although in some circumstances e.g. where the non-resident parent has died and no further action can be taken to enforce the arrears, they will simply have to be written off even if this appears unfair or inappropriate.

Arrears can only be written off where one or more of the circumstances set out in regulations apply and the caseworker has decided it is unfair or otherwise inappropriate to enforce the arrears. Caseworkers should also consider that these criteria only state that arrears can be written off and not that they must be written off. There may be situations where the circumstances in regulations apply to a case, but the caseworker does not feel it would be unfair or inappropriate to enforce the arrears. In these situations, the caseworker should take steps to collect the arrears in line with business as usual processes. An example of this may be where payments are flowing and the person with care has requested write off.

When making the decision caseworkers must consider all potential elements of the person with care arrears (e.g. live, temporary/permanently suspended and deferred). It should be noted, that while there is no right of appeal, if the client feels that a decision is unlawful, they may seek a judicial review of that decision.

NOTE: Where a case has moved onto the 2012 Scheme as part of reactive and proactive transition case closure, there may still be arrears being managed on the Legacy system and caseworkers should check with Legacy colleagues before taking action with regard to writing off arrears.

Caseworkers must fully document and adjudicate all decisions, including the welfare of the child/children in relation to write off of arrears.

NOTE: Arrears which have been suspended due to sequestration (bankruptcy in Scotland), where a Protected Trust Deed is in place with payments either being made or where the Trust Deed has ended and the non-resident parent discharged, cannot be considered for write off as this type of debt is not legally collectible.

Refer to the individual sections below for additional advice on:

- the information / evidence caseworkers will need to obtain to confirm the relevant criteria is satisfied; and
- the type of arrears that can be written off if the criteria applies.

The person with care of child in Scotland no longer require collection of arrears

Caseworkers must advise the person with care of the implications, if they wish for some or all of their outstanding arrears balance to be written off. During the conversation the caseworker should advise the client that if they decide to have their

arrears written off they will receive a client representation letter explaining the impact of their request. This letter will also give them a period of 30 days to tell us if they change their mind. After 30 days the arrears will be written off if we don't receive any representations and we will not be able to reverse this. Where representations are received, we will consider them and make a final decision.

The caseworker should advise the person with care that there is no right of appeal and once the arrears have been written off they cannot be re-instated. Caseworkers must consider all potential elements of the person with care arrears (e.g. live, temporary/permanently suspended and deferred) and ensure that decisions relating to write off are well documented. It should be noted, that while there is no right of appeal, if the client feels that a decision is unlawful, they may seek a judicial review of that decision. Caseworkers should also check that we hold the person with care's current address for the issue of the representation letter.

If a person with care has previously been sent the declaration form following a conversation with a caseworker where they said they would like their arrears written off but no action has been taken to write off arrears, caseworkers can contact the person with care to establish if they would still like their arrears written off, if they confirm they still want them written off caseworker should advise them that they will receive a client representation letter explaining their decision. This letter will also give them a period of 30 days to tell us if they change their mind. After 30 days the arrears will be written off if we don't hear from them and we will not be able to reverse this. Where representations are received, we will take them into account.

This process is case specific, so when the non-resident parent has multiple cases the caseworker must apply the process to the individual case in question. The caseworker should also consider that the arrears in this scenario may span both Legacy and 2012 Scheme cases.

The caseworker has a legal requirement to give all clients the opportunity to make representations. They must consider any representations in making a decision as to whether or not it is unfair and inappropriate to enforce the arrears under the circumstances, although it is likely that the arrears will be written-off even if this would be unfair or inappropriate because they simply cannot be collected.

It is important to note that the person with care does not have the authority to make this decision in relation to SOS arrears, so where a person with care requests write off, only debt which is owed to them can be written off. The write off of non child maintenance arrears is not permitted under the Regulations.

The person with care or child in Scotland has died

Where the person with care has died and arrears owed to them are still outstanding, the caseworker can decide to write off those arrears.

If the person with care has been dead for less than two years and the caseworker cannot identify the executor as part of BAU activities the case should be referred to the DWP Recovery from Estates Team at Bradford, who will attempt to trace an executor to contact. This trace action may take up to two years. If an executor is traced through this process, that executor and the non-resident parent must be issued with a letter starting the 30 day representation period.

If no executor is identified through this process a letter marked "to the executor" should be issued to the person with care's last known address. This starts the 30 day representation period.

If the person with care has been dead for more than two years, the caseworker need not refer the case to the DWP Recovery from Estates Team to trace an executor. This is because DWP do not retain this information for individuals who have been dead for longer than this time. In these instances, and if the caseworker cannot identify the executor as part of BAU activities, the representation letter should still go out to the non-resident parent to allow them to make representations (as per the usual process).

Where representations are received from the non-resident parent that arrears should not be written off, and the person with care's executor agrees to the collection of the arrears and supplies a method for the arrears to be paid, it would be appropriate to collect the arrears in most instances, as the non-resident parent is demonstrating a willingness to pay.

Where representations are received from the person with care's executor, the caseworker needs to consider the following points;

- whether the money will provide financial support for the qualifying children;
- the welfare of the children. If the executor wants the arrears collected, but the QCs are now residing with the non-resident parent, it would not be appropriate to collect the arrears;
- if the executor is stating that the maintenance will be used to pay off debts owed by the estate; child maintenance is intended to assist in the upkeep and wellbeing of a child. Arguably paying off debts to the person with care's estate does not perform this task, so it could be appropriate to continue with write off;
- if the QCs are over 20; this also relates to the fact that child maintenance is intended to provide for the upkeep of children. While it would have been used for their upkeep had it been paid when it was originally due, if the QCs are no longer young enough to qualify, it could be appropriate to write off.

NOTE: This is not an exclusive list of considerations, and other factors may have a bearing on the decision taken by the caseworker. Where representations are

provided and it is not clear which action would be most appropriate, caseworkers should escalate the case to Advice and Guidance.

Caseworkers should make a decision as to whether or not it is unfair or inappropriate to enforce the arrears, before deciding whether to write off those arrears.

Writing off non child maintenance arrears is not permitted under this provision.

The non-resident parent has died

Where the non-resident parent has died before 25/01/10 or there is no further action that can be taken to recover arrears from their estate:

From the 25/01/2010 the Department has had the ability to attempt to recover arrears of child maintenance from the estates of deceased non-resident parents. However, where the non-resident parent died prior to this date, there is no legal power to recover the arrears owed. The person with care must still be given the opportunity to make representations in these cases, but it must be made clear that we have no legal capacity to collect arrears in this scenario.

There is no requirement to provide the opportunity for a non-resident parent representative to make representations.

If the non-resident parent died after 25/01/10, write off action is permitted in relation to person with care arrears owed to the person with care where the recovery from deceased estates process has been either unsuccessful or has failed to recover all of the outstanding arrears.

The caseworker must still seek representations from the person with care and make a decision as to whether or not it is unfair and inappropriate to enforce the person with care arrears before they make a write off decision.

Writing off non child maintenance arrears is not permitted under this provision.

Non-resident parent has been advised arrears would not be collected

During collection/enforcement activity non-resident parents may allege that they were advised no further action would ever be taken to recover some/all of the arrears.

NOTE: Prior to 10/12/2012 CMG did not have the ability to write off arrears but this is terminology that may have been wrongly used.

Where CMG holds evidence to support the non-resident parent's statement, the caseworker can consider write off. If no evidence is held, the caseworker should ask the non-resident parent to provide evidence. If the case has moved to the 2012 Scheme as part of case transition, it may be necessary for 2012 Scheme

caseworkers to liaise with Legacy Scheme caseworkers to check their systems for evidence that we have.

The principle is that the non-resident's view on the payment of debt is to be believed, but the onus is on the non-resident parent to either provide supporting evidence or help CMG to retrieve evidence which will include:

- when were they advised the debt was 'written off' (i.e. a date or an indication of a date);
- how were they advised of this (i.e. by telephone or in writing) What was happening on their case at the time (e.g. were there complaints or appeal action ongoing).

Evidence should consist of either:

- a written letter or notification issued to clients or stakeholders by the CSA/CMG. The non-resident parent must provide a copy as evidence. It is likely that any such evidence will be a locally produced letter, as opposed to an official form;
- the information provided by the non-resident parent in writing or verbally, which, following analysis/checking on notes, closely corresponds with the actions previously undertaken on a case.

Evidence may indicate, on the balance of probabilities, that the non-resident parent's recollection/evidence supports their claim that they were told that no action would be taken to collect the arrears.

Caseworkers must be aware that evidence of temporary suspension action is standard business practice and would therefore not warrant write off unless there was evidence that the non-resident parent had been informed the arrears would never be collected.

Before any arrears are written off, the caseworker must give both clients the opportunity to make representations. They should consider any representations and make a decision as to whether or not it would be unfair or inappropriate to collect the arrears under the circumstances.

Writing off non child maintenance arrears is not permitted under this provision.

Where write off is approved and the arrears were due to the person with care there may be a need to consider a special payment for the person with care based on the premise that the person with care will no longer receive the money that they were entitled to. Consequently the person with care is potentially financially worse off than they would have been, had we not advised the non-resident parent that we would not collect the arrears. This decision would be made separate to the write off decision, and would be passed over to the Complaints Resolution Team to progress. In some

instances, the non-resident parent may dispute write off as they may (wrongly) believe that the arrears have already been written off. Consequently, they may feel that we should not be approaching them with regard to write off, as they consider it already completed. Caseworkers should advise the non-resident parent that we have not previously been able to write arrears off legally, so in order for us to do so now, it is necessary to follow the correct process.

Representations

In all cases, caseworkers must seek representations from the non-resident parent or person with care or Child in Scotland who are affected by the write off decision. The only exceptions to this are where the client in question has died (and there is no executor) or cannot be traced. Any representations raised by the client(s) must be taken into consideration by caseworkers when making the final decision as to whether or not to write off the arrears.

Representations can only be made by the client(s) and cannot be made by a third party representative (rep). The exceptions to this are executors of deceased persons and third party representatives who have power of attorney where the client is not in a position to act for themselves.

Receiving representations from a client is not enough in itself to prevent write off action - caseworkers must consider what has been said by the client(s) and take this into account when deciding whether or not write off is appropriate. Note that representations may also be raised supporting write off action.

When considering any representations which have been made, caseworkers must take account of the following:

- the original reason why write off was being considered;
- who has raised the representation;
- the reasons provided;
- whether what has been said has an impact on the decision to write off;
- the welfare of any children affected by the decision.

Caseworkers must fully document any decision made in relation to representations. Caseworkers must provide the basis and the reason for their decision and include it in client notifications.

If a caseworker is unable to make a decision based on the evidence provided they should discuss with their Team Leader and, if required, refer to Advice and Guidance via an Advice Service Request.

Representation reasons and their impact on the decision whether or not to write off may vary depending on the reason why write off was first under consideration. The decision as to whether or not to write off arrears in any case is a discretionary decision and caseworkers must take into account all of the circumstances of the case including the welfare of any children affected.

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