

Child Support Amendment Bill

Commentary on the Bill

Hon Peter Dunne
Minister of Revenue

First published in October 2011 by the Policy Advice Division of Inland Revenue, PO Box 2198, Wellington 6140.

Child Support Amendment Bill; Commentary on the Bill.
ISBN 978-0-478-27197-3

CONTENTS

POLICY CHANGES	1
Overview	3
A new child support formula	5
Recognition of care for child support purposes	11
Definition of "income" for child support purposes	13
A new discretion to allow certain payments to be recognised for child support payment purposes	15
A new administrative review ground to recognise re-establishment costs following a separation, in certain circumstances	17
Reduction in the qualifying age of children under the child support scheme	19
Compulsory deductions of child support from the employment income of paying parents	20
Reduction in child support penalty rates	21
Writing off child support penalties and debt	23
CONSEQUENTIAL MATTERS	27
Consequential amendments	29

POLICY CHANGES

OVERVIEW

Introduced in 1992, the New Zealand child support scheme helps to provide financial support for over 210,000 children. Although many parents reach private agreement on their financial contributions and care arrangements, many cannot. The scheme, therefore, provides a back-up for those parents who cannot mutually agree on their relative financial contributions to support their children. It also applies when the receiving parent receives a state-provided benefit.

While the current child support scheme provides a relatively straightforward way of calculating child support liability for the majority of parents, there are concerns that the scheme is now, in many cases, out of date.

The amendments in the bill aim to reduce these and other concerns. The changes provide for a fairer and more transparent assessment calculation for child support payments that takes a wider range of individual circumstances and capacities to pay into account. The bill also includes changes to the rules relating to the payment of child support, the imposition of penalties, and the writing-off of penalties.

Broadly speaking, the changes in the bill fall into three categories:

- a new child support calculation formula;
- secondary changes to update the child support scheme; and
- amendments to the payment, penalty and debt rules for child support.

Child support formula

The new formula introduced in the bill will provide a more equitable system of financial support in a variety of circumstances. In particular, it will better reflect many of the social and legal changes that have occurred since the introduction of the current scheme, such as the greater emphasis placed on separated parents sharing the care of and financial responsibility for their children. This in turn will increase the incentives for parents to meet their child support obligations.

The new formula bases child support payments on:

- a wider recognition of shared care, based, in the first instance, on there being care of at least 28 percent of nights in a year;
- the income of both parents; and
- the estimated average expenditures for raising children in New Zealand.

Secondary changes to update the child support scheme

The bill also includes amendments which affect the operation of the child support formula and scheme more generally. The amendments:

- allow Inland Revenue to rely on parenting orders and agreements when establishing care levels;
- introduce a Commissioner’s discretion to make it easier for significant daytime care to be recognised for shared care purposes in addition to nights;
- more closely align the definition of “income” for child support purposes with the broader definition of “family scheme income” for Working for Families purposes;
- introduce a Commissioner’s discretion to allow, in certain circumstances, various prescribed payments to be recognised for child support payment purposes;
- recognise re-establishment costs, following a separation, as an administrative review ground in certain circumstances; and
- reduce the qualifying age of children subject to the child support scheme from under 19 to under 18, unless they are 18 and enrolled in full-time secondary education.

Changes to payment, penalties and write-off rules

The rules relating to payment, penalties and the write-off of child support debt play an important role in encouraging parents to meet their child support obligations on time. A system that is overly penal and inflexible can lead to very high debt levels that discourage parents from contacting Inland Revenue and arranging payment. The changes in the bill are aimed at encouraging parents to make timely payments of child support. To that end, the bill:

- allows for compulsory deductions of child support from the employment income of paying parents;
- introduces a new two-stage initial penalty, with the current full 10 percent only being charged if the debt remains unpaid after 7 days;
- reduces the incremental monthly penalty from 2 percent to 1 percent after a year of non-compliance;
- changes the circumstances in which penalties can be written off, including when a paying parent enters into an instalment arrangement or is in serious hardship, when debt recovery is a demonstrably inefficient use of Inland Revenue’s resources, or when only a low level of penalty debt is outstanding; and
- allows Inland Revenue to write off assessed debt owed to the Crown, in relation to a receiving carer who is on a benefit, on serious hardship grounds.

Application dates

The amendments in the bill apply in two phases. The new child support formula will apply for assessment periods from 1 April 2013. Owing to the significant systems and other administrative changes involved in their implementation, all other changes to the child support scheme will apply from 1 April 2014.

A NEW CHILD SUPPORT FORMULA

(Clauses 9, 11, 23 and schedule 1)

Summary of proposed amendments

The comprehensive new child support formula introduced by the bill will base child support payments on:

- a wider recognition of shared care;
- the income of both parents; and
- the estimated average expenditures for raising children in New Zealand.

Lower levels of shared care

To deal with concerns about insufficient recognition of regular shared care of children, and the costs associated with that care, the revised formula will accommodate lower levels of shared care by way of tiered thresholds, commencing from 28 percent of nights (the current formula recognises shared care only if it amounts to at least 40 percent of nights).

Total income of both parents

Both parents' incomes (less a living allowance for each parent) will be included in the formula, with the costs of raising children being apportioned according to each parent's share of total net income. When a parent has other dependent children or is paying child support for children in other relationships, the parent's income will be reduced for the assumed expenditure on those children, based on the same method of calculation as for other children, before calculating their child support contribution.

Expenditures for raising children

The formula will use a new scale of costs (expressed as percentages of child support income) that reflects more up-to-date information on the expenditure involved in raising children (after allowing for likely tax credits). These percentages vary with the number of children, the age of the children (the percentage being higher for children over 12 years), and the total income of the parents. As income rises, the percentages progressively decline to reflect that the proportion of income spent on children declines as income rises. Given that the additional expenditure becomes increasingly discretionary as income rises, the new formula will, as currently, also include a cap on the amount of child support payable.

New child support formula

The net effect of these changes is that, under the new formula, the costs will be apportioned between the parents according to the relative difference between their respective shares of combined child support income as adjusted by their share of each child's care when the proportion of that care is at least 28 percent.

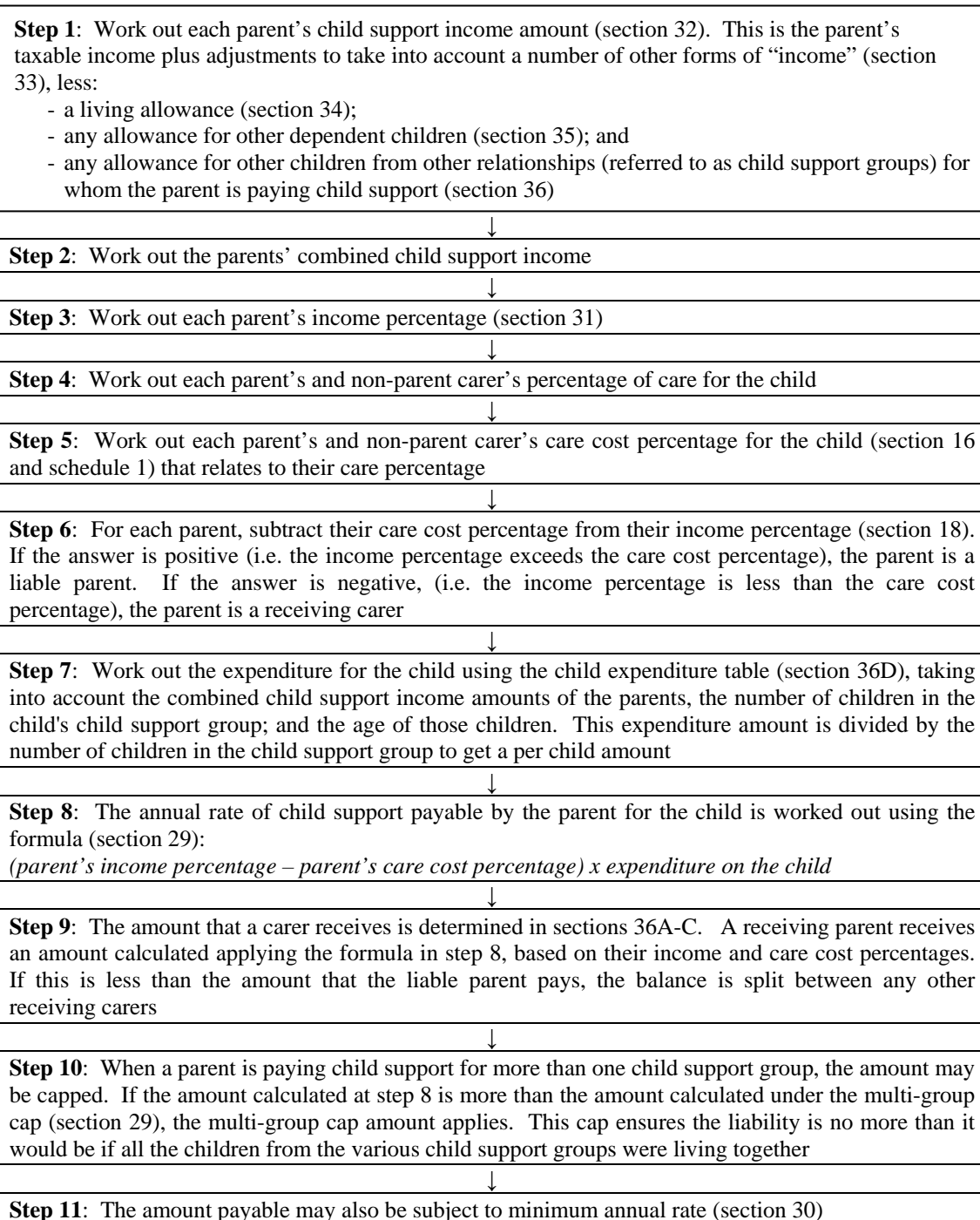
Non-parent carers may be eligible to receive a proportion of any child support payments if they care for the child for at least 28 percent of the time.

Application date

The amendments will apply from 1 April 2013.

Key features

Summary of key steps in determining child support payable for a particular child



Analysis of key features

Clause 9 repeals sections 8 to 24 and introduces new sections 7B to 19.

New sections 14 to 16 relate to establishing the proportion of ongoing daily care that each carer of a child provides to the child. A person who provides at least 28 percent of ongoing daily care (which equates to two nights per week on average) is entitled, under new section 16, to a “care cost percentage” in relation to the child. This gives recognition for the parent’s costs for the care they provide. The care cost percentages are set out in new schedule 1.

New section 14 provides that the Commissioner must establish the proportion of ongoing daily care that each parent and non-parent carer provides to a qualifying child. It also provides that if two or more people who live together provide that care, only one person may be treated as the carer with the care provided by both people being treated as care provided by that person. If one of the people is the parent, that person must be treated as the carer.

New section 15 identifies how the Commissioner establishes the proportions of ongoing daily care each carer provides. This is described in more detail in “Recognition of care for child support purposes” later in this commentary.

New section 16 determines, on the basis of the proportions of care already established, each carer’s care cost percentage. This is done by reference to the table in new schedule 1. A proportion of care that is less than 28 percent results in a care cost percentage of 0 percent. A proportion of care of 72 percent or more results in a care cost percentage of 100 percent. Proportions of care between 28 percent and 72 percent have different care cost percentages attributable to them.

New section 17 provides for the Commissioner to identify the liable parents and receiving carers of qualifying children. This requires that the care cost percentages of every carer, and an “income percentage” of every parent, be determined. A parent whose income percentage exceeds their care cost percentage will be a liable parent. A parent whose income percentage is less than their care percentage will be a receiving carer. A non-parent carer who provides at least 28 percent of ongoing daily care, and therefore has a care cost percentage, will also be a receiving carer. The income of non-parent carers is not taken into consideration in the calculation because, unlike the parents, they are not treated as having financial responsibility for the child.

Clause 11 introduces new sections 29 to 36, which replace the current sections that determine the amount of child support liability under a formula assessment.

New section 29 sets out a new formula for assessing the annual amount of child support payable in respect of a child. The amount is determined by subtracting a liable parent’s care cost percentage from their income percentage (which must result in a positive percentage, because otherwise they would not be a liable parent) and multiplying the result by the appropriate amount calculated in accordance with the “child expenditure table” that the Commissioner must issue annually in accordance with section 36D. The Commissioner’s table will be based on the expenditure on children table in schedule 2, and will, in most cases, use the combined child support income of both parents when determining the appropriate level of expenditure.

However, for liable parents that have more than one child support group (see new section 36), this formula may result in an assessment of child support liability that is higher than would arise if all the parent's qualifying children were living in a single household, rather than in multiple households. For these parents, an alternative formula, called the multi-group cap, is provided. This provides that their child support liability for each child is 100% minus their care cost percentage for the child, multiplied by the multi-group cost of the child. That multi-group cost is determined under new section 36(5).

New section 30 relates to the annual rate of child support liability of a liable parent. At present, there is a minimum annual rate that a liable parent must pay, regardless of the number of children to whom the liability relates. In order to retain this concept, new section 30 provides that, if the sum of the amounts of child support payable in respect of each of a liable parent's children is less than the minimum amount, the parent must pay the minimum amount.

New section 31 describes what a person's income percentage is in relation to a particular child. It is their "child support income amount" (determined under new section 32) divided by the sum of the child support income amounts of all parents of the child.

New section 32 sets out how a person's child support income amount for a child is determined. The amount is the person's "adjusted taxable income" minus each of the following:

- the person's living allowance;
- any dependent child allowances; and
- any applicable multi-group allowance.

New section 33 sets out how a person's adjusted taxable income is determined. This is explained further in "Definition of income for child support purposes" later in this commentary.

New section 34 sets out the living. At present, there is a range of different living allowances. Under the new scheme, the allowance for most people will be the amount payable under the domestic purposes benefit to a person with one or more dependent children, as set out in schedule 16 of the Social Security Act 1964. If, however, a parent is receiving a domestic purposes benefit granted under section 27G of the Social Security Act 1964 (because the person is caring at home for someone sick or infirm) their living allowance will be equivalent to the benefit payable to such a person with one or more dependent children. The living allowance is adjusted annually in line with changes to the above benefit rates.

New section 35 sets out the dependent child allowance. A parent is entitled to a deduction from their child support income for expenditure associated with each of their other children that they are financially supporting, provided they are paying child support in respect of those children. The dependent child allowance is the parent's care cost percentage of the dependent child multiplied by the appropriate amount taken from the child expenditure table for that child based on the adjusted taxable income, less living allowance, of that parent alone.

New section 36 sets out the multi-group allowance. This allowance applies to a parent who has more than one “child support group”. A child support group is all those children of the parent who share the same other parent. A parent’s multi-group allowance in relation to one child is the sum of the multi-group costs of all other children who are not in the same child support group as that child. Like the dependent child allowance, the multi-group allowance is a way of recognising the costs of other children for whom the parent is contributing.

The multi-group cost of a child is worked out according to a formula involving the appropriate amount from the child expenditure table for that child using the adjusted taxable income of the parent (after deducting the living allowance and any dependent child allowances) and assuming that all the children from the various child support groups were living together. The result from the child expenditure table is divided by the total number of children of the parent to get the cost for the particular child.

New section 36A provides that, when there is only one receiving carer, and that person is a parent, the proportion of the cost of raising the relevant child for that person is determined by how much their care cost percentage exceeds their income percentage.

New section 36B sets out the formula for allocating child support payments when there are one or more receiving carers of a child and none of them is a parent of the child. Non-parent carers receive a proportion of the payment made by the liable parent according to their relative share of the carers’ combined care cost percentages.

New section 36C sets out the formula for allocating child support payments when there is more than one receiving carer of a child, and at least one of them is a parent of the child. This formula is, in effect, a combination of the formulas in sections 36A and 36B.

New section 36D requires the Commissioner, before the start of each child support year, to approve a child expenditure table that will apply for that child support year. A child expenditure table is based on the “expenditure on children” table in new schedule 2, which prescribes the proportion of child support income regarded as being spent on children.

The expenditure on children varies according to the number of children in a household, the child support income of the parents, and the age of the children (the percentage being higher for children over 12 years). The table expresses the annual expenditure on children as a percentage of the combined child support income amount. This expenditure on children reflects more up-to-date information on the expenditure involved in raising children (after allowing for likely tax credits). As income rises, the percentage progressively declines to reflect that the proportion of income spent on children declines as income rises. Given that the additional expenditure becomes increasingly discretionary as income rises, the new formula also includes a cap on the amount of child support payable.

Background

The primary assumption under the current child support scheme is that the paying parent is the sole income earner and that the receiving parent is the main care provider. However, patterns of parenting have changed since the introduction of the scheme, and it is now more common for both parents to be actively involved in raising their children. Since the scheme's introduction, there has also been greater participation in the workforce by both parents, meaning that the principal carers of children are now more likely to be in paid work.

Some liable parents are concerned that the current scheme does not take into account their particular circumstances. For example, parents may share the care and costs of their children, but have arrangements that do not qualify as shared care for the purposes of the current child support formula. They are also concerned that current payment liabilities do not accurately reflect the true expenditure involved in raising children in New Zealand.

The new child support formula is designed to provide a system of financial support that takes into account a wider variety of circumstances. In particular, it will better reflect many of the social and legal changes that have occurred since the introduction of the current scheme, such as the greater emphasis placed on separated parents sharing the care of and financial responsibility for their children. This in turn will increase incentives for parents to meet their child support obligations. It will also be based on a more up-to-date estimate of the expenditures involved in raising children in New Zealand at different income levels.

RECOGNITION OF CARE FOR CHILD SUPPORT PURPOSES

(Clause 9)

Summary of proposed amendments

The bill contains amendments which allow Inland Revenue to rely on parenting orders and agreements when establishing care levels. It also makes it easier for other daytime care to be recognised when recognising care.

Application date

The amendments will apply from 1 April 2013.

Key features

Clause 9 introduces new section 15.

New section 15 identifies how the Commissioner establishes levels of ongoing daily care. It provides:

- that the Commissioner can rely on the content of care orders or agreements relating to the child;
- that the default position is that the proportion of nights that a child spends with a carer equates to the proportion of ongoing daily care that the person provides to the child;
- that a carer may challenge the above positions by providing evidence that a care order or agreement should not be relied on, or that the number of nights should not be taken to equate to the proportion of care provided; and
- that, if the Commissioner is satisfied on the evidence provided that the number of nights should not be taken to equate with the proportion of care, then the Commissioner may determine the proportion of care on the basis set out in new section 15(5).

Section 15(5) states that the Commissioner must have regard primarily to the periods the child is in the care of the carer, and then to the following factors:

- how the responsibility for decisions about the daily activities of the child is shared;
- who is responsible for taking the child to and from school and supervising the child's leisure activities;
- how decisions about the education or health care of the child are made;
- the financial arrangements for the child's material support; and
- which parent or carer pays for which expenses of the child.

Background

Inland Revenue cannot currently rely on a parenting order or agreement to establish the number of nights a child spends with each parent for child support purposes. Doing so would, however, reinforce what the courts have determined to be in the best interests of the child. This initiative would extend to parenting agreements which, while not enforceable by the courts, nonetheless convey the intentions and expectations of both parents.

Parents should, however, be able to rebut a presumption made on the basis of a parenting order or agreement when it can be shown that the order or agreement was not being followed in practice.

DEFINITION OF “INCOME” FOR CHILD SUPPORT PURPOSES

(Clause 11)

Summary of proposed amendment

The bill makes changes to the definition of “income” for child support purposes. These changes will closely align the definition with the definition of “family scheme income” for Working for Families purposes.

Application date

The amendment will apply from 1 April 2014.

Key features

At present, only a person’s taxable income is taken into account when determining “income” for child support formula purposes.

Clause 11 introduces new section 33, which defines “adjusted taxable income” for the purposes of the child support formula. The bill replicates the definition of “family scheme income” in section MA 8 of the Income Tax Act 2007, except for certain types of income that are not relevant in the child support context.

The net effect is that, in addition to taxable income, the following will be included as “income” for child support purposes:

- business and other losses that have been offset against taxable income;
- income from a trust and companies owned by trusts where the parent is the settlor;
- overseas pensions that are exempt from New Zealand tax;
- distributions from superannuation schemes that relate to contributions made by a person’s employer within the last two years, when the person has retired early;
- income kept in a closely held company;
- fringe benefits received by shareholder-employees who control the company;
- PIE income that is not “locked in”;
- tax-exempt salaries and wages;
- 50 percent of the value of private pensions/superannuation payments/annuities;
- main income equalisation scheme deposits; and
- other payments if the total exceeds \$5,000 a year (this captures, for example, income received from a trust where the parent is not the settlor).

Background

Changes were signalled by the Government in 2010 relating to the way that “income” should be defined for the purposes of Working for Families tax credits and other social policy programmes. For example, from 1 April 2011, losses, including losses from rental properties, are added back so that these losses cannot be used to reduce income when assessing eligibility for Working for Families Tax Credits. Changes were also made to ensure that certain trustee income is counted as part of a family’s total income.

Such rules were implemented to counter families structuring their affairs to inflate entitlements to social assistance (or reduce their liabilities). Adopting these rules for the child support scheme will also help to maintain the scheme’s integrity and ensure parents are assessed on their true financial capacity to pay.

A NEW DISCRETION TO ALLOW CERTAIN PAYMENTS TO BE RECOGNISED FOR CHILD SUPPORT PAYMENT PURPOSES

(Clause 27)

Summary of proposed amendment

The bill gives the Commissioner the discretion to allow certain payments made for a child's direct benefit to count towards a paying parent's child support liability, in certain circumstances.

Application date

The amendment will apply from 1 April 2014.

Key features

Clause 27 introduces new sections 130, 131 and 131A, which provide for a new payment method for some of the financial support for a child that a liable person is required to pay in a child support year.

The new payment method is to be available only if it is acceptable to the Commissioner. It allows, as a payment method, one or more qualifying payments made for the child's direct benefit during that year if:

- the liable parent who is to make or has made the payment is not to provide, or is not providing, in the relevant year, a proportion of ongoing daily care for the child that exceeds 28 percent;
- no receiving carer of the child is to be, or is, in that year a parent who is in receipt of a social security benefit (as defined in section 2(1));
- the child's parents have, before the start of that year, entered into a written agreement to the effect that they intend to pay no less than 10 percent, and no more than 30 percent, of the child support payable for the child in that year, by way of such payments;
- no parent of the child making the payments should have any child support debt (including penalties) outstanding; and
- the Commissioner is satisfied, on the basis of information available, that each of the payments to be recognised is a payment for the child's direct benefit made in that year.

Background

Currently, payments made by a paying parent for the benefit of their children are not credited against the parent's child support liability. Introducing the ability to do so may provide a greater incentive to pay child support, as a paying parent may be more

comfortable that the payment (or at least part of it) is directly benefiting the child according to the paying parent's desires for the child's upbringing.

A NEW ADMINISTRATIVE REVIEW GROUND TO RECOGNISE RE-ESTABLISHMENT COSTS FOLLOWING A SEPARATION, IN CERTAIN CIRCUMSTANCES

(Clause 26)

Summary of proposed amendment

The bill contains provision for a parent to seek an administrative review of a child support assessment to take account of re-establishment costs that were paid out of income that was earned in accordance with a pattern that was established after the parents first separated. Any excluded income in respect of these re-establishment costs should be no more than 30 percent of adjusted taxable income.

Application date

The amendment will apply from 1 April 2014.

Key features

Clause 26 introduces new section 105(2)(d) that sets out a new administrative review ground. The new ground is that, at any time within three years starting on the date on which the child's parents ceased to live together in a marriage, civil union or de facto relationship, the assessed amount of child support results in an unjust and inequitable financial result because of re-establishment costs incurred by the parent.

New section 105(7) sets out specifically when this ground can be used. Under new section 105(7) this ground will be satisfied if the adjusted taxable income of a parent of the child for the child support year concerned includes a proportion that is:

- no more than 30 percent of that income;
- income from work done by that parent additional to work that he or she did before the child's parents ceased to live together in a marriage, civil union or de facto relationship;
- used, or needs to be used, in whole or in part, by a parent of the child in that child support year to meet actual and reasonable costs incurred to re-establish himself or herself, and any child or other person that he or she has a duty to maintain, after the child's parents ceased to live together in a marriage, civil union or de facto relationship.

New section 105(8) relates to computing the three-year period in which the child's parents ceased to live together in a marriage, civil union or de facto relationship. It permits the exclusion of a period of resumed cohabitation with the sole or main motive of reconciliation if the period does not exceed, or the periods in aggregate do not exceed, three months.

Background

A paying or receiving parent may take on additional employment or overtime to help re-establish themselves after a separation – for example, to buy an alternative family home. Currently, income from secondary employment and overtime is automatically included in a child support formula calculation.

Trying to incorporate recognition of all re-establishment costs into the child support formula would not be appropriate. Instead, the bill proposes that re-establishment costs, for a period of up to three years after a relationship separation, become a ground for administrative review.

REDUCTION IN THE QUALIFYING AGE OF CHILDREN UNDER THE CHILD SUPPORT SCHEME

(Clause 8)

Summary of proposed amendment

The bill proposes reducing the upper age of qualifying children under the child support scheme from under 19 years of age to under 18 years of age, unless the child is still in full time secondary education.

Application date

The amendment will apply from 1 April 2014.

Key features

Clause 8 amends current section 5, which identifies which children are qualifying children for whom child support under a formula assessment may be payable. Currently, children under the age of 19 (and who meet the other elements of the definition) are qualifying children. This change reduces the relevant age to children under the age of 18 so long as they meet the other requirements.

Children who are aged 18 can still be qualifying children, but only if they are still enrolled at a registered school.

Background

Currently, child support is normally payable until a child reaches the age of 19 years (so long as the child also meets the other elements of the definition). However, many children start higher education before this age and so have access to the student loan and student allowance schemes, or are otherwise able to work or claim a benefit in their own right.

The bill therefore proposes that the qualifying age be changed so that child support payments automatically end when the child reaches 18, unless the child is still in full-time secondary education. In that case, the child would cease to be a qualifying child when they left school.

COMPULSORY DEDUCTIONS OF CHILD SUPPORT FROM THE EMPLOYMENT INCOME OF PAYING PARENTS

(Clause 27)

Summary of proposed amendment

The bill proposes making it compulsory for child support payments to be automatically deducted from the employment income of paying parents.

Application date

The amendment will apply from 1 April 2014.

Key features

Clause 27 introduces new section 129 which makes it compulsory for child support payments to be automatically deducted from the income of a paying parent who falls into one or more of the following categories (regardless of when the person's liability to pay financial support arises, or whether the person has defaulted in a payment or payments of financial support):

- a PAYE or ACC income recipient;
- a person who is in receipt of a specified social security benefit; and
- a person who is in receipt of a basic grant or an independent circumstances grant under the Student Allowances Regulations 1998.

Background

Receiving parents may be adversely affected by the non-payment of child support by paying parents, or alternatively be concerned about the potential instability of future payments. Currently, child support payments can only be deducted from the employment income of paying parents when those parents have defaulted on their child support payments.

Making it compulsory for all child support payments to be automatically deducted from the employment income of paying parents will help to ensure that as many payments as possible are made, and made on time, by giving more certainty to receiving parents. Paying parents will have their payments automatically co-ordinated with their pay periods, whether those periods are weekly, fortnightly or monthly.

It is recognised that some paying parents will have concerns about their employers knowing that they are making child support contributions. However, the public interest in operating an effective child support scheme should outweigh these individual concerns.

REDUCTION IN CHILD SUPPORT PENALTY RATES

(Clause 28)

Summary of proposed amendments

The bill proposes replacing the current 10 percent initial penalty for late payment with a two-stage initial penalty where the current full 10 percent is only fully charged if the debt remains unpaid after 7 days.

The bill also proposes that the incremental monthly penalty be reduced from 2 percent to 1 percent after a year of non-compliance, which is expected to be complemented with more intensive case management from Inland Revenue.

Application date

The amendments will apply from 1 April 2014.

Key features

Clause 28 replaces current section 134 with new sections 134, 134A, 134B and 134C.

New section 134 re-enacts section 134, for penalties imposed on or after 1 April 2014, with two changes. One change is that the initial late payment penalty, which is currently the greater of 10 percent of the unpaid financial support or \$5, is replaced with:

- an initial late payment penalty, at the expiry of the due date, of the greater of 2 percent of the unpaid financial support and \$5; and
- an additional initial late payment penalty, at the expiry of the seventh day after the due date, of 8 percent of so much of the sum of the unpaid financial support as remains unpaid at that expiry.

The other change in new section 134 is to the current 2 percent incremental monthly penalty. The bill proposes that these incremental penalties are adjusted so that, after 12 of those monthly penalties, the monthly penalty rate is reduced from 2 percent to 1 percent, which is expected to be complemented with more intensive case management from Inland Revenue.

Background

Penalties play an important role in encouraging parents to meet their child support obligations. If they are excessive, however, they can discourage the payment of child support to the detriment of the children concerned.

In respect of the initial penalty, a 10 percent rate for any late payment may be seen as excessive if the payment was late only because of an oversight. Introducing a two-

stage initial penalty whereby a paying parent is only charged 2 percent if the payment is not made on time, with the remaining 8 percent only being charged if the amount remains unpaid after 7 days, will give the paying parent a week to make any payments inadvertently not made. This may encourage earlier payment and decrease the level of unpaid debt owing by the paying parent. This approach also better mirrors the two-stage treatment adopted for the initial late payment of tax debts.

The cumulative nature of the 2 percent incremental penalty means that penalty amounts can grow rapidly, often vastly outstripping the original debt. At some point, parents who would otherwise be willing to pay off their assessed liability may become reluctant to approach Inland Revenue to do so, the high penalty levels acting as a disincentive to compliance.

Reducing the incremental penalty from 2 percent to 1 percent will help prevent the current rapid rate of escalation for penalty debt, and will help stop debt reaching levels that paying parents feel are disproportionate to the original debt. Other offsetting enforcement measures, such as intensive case management from Inland Revenue, are expected to be implemented if payments are still not made.

WRITING OFF CHILD SUPPORT PENALTIES AND DEBT

(Clauses 29 to 42)

Summary of proposed amendments

The bill proposes changing the circumstances in which child support penalties can be written-off. These circumstances include when a paying parent enters into a payment arrangement or cases of serious hardship, when debt recovery is a demonstrably inefficient use of Inland Revenue's resources, or when only a low level of penalty debt is outstanding.

The bill also proposes that Inland Revenue should also be able to write off assessed debt owed to the Crown, in relation to a receiving carer who is on a benefit, on serious hardship grounds.

Application date

The amendments will apply from 1 April 2014.

Key features

Clause 32 inserts a new section 135FA. New section 135FA gives the Commissioner a discretion to give write off, in whole or in part, incremental penalties of a liable person that were unpaid when a payment agreement is entered into on or after 1 April 2014. The discretion is exercisable if the Commissioner is satisfied that recovery of those incremental penalties would do either or both of the following:

- place the liable person in serious hardship (as defined in section 135G(3));
- involve an inefficient use of the Commissioner's resources.

Clause 33 amends section 135G, which enables the Commissioner, if specified preconditions are met, to grant relief to a liable person from the payment of incremental penalties. The change relaxes the precondition that requires the liable person to have paid all of the financial support debt and initial late payment penalties to which the incremental penalties relate. It is proposed that relief may be granted under section 135G even if the liable person has paid only some, and not all, of the financial support debt and initial late payment penalties to which the incremental penalties relate.

Clause 34 inserts a new section 135GA, which enables the Commissioner to grant discretionary relief for low-level residual penalty-only debt (initial late payment penalties or incremental penalties or both) if:

- the liable person has paid all of the liable person's financial support debt; and
- the Commissioner is satisfied that recovery of those penalties would involve an inefficient use of the Commissioner's resources.

Clause 35 repeals section 135H and substitutes new sections 135GB and 135H. New section 135GB requires the Commissioner to write off an initial late payment penalty if a payment arrangement is entered into or made on or after 1 April 2014. The Commissioner's duty under new section 135GB to write off the initial payment penalty is not subject to a precondition that the Commissioner be satisfied that the arrangement has been fully complied with.

Clauses 38 and 39 amend sections 135M and 135N on the availability of relief from ongoing incremental penalties if a payment arrangement or deduction notice is in force. They remove the precondition that every instalment is paid in full in accordance with the payment arrangement. That precondition currently prevents ongoing incremental penalties from being written off if any sum or instalment payable under the agreement is not paid in full in accordance with the agreement. The proposed changes, by contrast, require an incremental penalty imposed at the expiry of a one month period to be written off if a payment agreement or deduction notice is in force, and has been complied with fully, during that period.

Clause 42 inserts a new section 180A, which enables the Commissioner to write off some or all of the benefit component of an amount of child support that is payable by the liable person to the Crown, and that is unpaid and in arrears, if:

- the receiving carer is or was a social security beneficiary (as defined in section 2(1)) at the time the child support is or was payable; and
- the Commissioner is satisfied that recovery of that amount would place the liable person in serious hardship (as defined in section 135G(3)).

The benefit component of the amount of child support, as defined in new section 180A(2), means so much of that amount as is not payable to the receiving carer under section 142(1)(g).

Background

Although the primary objective of any changes to the penalty rules should be to recover progressively any existing assessed debt and re-establish the regular payment of child support liabilities, writing off penalties in certain circumstances may help facilitate regular payment or, alternatively, be justifiable on hardship grounds.

A wider range of options to write off penalties is proposed for circumstances in which payment would result in the paying parent being placed in significant hardship or it would be a demonstrably inefficient use of Inland Revenue's resources to collect the debt because the chances of collection are very low.

Likewise, the starting position for writing off penalties should recognise that a paying parent who comes to Inland Revenue to arrange the payment of a debt is trying to comply. Therefore, if an agreed amount is to be written off, it ought to be able to be written off at the start of an instalment arrangement rather than after a significant period of positive compliance, as is currently the case. If the paying parent defaults again, new late payment penalties should be applied.

Allowing Inland Revenue to write off low levels of penalty-only debt would allow Inland Revenue, once all assessed child support debt has been paid, to write off all penalty-only debt where recovery of those penalties would involve an inefficient use of the Commissioner's resources.

Inland Revenue cannot currently write off assessed debt because, in many cases, the debt is owed to the receiving parent for the care of the child. When a receiving parent is not on a sole-parent benefit, however, that parent can instruct Inland Revenue to waive the assessed debt. Inland Revenue does not have an equivalent discretion to waive assessed debt owed to and retained by the Crown when a receiving parent receives a sole-parent benefit. The courts can order a debt to be written off, but this is costly and time-consuming. Allowing assessed debt relating to beneficiaries to be written off by Inland Revenue on serious hardship grounds would avoid the need to take this course of action.

CONSEQUENTIAL MATTERS

CONSEQUENTIAL AMENDMENTS

(Clauses 5, 6, 7, 10, 12, 13–22, 24, 25 and schedule 2)

Summary of proposed amendments

The bill also makes a number of consequential amendments to other parts of the Child Support Act 1991 so that it is consistent with the policy changes noted above. The main consequential amendments are:

- Clause 5 amends section 2, which is the definition section. Many terms currently used in relation to the formula assessment of child support will no longer be used. These terms include eligible custodian, principal provider of ongoing care, shared custody child, and substantially equal sharing of ongoing daily care. The definitions of these terms are therefore repealed. Some new terms will be used in the new formula assessment scheme and are included in the definition section. These include the following:
 - care cost percentage (which relates to the costs associated with the proportion of ongoing daily care that a person provides to a qualifying child);
 - care order or agreement (which is a parenting order or other agreement concerning the proportion of care provided to a child);
 - carer (which refers to a parent or non-parent who provides ongoing daily care to a child, other than on a commercial basis);
 - income percentage (which is a parent’s proportion of the combined child support income amounts of all parents of a child);
 - receiving carer (which refers to a carer in respect of whom child support payments are payable).
- Clause 6 amends section 4, which sets out the Act’s objects. The bill does not substantively change the Act’s objects as currently described, but adapts them to reflect the new formula assessment scheme implemented by the bill.
- Clause 7 inserts a new section 4A. This gives an overview of child support liabilities under a formula assessment, and is by way of explanation only – it has no direct legal effect.
- Clause 10 substitutes a new section 25. This maintains the current approach to the ending of liability to pay child support, but updates the section for consistency with the new formula assessment.
- Clause 12 amends section 41, which currently sets out the effect of a liable parent electing, under section 40, to estimate his or her income as lower than it would otherwise be determined to be. Under the new formula assessment, this election will be available to any parent whose income is assessed for formula-assessment purposes.
- Clause 13 amends section 72. This section sets out the minimum rates of child support and domestic maintenance payable by a liable person. The amendment updates the section for consistency with the new formula assessment scheme,

and resets the starting figure on which minimum payments for child assessment under a formula assessment are set.

- Clause 14 substitutes new section 82. Section 82 currently obliges liable parents under a formula assessment to advise the Commissioner of certain changes affecting their living circumstances. The section is amended to extend the obligation to all parents, and to non-parent carers regarding changes affecting their care cost percentage. It adjusts the wording to reflect the new living allowance, dependent child allowance, and multi-group allowance.
- Clause 15 substitutes new sections 88, 88A, and 89. These sections set out the minimum specific information that must be included in notices of assessment sent by the Commissioner to parents and carers.
- Clause 16 amends section 90, which identifies the appealable decisions of the Commissioner that any person affected by the decision may object to.
- Clause 17 amends section 91, which sets out the child support and other assessments against which objections may be made.
- Clause 18 amends section 92, which sets out requirements relating to objections.
- Clause 19 amends section 96Q by identifying the parties to proceedings under Commissioner-initiated administrative reviews as being the parent who is the subject of the review (the subject parent) and any receiving carer who elects, under section 96Y, to become a party.
- Clause 20 repeals sections 100 and 101 on the basis that all appeals relating to objections against an assessment can be made on the more open-ended basis provided for in sections 102 and 103.
- Clause 21 amends section 106(1), which identifies the orders that a court may make following an application under section 104 seeking a departure from the provisions of the Act relating to a formula assessment.
- Clause 22 inserts a new section 152B. It replicates the effect of section 34, which is to allow the Commissioner to offset payments of child support under a formula assessment to one parent from any payments payable by the other parent.
- Clause 24 further amends the Child Support Act 1991 as set out in schedule 2. This provides for some further consequential amendments of a more mechanical nature.
- Clause 25 consequentially amends section 16(6) of the Adoption Act 1955.