

EXPLANATORY DOCUMENT TO

THE PUBLIC BODIES (CHILD MAINTENANCE AND ENFORCEMENT COMMISSION: ABOLITION AND TRANSFER OF FUNCTIONS) ORDER 2012

2012 No. 2007

1. This explanatory document has been prepared by the Department for Work and Pensions and is laid before Parliament under section 11 of the Public Bodies Act 2011.
2. **Purpose of the instrument**

To abolish the Child Maintenance and Enforcement Commission (CMEC) and transfer its functions to the Secretary of State for Work and Pensions as part of the Government's public bodies reform programme.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.
4. **Legislative Context**
 - 4.1 The Government are proposing to use the powers in the Public Bodies Act 2011 ('the Act') to abolish CMEC as a non-departmental public body and transfer its functions to the Secretary of State for Work and Pensions.
 - 4.2 CMEC was established by the Child Maintenance and Other Payments Act 2008 ('the 2008 Act') and has responsibilities relating to child maintenance in Great Britain. Its primary objective is to maximise the number of effective child maintenance arrangements in place for children who live apart from one or both of their parents. Parents may make arrangements collaboratively, through voluntary family-based arrangements, through the courts or through the statutory schemes.
 - 4.3 CMEC is responsible for the statutory maintenance service, currently delivered by its operational arm, the Child Support Agency (CSA). It is also responsible, via contract, for Child Maintenance Options, which provides free, impartial information and support to enable parents to identify and set up the most suitable maintenance arrangement for their circumstances. The Commission also acts to promote the financial responsibility parents have for their children even when they no longer live with them.
 - 4.4 The proposal to abolish CMEC was announced as part of the Public Bodies Bill Review (14 October 2010), in which the Government proposed to increase radically the accountability and transparency of all public bodies. As part of that proposal, CMEC would be abolished and the Secretary of State for Work and Pensions would exercise its functions, thereby bringing the delivery of child maintenance strategic and operational policy under more direct Ministerial control.
 - 4.5 CMEC does not meet any of the three criteria set out by the Minister for the Cabinet Office in the Public Bodies Bill Review which determined whether a body or function should be delivered at arms length from Ministers. These criteria test whether a body:

- Performs a technical function;
- Requires political impartiality; or
- Needs to act independently to establish facts.

4.6 CMEC is not a technical or fact gathering body that needs independence, nor does it require political impartiality to discharge its responsibilities. CMEC performs an administrative function and provides services which should be managed within government.

4.7 Given that CMEC satisfies none of the three tests, and Ministers believe that they should be directly accountable for delivering and reforming the statutory child maintenance system, it has therefore been concluded that CMEC's functions do not need to be carried out by a non-departmental public body. By removing CMEC's separate Board and Chief Executive, and with the head of the business reporting directly to the Permanent Secretary, Ministers and Parliament will have more direct control, accountability and responsibility for the system, and be more directly able to manage any changes to it.

5. Territorial Extent and Application

This instrument extends to Great Britain.

6. European Convention on Human Rights

The Minister for Disabled People, Maria Miller, has made the following statement regarding human rights:

“In my view the provisions of the Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 are compatible with the Convention rights”.

7. Policy Background

Activity during legislative passage

Public Bodies Act 2011

7.1 In debate during the passage of the Act, the Minister for Welfare Reform, Lord Freud, explained that:

“The change in status for CMEC from a non-departmental public body to an executive agency within the DWP is driven by the coalition Government's desire to have greater accountability for the hugely important issue of child maintenance. We feel that it is important to strengthen ministerial accountability when the Government are considering the role that the child maintenance system can play in their overall commitment to support shared parenting and promote parental responsibility.”

7.2 On 12 September 2011, DWP announced (see press release: <http://www.dwp.gov.uk/newsroom/press-releases/2011/sep-2011/dwp106-11.shtml>) its intention to bring day-to-day operations of its existing executive agencies

(Jobcentre Plus and the Pensions, Disability and Carers Service) under the leadership of a single Chief Operating Officer as part of restructuring to make the Department more efficient and streamline its management. On 1 October 2011 Jobcentre Plus and the Pensions, Disability and Carers Service ceased to have executive agency status.

- 7.3 In light of these decisions, the staff and operations of CMEC will not be transferred into the Department as an executive agency. Instead there will be a separate operational business unit within the Department, reporting directly to the Permanent Secretary. This will enable the efficiencies and opportunities for direct accountability that the Department's recent reorganisation has created to be fully realised.

Welfare Reform Act 2012

- 7.4 In debates during the passage of the Welfare Reform Act 2012, an amendment was tabled which sought to impose an overriding objective on the Secretary of State in applying the provisions of the Child Support Act 1991. It also sought to ensure bi-annual reporting by the Secretary of State to Parliament on the progress of achieving this overriding objective. However these changes were unnecessary and the amendment was rejected.
- 7.5 The Secretary of State does not require objectives or duties to promote child maintenance in order to do so, and neither does he require duties to issue guidance and information to be able to do so. The statutory objectives that CMEC has and its duty to promote child maintenance and to issue guidance and information are not transferred to the Secretary of State by the Order.
- 7.6 The Secretary of State already has sufficient powers to ensure that the Department maximises the number of effective child maintenance arrangements and sufficient powers to provide information. Assurances were provided during the debate that the Secretary of State will have these objectives in mind and, as part of the process for managing the transfer, will consider the measurement and reporting of success.
- 7.7 However, what is being transferred to the Secretary of State are CMEC's functions.
- 7.8 There is no intention to change the services currently delivered by CMEC when its functions are transferred. The promotion of child maintenance, the provision of information and guidance and the delivery of the statutory service will all continue.
- 7.9 In terms of policy background, the Government want to encourage parents to make family-based arrangements, where possible, as they believe that such arrangements are more likely to be enduring, result in ongoing financial support and be better for parents and children. With the right support, more children will be able to benefit from effective maintenance arrangements but this support can be difficult to access.
- 7.10 That is why an expert steering group, comprised of experts from the voluntary and community sector and academia, have been asked to advise on improving the co-ordination of existing support for separating and separated families.
- 7.11 As family support is a devolved matter, reporting in many of these areas at a Great Britain level will not be the sole responsibility of the Secretary of State. Officials

continue to work with counterparts in the devolved administrations as they look at implications for support services for separated families in their respective jurisdictions.

- 7.12 The Department will continue to publish the quarterly summary of statistics which currently details the performance of the Child Support Agency and will publish details of key contracts and spend in line with the transparency agenda, and in line with other parts of the Department.
- 7.13 In order to measure and gather information about maintenance arrangements outside the statutory service, the Department will be including a series of questions about child maintenance in the large-scale Economic and Social Research Council led survey, "Understanding Society". More information can be found on this at: <http://www.understandingsociety.org.uk/default.aspx>

What is being done and why

- 7.14 In line with the requirements of the Act, a Minister may only make an Order under section 1 of the Act abolishing a body if the Minister considers that the Order serves the purpose of improving the exercise of public functions. In considering this, the Minister must have regard to efficiency, effectiveness, economy, and securing appropriate accountability to Ministers.
- 7.15 This has been considered. The key to this change is that CMEC has responsibilities relating to child maintenance, an issue which affects many families, and the Government feel it is right that Ministers should be directly responsible and accountable for this important work.
- 7.16 In particular to note are that:
- **Efficiencies** to be realised in support areas by not duplicating enabler functions such as HR and finance, and by child maintenance services being squarely part of the wider Department and benefiting from the scale and expertise this brings;
 - **Effectiveness** will be improved as Ministers will be more directly able to influence service delivery and any changes to that, including addressing issues that impede the effective delivery of high quality services or the implementation of new policies and systems;
 - Small **economies** will be achieved as some activity is stopped (not producing separate annual accounts and not requiring a Board should save for example approximately £0.5 million per annum). As the duplication of functions are addressed, further savings can be expected to be realised; and
 - Most significantly more appropriate **accountability** to Ministers will be achieved by the delivery of child maintenance services being directly under their accountability and responsibility. There will no longer be a separate, legal board between Ministers and those managing the delivery of the service.
- 7.17 Since 2008, the issue of child maintenance has been at arms length to Ministers; however the Government believe that accountability and decision making responsibility for child maintenance should sit with Ministers. As explained above, the

2010 review of public bodies concluded that there was no reason, based on the Government's three tests, for these functions to remain at arms length.

- 7.18 The Government therefore plan to abolish CMEC as a non-departmental public body, and transfer its functions to the Secretary of State for Work and Pensions. This will secure appropriate accountability to Ministers for the exercise of public functions by establishing direct accountability to and through them as the elected and legitimate office holders who answer to Parliament for performance in this area and for the ongoing reform of the child maintenance system.
- 7.19 In accordance with section 8(2) of the Act, it can be confirmed that these changes will not alter or remove any necessary protection nor do they prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. This change is around the administration of child maintenance and bringing the responsibility for this work directly under Ministerial responsibility.
- 7.20 In addition, article 4 of the Order makes provision for continuity of the exercise of the functions being transferred. This ensures that the transfer of functions to the Secretary of State will have no effect on the validity of anything done by, or in relation to, the Commission before the transfer.

What will take the place of CMEC?

- 7.21 The Secretary of State for Work and Pensions will become responsible for the delivery of child maintenance and for ensuring that any change programmes are implemented.
- 7.22 CMEC will be abolished and no longer exist as a separate legal organisation.
- 7.23 Staff will transfer from CMEC to DWP under the Cabinet Office Statement of Practice (COSOP) rules, and the transfer will be treated as a Machinery of Government change from one department to another department. This is because CMEC is a Crown body and therefore exercises its functions on behalf of the Crown. Staff will retain their civil servant status, and staff terms and conditions will be protected at the point of transfer.
- 7.24 Noel Shanahan (current CMEC Commissioner and Chief Executive) will become head of the operational business unit, reporting to DWP's Permanent Secretary and become a member of the DWP Executive Team. The business itself will be called the Child Maintenance Group. The impact of abolition on delivery staff, who form by far the largest part of CMEC's workforce, will be minimal. The enabler functions, such as finance and HR, over a period of time will be separated and integrated into the corresponding DWP teams in terms of line management.
- 7.25 CMEC is part-way through a major project to reform the system of child maintenance, where the first part of delivery is due to start in 2012. This involves a major new IT system to support a new statutory child maintenance service, which will affect all CMEC's current and future clients. Hence, Noel Shanahan will remain the senior responsible officer for the change programme, and the staff working to deliver this will remain under his management in order to retain continuity in this important area.

- 7.26 As such it is proposed that initially no major changes are made to how operational staff currently within CMEC are organised, nor how the business is run, although the enabler functions will be managed separately and support the business in the same way as other operational areas within the Department.
- 7.27 The details are currently being planned. Initial work is concentrating on the practical things that need to be done when an organisation is abolished and its functions transferred to another.
- 7.28 Thereafter, it is expected to see efficiencies as functions are merged, but at this stage plans have not been fully developed or costed. More detailed work will be undertaken in a second stage, but as the plan is to bring CMEC into the Department without major changes (as set out above), sizeable savings initially beyond those associated with not having a separate CMEC Board and accounts (around £0.5 million per annum) are not envisaged and that these savings may be offset by costs of the change (such as changes to resource management systems).
- 7.29 Operational front-line staff delivering the statutory child maintenance service will see little or no change, and they will report into the Department as a business unit, enabling that unit to focus solely on the effective implementation and administration of an efficient and effective child maintenance service. Whilst, like all parts of government, all parts of the business will be expected to find efficiency savings, this would have happened without the abolition and transfer. Any additional savings brought about by this particular change will be around back room functions, not front line delivery.
- 7.30 Accounts will be produced for CMEC for the period from the start of the financial year to the point of abolition. Noel Shanahan as the Accounting Officer during this period will work with and advise the DWP Permanent Secretary as the new Accounting Officer following abolition to agree these accounts before sending to the Comptroller and Auditor General and laying before Parliament. Thereafter, as part of DWP, separate accounts will not be necessary and will be reported upon as part of DWPs accounts.

The Order

- 7.31 This Order abolishes CMEC and transfers its functions to the Secretary of State.
- 7.32 It also transfers to the Secretary of State any property, rights or liabilities of CMEC, or to which CMEC is subject, on the transfer date.
- 7.33 The Order ensures anything that is done or in the process of being done by CMEC on the transfer date will be treated as done by the Secretary of State when CMEC's functions are transferred. It also provides that the Secretary of State will be liable for anything CMEC has done in the exercise of its functions. The Order does not deal with the transfer of CMEC's staff to the Secretary of State as CMEC's staff are civil servants and will transfer as described in paragraph 7.24 above.
- 7.34 It also ensures that if any documentation is issued which refers to CMEC after its abolition, the document will not be invalidated as a result. This is to allow a cross over period before the IT systems used in relation to child maintenance are changed so that

in the intervening period documentation can be issued in the name of CMEC but still have legal effect. Article 5 ensures any documentation issued in its name before its abolition is still valid.

- 7.35 The Schedule to the Order makes a number of consequential, incidental and supplementary amendments to legislation which are required as a result of the abolition of CMEC and the transfer of its functions to the Secretary of State. The majority of the changes made in the Schedule to the Order are textual amendments that simply replace any references to the Commission with a reference to the Secretary of State.
- 7.36 In addition to those textual changes, the draft [to the] Order published with the consultation included the omission and re-enactment of several provisions from the 2008 Act in the Child Support Act 1991. However, as some of these provisions have very recently been substantively amended and [heavily] debated in both Houses of Parliament, it has been decided to leave the provisions in the 2008 Act.
- 7.37 The Schedule to the Order also amends the Secretary of State's existing information sharing gateways to include child maintenance, for reasons of coherence, rather than retain separate gateways for child maintenance in the 2008 Act.

8. Consultation outcome

- 8.1 A public consultation covering the Government using the powers in the (then) Public Bodies Bill to abolish the Child Maintenance and Enforcement Commission (CMEC) as a non-departmental public body, and transfer of its functions to the Secretary of State for Work and Pensions was conducted between 10 October 2011 and 3 January 2012.
- 8.2 Eleven responses to the consultation were received, a rate which indicates that this is not a contentious change. Five respondents were broadly in agreement with the proposals although some made additional points. Three respondents clearly disagreed with the proposed changes, with the remainder not offering comments or being concerned with the consultation process rather than its substance.
- 8.3 The chief concerns raised by the respondents were the extent to which, and rigour with which, CMEC's current objectives will be pursued and how its activities will be reported upon given its change of status. Ministers have made clear that their principal driver in seeking to bring CMEC's functions back into government is so that they may exercise more direct control over the discharge of statutory child maintenance functions and that robust reporting mechanisms will be put in place to support this.
- 8.4 Concern was also expressed that the consultation document provided no information regarding the exact future structure of CMEC and its reporting lines to DWP. At that time these matters were still under consideration, but since the consultation document was published decisions have been reached in this area as explained in paragraphs 7.21 to 7.29 above.
- 8.5 Concern was further expressed as to whether there was sufficient evidence to provide justification for this change, and if the change would provide value for money for the taxpayer and be in the best interests of parents. Also some stakeholders expressed

concern that there was a risk of a temporary decline in performance if a big change to staff working in the organisation were to be made. The movement to DWP will not directly affect parents as there is no change in policy directly attached to it. As explained in paragraph 7.26 above, the way that CMEC will be transferred into DWP is being done so that this change will not destabilise the organisation or risk the successful implementation of the new child maintenance arrangements and without further changes to reporting structures or responsibilities in child maintenance operations, at least until the new statutory scheme has commenced and is judged to be functioning well. This means that some of the benefits of moving CMEC into DWP will, therefore, not be seen immediately as the transition will be managed carefully to avoid disruption. However in the longer term value for money and efficiency will improve as duplication is eliminated and as Ministers have more direct control over the delivery and development of services in this area.

- 8.6 Another response related to a requirement under the Child Maintenance and Other Payments Act 2008 that the Secretary of State review the status of CMEC as a Crown Body as soon as practicable after three years. Stakeholders suggested that this review should be abandoned. Given the proposal to abolish CMEC this suggestion was accepted and there will be no reason to undertake this review.
- 8.7 Two further responses were considered but were rejected. One was confused about the interaction of the benefits system and child maintenance in relation to fraud referrals, basing their opinion on outdated information from a time when child maintenance could affect the receipt of benefits.
- 8.8 The second, about transferring the work to the courts, assumed that delivery of child maintenance is the entirety of everything the Commission does and that the CSA would fit within a court context. This is far from the case. CMEC's functions include the promotion of the financial responsibility that parents have to their children and to provide information and support to parents on their child maintenance options. These functions would not sit easily with the court system, and it may be that the court system would not have the powers or resources to fulfil them. More importantly, the Government's aim is to provide parents with the support they need to make family-based arrangements and to move them away from potentially confrontational situations. Encouraging parents to have recourse to the courts is unlikely to promote family-based arrangements and shared parenting. It is also likely to increase how long it takes for effective child maintenance arrangements to be put in place and increase the burden, both financial and administrative, on the Court Service.
- 8.9 All responses were fully considered. Having done so, no changes to the proposed abolition were necessary.
- 8.10 Further information relating to the consultation responses can be found in the annex.

9. Guidance

The nature of this order, ie the abolition of CMEC and the transfer of its functions to the Secretary of State for Work and Pensions, makes it unnecessary to publish guidance in relation to it. The change will not affect the delivery of services.

10. Impact

- 10.1 This Order abolishes CMEC and effectively transfers its functions to the Department for Work and Pensions. The services delivered are not altered by this change, simply the way the service is managed. It will have no impact on businesses or civil society organisations. This Order has only a negligible impact on the public sector, namely a small number of CMEC and Departmental corporate staff.
- 10.2 The transfer of CMEC's business to the Department can be achieved at minimal one-off cost (less than £1m, which will be absorbed). These costs include things such as IT changes. In the medium term there are efficiencies to be achieved in reducing duplication, as well as enabling more direct Ministerial control of major reforms that will provide a better service to parents for the benefit of their children.
- 10.3 The initial savings will be largely around matters such as no longer having to produce separate accounts for CMEC (from 2013/14), saving c£0.2m pa and no longer having a separate Board, hence saving on salaries and expenses currently paid to the Chair and non-executive members (c£0.3m pa).
- 10.4 However, the business will be integrated more fully into the Department over the medium term, with a view to removing duplication and enhancing accountability, and hence realising more savings going forward.
- 10.5 A full impact assessment has not been published for this order.

11. Regulating small businesses

The legislation does not apply to small businesses.

12. Monitoring and review

- 12.1 A benefits realisation review will be undertaken following abolition and after new structures have been embedded during 2013/14.
- 12.2 DWP Ministers will be accountable to Parliament for the way that they fulfil their responsibility for their child maintenance role.

13. Contact

Darren Woolfenden, Business Partner for CMEC Sponsorship at the Department for Work and Pensions (Darren.Woolfenden@DWP.gsi.gov.uk or 020 7449 5505)

Annex

The consultation:

<http://www.dwp.gov.uk/docs/cmec-abolition-consult.pdf>

The published response to the consultation:

<http://www.dwp.gov.uk/docs/cmec-abolition-consultation-response.pdf>

Analysis of the responses:

CMEC consultation responses

The Consultation

The consultation was aimed primarily at those organisations that have a professional relationship with the Child Maintenance and Enforcement Commission, although all views were welcomed.

These organisations were alerted by e-mail and meetings offered to a number of those to discuss the consultation proposals in more detail:

- 4Children
- Action for Children
- Barnardo's
- Centre for Separated Families
- Centre for Social Justice
- Child Poverty Action Group
- Children Need Families
- Children's Society
- Citizens Advice
- Citizens Advice Scotland
- CIVITAS
- The Faculty of Advocates
- Families Need Fathers
- Families Need Fathers Scotland
- The Family Parenting Institute
- Family Links
- Fatherhood Institute
- Fife Gingerbread
- Fyfe Ireland Solicitors
- Gingerbread

- The Institute of Payroll Professionals
- Law Society
- Law Society Scotland
- The low Income Tax Reform Group
- MATCH
- Mumsnet
- NACSA
- National Family Mediation
- One Parent Families Scotland
- One Plus One
- Policy Exchange
- Refuge
- Relate
- Relationship Scotland
- Resolution
- Deidre Sanders
- ScoopAid
- Tavistock Centre for Couple Relationship
- University of York
- Working with Men

Communications to both CEMC and DWP staff were issued on 10 October 2011.

The consultation ran from **10 October 2011 to 3 January 2012** and was made available on line at

<http://www.dwp.gov.uk/consultations/2011/cmec-abolition.shtml>

The breakdown of responses

The following table provides a breakdown of the responses received.

Breakdown of responses	Number received
External organisations	9
Members of the public	0
Child Maintenance and Enforcement Commission staff	0
Department of Work and Pensions staff	1
Ministry of Justice staff	1
Total	11

Of the responses

5 respondents agreed/welcomed the change although most had additional concerns (001 / 005 / 008 / 009 / 010)

3 disagreed or asked for reconsideration (006 / 007 / 011)

1 nil response (002)

1 response re the consultation process not the actual proposal (004)

1 alternative proposal *could* be classed as a disagree (003)