

# **CHILD SUPPORT (PASS ON) ACTS AMENDMENT BILL**

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*Commentary on the Bill*

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**Child Support (Pass On) Acts Amendment Bill; Commentary on the Bill**

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# Overview of the Bill

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## Bill overview

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This Bill proposes amendments to ensure that beneficiaries receiving a sole parent rate of main benefit are not treated differently from other beneficiaries. It proposes that, from 1 July 2023, child support collected by Inland Revenue would be paid to those beneficiaries, and the Ministry of Social Development (MSD) would then treat these payments as income when determining entitlement to a benefit or other assistance.

Currently, parents and carers who receive a sole parent rate of main benefit are required to apply for child support to be assessed and collected by Inland Revenue. Child support payments collected by Inland Revenue on behalf of these sole parent beneficiaries are retained by the government to offset the cost of their benefits. Once the cost of their benefit has been offset, any excess is paid to the beneficiary. Excess payments are not treated as income by MSD when determining the sole parent's benefit entitlement. However, other beneficiaries (such as re-partnered beneficiaries) have their child support passed on. This creates an inequity and inconsistency between how sole parent beneficiaries and other beneficiaries are treated in the benefit system.

To correct this inequity and inconsistency, the Bill proposes to remove the obligation for sole parent beneficiaries to apply for child support to be assessed and collected by Inland Revenue. Any child support payments collected by Inland Revenue would be passed on to sole parent beneficiaries. These changes would not apply to Unsupported Child's Benefit beneficiaries.

The proposal is estimated to have a positive impact on approximately 41,550 sole parent families. On average, they would receive \$65 per week of child support income, with a median gain of \$24 per week (before the abatement of benefits).

This Bill further proposes that MSD automate the treatment of child support payments passed on by Inland Revenue as income when determining their eligibility to, or rate of, benefit.

The proposals in this Bill would align the treatment of child support payments received by sole parent beneficiaries with the treatment of child support payments received by other beneficiaries. Child support would be income for upcoming benefit payments. Monthly child support would be treated as income and spread across four or five weeks.

Following the abatement of benefits, families would gain overall by an average of \$47 per week, with a median gain of \$20 per week.

It is estimated that this proposal would reduce child poverty by around 6,000 (+/- 3,000) children on the fixed-line after housing cost (AHC50)<sup>1</sup> measure, and by around 10,000 (+/-

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<sup>1</sup> This is defined as income below 50% of the median equivalised household income in the base year (2017/2018), after accounting for housing costs. This measure tells us how households with low incomes are doing relative to previous years and the impact of housing costs.

4,000) children on the moving-line before housing cost (BHC50)<sup>2</sup> measure in the 2023/24 financial year.

This initiative aligns well with the Government's ten-year longer-term child poverty reduction target to reduce material hardship from 13.3 percent of children to six percent.

Related to the proposals outlined above, this Bill also proposes that a formula assessment of child support payable by liable parents would be a cost that can be considered for Temporary Additional Support and Special Benefit purposes.

Passing on child support was recommended by the Welfare Expert Advisory Group (WEAG) in 2019. This change would build on the earlier policy change made in 2020 to remove the financial penalty for sole parent beneficiaries who did not name the other parent of their child and apply for child support, which was also recommended by WEAG.

Child support pass-on is being implemented in two phases. This Bill implements the first phase, which would mean that child support is passed on and most child support would be treated as income. The second phase would implement rules for how child support payments are treated as income in rarer cases and may come into effect at a later date.

### **Effective date**

All the proposed amendments contained in the Bill would take effect on 1 July 2023.

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<sup>2</sup> This is defined as having income below 50% of the median equivalised household income in the year measured, before accounting for housing costs. This measure tells us how low-income households are doing relative to other households.



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# Amendments to the Child Support Act 1991

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# Passing on child support

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## **Clause 14**

### **Summary of proposed amendment**

This Bill proposes that child support assessed and collected by Inland Revenue for parents or carers receiving a sole parent rate of main benefit would no longer be retained.<sup>3</sup> Instead, child support payments would be passed on to these beneficiaries in the same way they are currently passed on to other beneficiaries.

### **Background**

Child support is money paid by parents who do not live with their children or who share care with someone else. The money is to help with the cost of raising a child. One of the main objects of child support is to ensure children are maintained by their parents.

Parents and carers who are receiving a sole parent rate of main benefit or Unsupported Child's Benefit (UCB) are called "social security beneficiaries" in the Child Support Act 1991. Those beneficiaries are currently required to apply to Inland Revenue for a formula assessment of child support.

Child support payments collected by Inland Revenue on their behalf are retained by the government to offset the cost of their benefit. Once the full cost of their benefit has been offset, child support payments in excess of that full cost are paid to them. This excess payment is not treated as income for main benefits but is taken into account by the Ministry of Social Development for determining entitlements to other assistance, such as Temporary Additional Support, Special Benefit, and Childcare Assistance.

These settings do not apply to other beneficiaries. Parents on a couple's rate of main benefit who have children in their care from a previous relationship and parents receiving only supplementary assistance are not required to apply for child support. If they do receive child support, they receive the payments in full, with none of it retained by the government. There is, therefore, an inconsistency between how social security beneficiaries and other beneficiaries are treated in the benefit system.

### **Key features**

The proposed amendments would ensure child support payments collected by Inland Revenue for parents or carers receiving a sole parent rate of main benefit would no longer

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<sup>3</sup> These beneficiaries may be receiving Emergency Benefit, Jobseeker Support, Sole Parent Support, Supported Living Payment - health condition, injury, disability, or total blindness, or Young Parent Payment depending on their circumstances.

be retained by the government. Instead, their child support payments would be passed on in the same way they are currently passed on to other beneficiaries.

Child support assessed and collected by Inland Revenue for UCB beneficiaries would continue to be retained (see ["Proposals not to apply to UCB beneficiaries"](#) below).

# Removing the requirement to apply for child support through Inland Revenue

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## *Clauses 5–7*

### **Summary of proposed amendments**

The proposed amendments would remove the requirement for parents receiving a sole parent rate of main benefit to apply for child support through Inland Revenue.

### **Background**

Currently, parents and carers receiving a sole parent rate of main benefit or an Unsupported Child's Benefit (UCB) are required to apply for formula assessed child support through Inland Revenue unless one of the grounds for exemption (such as a risk of violence) applies. This requirement does not apply to other beneficiaries with children or other parents outside the benefit system.

### **Key features**

The requirement that parents receiving a sole parent rate of main benefit apply for child support would be removed. This would enable these parents to enter the type of child support arrangement that best meets their needs – a formula assessment, a voluntary agreement, a private arrangement, or no child support arrangement at all.

The requirement for UCB beneficiaries to apply for child support would remain (see ["Proposals not to apply to UCB beneficiaries"](#) below).

## Proposals not to apply to UCB beneficiaries

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### *Clauses 4, 9, 11–13, and 15–18*

#### **Summary of proposed amendments**

The proposed amendments would ensure that the proposals in the Bill to pass on child support collected by Inland Revenue and to remove the obligation to apply for child support through Inland Revenue would not apply to Unsupported Child's Benefit (UCB) beneficiaries.

#### **Background**

The UCB is administered by the Ministry of Social Development for children living with caregivers outside the State care system. It is a payment that helps caregivers who are supporting children whose parents cannot care for them because of a family breakdown.

Currently, caregivers who receive a UCB are subject to the same process for retaining child support as parents receiving a sole parent rate of main benefit. However, while the proposals contained in the Bill to pass on child support collected by Inland Revenue and to remove the obligation to apply for child support through Inland Revenue would apply for parents receiving a sole parent rate of main benefit, the proposals would not apply to UCB beneficiaries.

#### **Key features**

Caregivers receiving the UCB for children will still be required to apply for child support through Inland Revenue for those children, and the government will continue to retain those child support payments, up to the value of the UCB, to offset the cost of that benefit.

This is because child support settings for UCB beneficiaries are currently being considered by Oranga Tamariki – Ministry for Children as part of the work to reform the system of financial assistance and support for caregivers, following the 2019 review.

"UCB beneficiary" would be a defined term in the Child Support Act 1991.

Consequential amendments would be made to various provisions in the Child Support Act 1991 to reflect that they would only apply to a "UCB beneficiary".

The proposals in the Bill will apply to UCB beneficiaries for children they are not receiving the UCB for.

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# Amendments to the Social Security Act 2018 and Social Security Regulations 2018

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# Definitions of “information share child support payment” and “non-information share child support payment”

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## **Clause 37**

### **Summary of proposed amendment**

The proposed amendment would insert definitions of “information share child support payment” and “non-information share child support payment” into schedule 2 of the Social Security Act 2018. These definitions are necessary to apply the proposed new income rules.

### **Background**

The proposal to treat certain child support payments as income under new income rules means it is necessary to specify the child support payments the new rules would apply to.

It would not be appropriate to apply the proposed new income rules to all types of child support payments (for example, child support relating to periods before 1 July 2023). Therefore, it is necessary to set out which child support payments the proposed rules would apply to, the types of payments that the general rules should continue to apply to, and the child support payments that would not be included as income for benefit and other assistance.

### **Key features**

The proposed new rules for treating child support as income would apply to an “information share child support payment” (see [“Child support payments treated as income”](#) below).

An “information share child support payment” would be child support that is:

- paid by direct credit to the person’s nominated bank account
- notified to the Ministry of Social Development (MSD) by Inland Revenue under their approved information sharing agreement, and
- not a “non-information share child support payment”.

A “non-information share child support payment” would be child support that is:

- excess child support paid to an Unsupported Child’s Benefit (UCB) beneficiary (because the child support paid is more than the cost of the UCB) or a mixed child support payment

- paid in a lump sum under an order made by a Family Court
- a foreign child support payment (being a payment that relates to child support Inland Revenue is collecting on behalf of another country)
- child support passed on to an MSD beneficiary living outside New Zealand
- paid after 30 June 2023 for a period before 1 July 2023, or
- specified as a “non-information share child support payment” in regulations.

It is proposed that the current income rules would continue to apply to non-information share child support payments (see [“Child support payments treated as income”](#) below).

The Bill proposes that new payments can be added to the definition of “non-information share child support payment” via regulations if they are identified. This would allow these payments to be treated appropriately in a timely manner.

Child support payments that do not come under either definition would not be income for benefit or other assistance. For example, child support that two parents owe each other that has been netted off and is no longer payable.

# Child support payments treated as income

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## **Clauses 39–46**

### **Summary of proposed amendments**

The proposed amendments provide that “information share child support payments” passed on by Inland Revenue would generally be treated by the Ministry of Social Development (MSD) as income for benefit purposes. The income would be spread across the next four or five weeks (depending on the number of benefit payments in the month and whether a weekly or fortnightly benefit is being received).

“Non-information share child support payments” would continue to be treated under MSD’s current income rules.

### **Background**

Currently, parents and carers receiving a sole parent rate of main benefit or an Unsupported Child’s Benefit (UCB) only receive child support payments to the extent that the payments exceed their benefits. These payments are not treated as income for those benefits as their cost has already been offset.

Other beneficiaries receiving child support are required to tell MSD about any child support they receive so it can be treated as income. The proposal to also treat “information share child support payments” as income would align with the principle that financial support from the government is provided to people while taking into account the resources available to them.

Child support is a monthly payment, whereas benefit payments are paid weekly or fortnightly. Under the current income rules, MSD has a discretion to determine the period to which any income relates. This means when MSD is made aware of a person’s income, they may determine it relates to a past or future period. If MSD determines the income relates to a past period for which the benefit has already been paid, this can result in benefit debt for the beneficiary. Under the new income rules, specific rules are proposed to treat child support payments as income on a weekly basis.

### **Key features**

Under the proposed new income rules, information share child support payments would be treated as income on a weekly basis for the purpose of benefits and other assistance.

These proposed changes would replace how MSD treats child support payments from Inland Revenue as income for all beneficiaries, not just parents receiving a sole parent rate of main benefit.

Non-information share child support payments would continue to be treated as income under MSD’s current income rules.

## Detailed analysis

### Information share child support payments

Child support payments collected by Inland Revenue are based on an annual liability. This annual amount is then divided equally into 12 monthly payments due by liable parents. In contrast, benefits are paid on either a weekly or fortnightly basis.

If the monthly child support payment was only treated as income in the week or fortnight it was received, the payment may result in more benefit abatement than if the payment was spread over the length of time it is intended to represent.

The Bill therefore proposes to take the monthly child support payment and turn it into weekly amounts by spreading the payment evenly across the next four or five weeks. This ensures that entitlement to a benefit is assessed in a way that is consistent with the number of weeks the child support payment is intended to support the child.

This means that benefit entitlement would be assessed based on the financial resources available to the receiving carer and debt for families would also be minimised by ensuring child support payments do not impact benefits that have already been paid.

#### **Example 1: Spreading of income**

Jo is receiving a sole parent rate of benefit. Her ex-partner is paying child support of \$180 each month. Currently, the government retains all the child support to offset the cost of Jo's benefit. Assuming the proposals in the Bill are implemented, child support for periods from July 2023 would be passed on to Jo.

The child support for August 2023 would be due to be paid to Inland Revenue by 20 September, and Inland Revenue would then pay Jo. Rather than treating the child support as income for August, or as income in the week it is received (which would only abate Jo's benefit in that week), the payment would be treated as \$36 of income in each of the following five weeks.

This is different from the current income rules in the Social Security Act 2018. Those rules provide MSD with a discretion to determine the period the income is taken into account for benefit purposes.

#### **How child support will be treated as income for benefit purposes**

Whether a person is receiving their benefit weekly or fortnightly will impact the number of weeks their child support payment is treated as income as well as the start and end dates of the income treatment.

#### ***Weekly benefits***

*When the payment starts to be treated as income*

The period of entitlement for weekly benefits runs from Monday to Sunday. The benefit payment is made to the beneficiary in the following week.

Under the proposed amendments, a child support payment would start to be treated as income from the Monday of the week that the payment is treated as being received (referred to in the Bill as the “deemed receipt”). A payment would be treated as received on the business day after Inland Revenue notifies MSD that the payment has been made to the receiving carer.

### Example 2: When payment starts to be treated as income

Inland Revenue notifies MSD that a child support payment has been made to a receiving carer’s nominated bank account on 22 August 2023. Assuming the proposals in the Bill are implemented, the payment would be treated as being received on 23 August (being one business day after Inland Revenue notifies MSD the payment has been made). The payment would start to be treated as income for benefit purposes on 21 August - the Monday of the week the payment is treated as being received.

Mon	Tue	Wed	Thu	Fri	Sat	Sun
21	22	23	24	25	26	27
Start date for treating as income	Payment made and MSD notified	Date treated as being received				

If notification is sent to MSD on a Friday, the payment would be treated as being received on the following Monday, and the payment would start to be treated as income on that same Monday.<sup>4</sup>

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<sup>4</sup> If the day after the payment is made is a public holiday, the payment would be treated as received on the next day.

### Example 2 (continued)

Mon	Tue	Wed	Thu	Fri	Sat	Sun
21	22	23	24	25 Payment made and MSD notified	26	27
28 Date treated as being received Start date for treating as income	29	30	31	1	2	3

#### *When the payment stops being treated as income*

When a child support payment stops being treated as income for weekly benefits would depend on whether it is an "in-cycle payment" or an "out-of-cycle payment".

An in-cycle payment would be any child support payments made by Inland Revenue to a receiving carer on the day that is two business days after the 19th of the month. For example, if the 19th of a month is a Saturday, any child support payment that Inland Revenue pays to a receiving carer on Tuesday 22nd would be an in-cycle payment. In-cycle payments generally represent a child support payment that has been made on time. However, any late child support payments made on this day would also be treated as an in-cycle payment for benefit purposes.

Any child support payments made to a receiving carer on any other day of the month that is not the in-cycle payment date would be an out-of-cycle payment. Using the example in the previous paragraph, if the payment was made on, for example, Monday 21st or Wednesday 23rd, the payment would be an out-of-cycle payment. Inland Revenue does not make child support payments on non-business days – such as weekends or public holidays. Out-of-cycle payments represent payments for an earlier child support period that have not been paid by the due date.

#### When an in-cycle payment stops being treated as income

For in-cycle payments, the child support payment would stop being treated as income on the Sunday before the "expected date of the next in-cycle payment", being the third business day after the 19th of the following month. This rule is designed to ensure that an in-cycle payment stops being treated as income before the next payment starts to be treated as income.

### Example 3: How in-cycle payments would be treated as income

Paul is a receiving carer and is receiving a sole parent rate of main benefit. On 21 June 2024, Inland Revenue makes a \$400 child support payment to Paul’s bank account and notifies MSD of the payment.

Assuming the proposals in the Bill are implemented, the payment would be treated as being received one business day after MSD is notified. In this case, as 21 June 2024 is a Friday, the payment would be treated as being received on Monday 24 June. The period the child support would be considered as income would start on the Monday of the week the payment is treated as being received, which is also 24 June.

The expected date of the next in-cycle payment would be the third business day after 19 July, which would be Wednesday 24 July. The period the child support would be treated as income would therefore end on Sunday 21 July, being the Sunday before the expected date of the next in-cycle payment.

Therefore, the period the child support payment would be treated as income would start on 24 June and end on 21 July.

There are four weekly benefit payments between these dates. Therefore, the child support payment of \$400 would be divided by four. MSD would treat \$100 of child support as Paul’s income for each week during this period.

Mon	Tue	Wed	Thu	Fri	Sat	Sun
17	18	19	20	21 In-cycle payment made, and MSD notified	22	23
24 Date treated as being received Start date for treating as income	25	26	27	28	29	30

### Example 3 (continued)

Mon	Tue	Wed	Thu	Fri	Sat	Sun
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21 End date for treating as income
22	23	24 Date we expect the next payment to be treated as received	25	26	27	28

#### When an out-of-cycle payment stops being treated as income

An out-of-cycle child support payment would stop being treated as income on the Sunday before the date that is the same date in the next calendar month as the date the payment is treated as received in the current month.

#### **Example 4: How out-of-cycle payments would be treated as income**

Inland Revenue makes a child support payment of \$100 on 8 November 2023 to Maggie. Assuming the proposals in the Bill are implemented, this would be an out-of-cycle payment as the payment is not made on the in-cycle payment date of 21 November (two business days after 19 November). The payment would be treated as being received on the next business day, which is 9 November.

The payment would be treated as income starting on the Monday of the week the payment is treated as being received – this would be 6 November.

The same date in the next calendar month would be 9 December. The period would end on the Sunday before this date – this would be 3 December. In the event that this date is a Sunday, the income treatment would end on the Sunday the week before this date.



Therefore, the period the child support payment would be treated as income would start on 6 November and end on 3 December.

There are four benefit payments between these dates. Therefore, the child support payment of \$100 would be divided by four. MSD would treat \$25 of child support as Maggie’s income for each week during this period.

Mon	Tue	Wed	Thu	Fri	Sat	Sun
6 Start date for treating as income	7	8 Out-of-cycle payment made, and MSD notified	9 Date treated as being received	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	1	2	3 End date for treating as income
4	5	6	7	8	9 Same day in the following month	10

When the date in the next calendar month does not exist, the “same” date will be the 1st of the following month.

**Example 5: Out-of-cycle payments – no date in the next calendar month**

Assume a child support payment is treated as being received on 31 August. As there is no 31 September, the same date would be 1 October. The rest of the rules for treating child support as income would apply as described above.

**Fortnightly benefits**

The period of entitlement for fortnightly benefits runs from Wednesday to Tuesday for two weeks. The benefit payment is made to the beneficiary in the second week of the fortnightly period.

Under the proposed amendments, when a child support payment would start to be treated as income would depend on whether the child support is treated as being received in the first week or the second week of the fortnight. As discussed under “Weekly benefits”, a payment would be treated as received on the business day after Inland Revenue notifies MSD that the payment has been made to the receiving carer.

If the payment is treated as being received in the first week of a fortnight, the payment would be treated as income from the Wednesday on or before the payment is treated as being received.

**Example 6: Fortnightly benefits – receipt in the first week**

	Wed	Thu	Fri	Sat	Sun	Mon	Tue
Week 1	16 Start date for treating as income	17	18 Payment made, and MSD notified	19	20	21 Date treated as being received	22
Week 2	23	24	25	26	27	28	29

If the payment is treated as being received in the second week of a fortnight, the payment would be treated as income from the Wednesday following the date the payment is treated as being received – that is, the beginning of the next fortnight.

**Example 7: Fortnightly benefits – receipt in the second week**

	Wed	Thu	Fri	Sat	Sun	Mon	Tue
Week 1	16	17	18	19	20	21	22
							Payment made, and MSD notified

### Example 7 (continued)

	Wed	Thu	Fri	Sat	Sun	Mon	Tue
Week 2	23 Date treated as being received	24	25	26	27	28	29
Week 1 (next pay period)	30 Start date for treating as income	1	2	3	4	5	6

If a person is paid their benefit fortnightly, the child support payment would be treated as income for four weeks only. The child support payment would be divided by four to get the weekly income amount. Therefore, when a child support payment is made, MSD would work out when the payment would start to be treated as income and spread the child support payment across the next two fortnightly benefits. Whether a payment is an in-cycle or out-of-cycle child support payment would not be relevant when benefits are paid fortnightly.

### Example 8: Fortnightly benefits

Kahla receives a fortnightly benefit. One of her benefit payments is for the fortnight from 16 August to 29 August 2023.

Inland Revenue makes a \$400 child support payment to Kahla on 17 August. Assuming the proposals in the Bill are implemented, the payment would be treated as received on the next business day – 18 August.

As the payment would be treated as received in the first week of the fortnight (16 August to 22 August), the payment would be treated as income from 16 August.

The child support payment would be treated as income across two fortnight benefit periods. MSD would treat \$100 as income for each week in the fortnight from 16 August to 29 August, and \$100 for each week in the fortnight from 30 August to 12 September.

**Example 8 (continued)**

	Wed	Thu	Fri	Sat	Sun	Mon	Tue
Week 1	16 Start date for treating as income	17 Payment made, and MSD notified	18 Date treated as being received	19	20	21	22
Week 2	23	24	25	26	27	28	29
Week 1 (next fortnight)	30	31	1	2	3	4	5
Week 2 (next fortnight)	6	7	8	9	10	11	12 End date for treating as income

***Transferring between different benefit frequencies***

When a beneficiary transfers from a weekly benefit to a fortnightly benefit, or vice-versa, the above rules may sometimes result in their benefit being abated more than intended.

The Bill includes a limited discretion that would allow MSD to treat the child support payment as income over a different number of weeks. The intent is for the income to be treated as close as possible to the prescribed rules.

However, sometimes a beneficiary may transfer to a benefit with a different payment frequency part way through the period. This means a child support payment could start being treated as income before the new benefit commences. In those circumstances, the beneficiary would not be paid the correct amount of benefit. MSD could not rectify the incorrect payment using the proposed discretion outlined above.

The Bill therefore proposes to exempt child support payments from being included as income for benefit purposes when all of the following occur:

- a beneficiary transfers from a weekly benefit to a fortnightly benefit or vice versa

- the child support payment would be treated as being received on or after the day of the new benefit, and
- the child support payment would be treated as income before the day of the new benefit.

### **Example 9: Transferring between benefits – child support exemption**

Assume the proposals in the Bill are implemented, and Barry moves from a fortnightly benefit to a weekly benefit on Tuesday 17 October 2023.

Inland Revenue notifies MSD of a child support payment on Thursday 19 October. The payment would be treated as received on Friday 20 October.

If Barry was on a weekly benefit for the whole period, his child support income would have been treated as income from Monday 16 October. However, Barry’s weekly benefit did not begin until Tuesday 17 October, which means this child support payment would be treated as income before the day the new benefit starts.

Therefore, the child support payment received by Barry would be an exempt child support payment and would not be treated as income for benefit purposes.

<b>Mon</b>	<b>Tue</b>	<b>Wed</b>	<b>Thu</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
16	17	18	19	20	21	22
Would normally treat as income start date	<b>New weekly benefit begins</b>		Payment made, and MSD notified	Date treated as being received		

### **Non-information share child support payments**

#### ***Child support paid to UCB beneficiaries and mixed child support payments***

Currently, UCB excess (the amount of child support paid to the receiving carer after the cost of their benefit has been recovered) is only treated as income for supplementary assistance purposes – for example, Temporary Additional Support (TAS) and Special Benefit (SpB). This is because the cost of the UCB has been recovered by retaining child support.

A “mixed child support payment” refers to when a receiving carer is paid child support and the payment is for a child for whom UCB is paid and another child for whom UCB is not paid (and so child support is not retained). It is not possible to determine the amount of the payment that relates to each child to apply different income rules to the payment.

Therefore, the Bill proposes that MSD treat the entire child support payment as if it were a

payment in excess of the UCB payment. This treatment is to ensure the person is not negatively impacted.

Because mixed child support payments are only income for some benefits, it is not appropriate to apply the proposed income rules.

**Example 10: Child support payments for more than one child when UCB is paid for some of those children**

Hayden is assessed to pay \$200 a month of child support to Jess for Oliver, for whom Jess is also receiving a UCB.

Hayden is also assessed to pay Jess \$200 a month of child support for Liam. Jess is not receiving UCB for Liam.

This month, Hayden only pays \$280 instead of the full \$400. Under the proposed rules, the entire child support payment would be treated as if it were excess child support paid. This means the \$280 paid by Hayden would only be treated as income for determining Jess's entitlement to TAS, SpB, and Childcare Assistance.

***Other non-information share child support payments***

Payments ordered by a Family Court and foreign child support payments will continue to be treated as income under the current income rules, which means these payments will be processed manually and MSD will have discretion over which periods to allocate these payments to.

This is because the current discretionary rules are considered more appropriate for determining the relevant period for which these payments should be treated as income.

## Use of automated electronic systems

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### *Clauses 30–31, 34, and 55–56*

#### **Summary of proposed amendments**

The proposed amendments would introduce automated decision-making, which would allow the Ministry of Social Development (MSD) to automate the process of treating child support payments as income for benefit purposes. This would ensure the rules are applied consistently, accurately, and in a timely manner and would reduce the compliance burden on beneficiaries.

The Bill proposes that benefit debt would not be recovered when the debt arises from an error in the information shared by Inland Revenue or the processing of that information.

#### **Background**

A person receiving a benefit payment is currently required to tell MSD about any income they receive. MSD then manually determines the period for which the income affects any benefits they receive.

The Bill proposes to treat child support payments passed on as income for benefit purposes. The proposals in the Bill would greatly increase the number of beneficiaries who would receive child support that would be treated as income. If child support were manually included as income, this would create a large volume of additional manual transactions for MSD to administer and a considerable compliance burden for beneficiaries.

#### **Key features**

The Bill proposes to automate the treatment of child support payments as income for benefit purposes. This would be achieved by Inland Revenue sharing child support information with MSD under the Approved Information Sharing Agreement between the two agencies.

Automating the process of treating child support payments as income is proposed to reduce the compliance burden for beneficiaries, improve the consistency and accuracy of MSD's administration, and ensure child support is treated as income in a timely manner. This is important to minimise the potential for debt to be incurred by families.

The Bill proposes that if there is a systems failure, sudden unplanned event or error in the processing of the child support information shared between Inland Revenue and MSD, any resulting overpayment of benefit (debt) would not be recovered from the client in all cases and would be written off. This is because it would be unfair for such debts to be recoverable as they arise from errors with the information share.

# Limited ability to review child support income

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## *Clauses 32– 33, and 35*

### **Summary of proposed amendments**

The Bill proposes to remove the Ministry of Social Development's (MSD) power to review a past benefit period for information share child support payments except in specified circumstances.

### **Background**

MSD has broad powers that allow them to review a person's benefit entitlement. This power is necessary for MSD to ensure beneficiaries receive their "full and correct entitlement".

Child support amounts assessed by Inland Revenue may change. This may be due to a change in either parent's circumstances coming to light after the fact. Ordinarily, MSD uses their broad powers to review the receiving carer's benefit. However, this increases income uncertainty for beneficiaries and contributes toward families incurring benefit debt.

### **Key features**

The Bill proposes to limit the use of MSD's review power for child support payments except in specified scenarios. The purpose is to ensure child support payments are almost always spread forward, which reduces the likelihood of debt, and to ensure that child support payments are treated as income in a way that best reflects money that the beneficiary has available.

#### **Example 11: Limited ability to review**

Elaine was receiving child support for her two children, Chloe and Claire. When Chloe left her care, Elaine did not tell Inland Revenue immediately. When she finally told Inland Revenue, her child support was recalculated from the date Chloe left her care. Elaine now has a child support debt.

Despite Elaine's child support assessment being reduced, under the proposals in the Bill, MSD would not go back and change the amount of child support that was previously treated as income for Elaine. This is because Elaine still received and had use of the amount of child support that was treated as income at the time.

However, if Elaine's circumstances result in her child support assessment being increased, the increased child support would be treated as income when it is received. MSD would not retrospectively review her benefit for periods the child support relates to.



The Bill sets out the following circumstances under which MSD would be able to review child support income and amend the amount that was previously treated as income:

- Inland Revenue makes a payment of child support to a beneficiary, and MSD is later notified either by the beneficiary or by Inland Revenue that the beneficiary has not received the payment or not received it by the deemed date of receipt.
- MSD is satisfied, in exceptional circumstances, that a person cannot access their child support payment.
- An error has occurred in the administration of how a child support payment has been treated as income. These include situations where the information shared is incorrect due to Inland Revenue error; or where the information is read incorrectly by MSD's system or was input incorrectly due to human error.
- A beneficiary has been incorrectly matched or is not matched at all via the information share.
- MSD receives the information shared by Inland Revenue late, or the information is provided late.
- When a beneficiary has died and they receive a child support payment after their death, as a beneficiary's benefit entitlement cannot change after they have died. This would allow MSD to amend a beneficiary's entitlement as necessary.

#### **Example 12: Circumstances where MSD will review**

Barret receives \$200 child support each month. One month, Inland Revenue makes a payment of child support to Barret's bank account. However, an issue with the bank's processes means Barret did not receive his child support.

Because Inland Revenue have notified MSD of the payment, MSD treats Barret as having received income \$50 per week for the next four weeks.

Barret notifies MSD that he has not received his child support. Under the proposals in the Bill, after confirming that Barret has not received his child support, MSD is able to go back and remove the child support income that is on his record. Once MSD has confirmed that the payment has been processed by Barret's bank, they will add the child support income back onto his record from when it is processed.

The Bill proposes that new review grounds can be added via regulations if they are identified. This would allow new scenarios to be reviewed in a timely manner.

# Deprivation of income

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## *Clauses 47–48, and 64*

### **Summary of proposed amendments**

The Bill proposes to exclude not applying for a child support arrangement or cancelling an existing child support arrangement from being considered deprivation of income for benefit purposes.

### **Background**

One of the principles underlying the Social Security Act 2018 is that people should use the resources available to them before seeking financial support. When someone has changed their position to put themselves at a financial disadvantage, and this leads to them qualifying for assistance, or assistance at a higher rate, this is considered “deprivation”. Deprivation can apply regardless of whether this was intentional.

When the Ministry of Social Development is satisfied that deprivation has occurred, it may refuse to grant a benefit, cancel or reduce a benefit already granted, or grant a benefit at a reduced rate.

### **Key features**

The Bill proposes to remove the requirement for parents receiving a sole parent rate of main benefit to apply for child support through Inland Revenue. Therefore, a parent newly eligible for a benefit may choose not to apply. In addition, existing beneficiaries who previously had to apply for child support through Inland Revenue may choose to cancel their child support. Treating these decisions as deprivation would defeat the purpose of the proposed policies.

The Bill therefore proposes to exclude the above choices from being considered deprivation.

This exclusion would apply to all forms of child support, including private arrangements that Inland Revenue does not administer.

This proposal is also intended to apply to income-related rent subsidies. The Bill therefore includes a proposed amendment to the Public and Community Housing Management Act 1992 to achieve this.

# Stand downs

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## **Clause 54**

### **Summary of proposed amendment**

The proposed amendment provides that all child support paid to a person under the Child Support Act 1991 (excluding an amount that the Ministry of Social Development (MSD) has determined is capital) would be considered when calculating the person's stand-down period.

### **Background**

Most main benefits are subject to an initial income stand-down period. The stand-down period is either one or two weeks after the date a person becomes entitled to the benefit. The period depends on the person's circumstances and their average income determined over an "average income calculation period".

### **Key features**

The Bill proposes that all child support paid under the Child Support Act 1991 that a person receives over the relevant period would be included in their "average income" for calculating the stand-down period. This includes excess child support paid to an Unsupported Child's Benefit beneficiary. An amount that MSD determines is capital would be excluded.

# Cash asset test

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## ***Clauses 58–61***

### **Summary of proposed amendments**

The proposed amendments would exempt information share child support payments from being a cash asset for the period the payment is treated as income for benefit purposes. After this period, any unspent child support could be included in a cash asset test.

The initial exemption period would be able to be extended by an additional 28 days in exceptional circumstances.

### **Background**

The Accommodation Supplement and Temporary Additional Support are subject to a cash asset test. This means that the Ministry of Social Development (MSD) considers a person's cash assets (such as savings) when working out their benefit entitlement. If a person has cash assets over a set threshold, they cannot receive these benefits. This test is to ensure that people use the resources available to them before receiving assistance. MSD's current practice is generally to treat payments as a cash asset from the time they are received.

Child support payments are intended to support the child for four or five weeks after they are received. Treating child support payments as a cash asset from the time they are received is incompatible with this intent. If the cash asset tests continue to apply to child support payments, receiving carers would be penalised for spending the child support payment over the period it is intended for.

### **Key features**

The Bill proposes to exempt child support payments from the cash asset test for the period the payments are treated as income for benefit purposes. MSD would also have the discretion to extend this period by a further 28 days in exceptional circumstances. After the exemption expires, any unspent child support payment would be included in a cash asset test.

# Abatement of youth and young parent payments

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## Clause 49

### Summary of proposed amendment

The Bill proposes to amend the abatement regime of the youth payment (YP) and the young parent payment (YPP) so that child support passed on would abate those payments on a dollar-for-dollar basis instead of causing the recipient to lose their payment altogether.

### Background

Currently, YP and YPP have an abatement regime where a person's weekly income starts to abate once it exceeds a specified threshold. Once the person's weekly income exceeds a second, higher threshold, the payments stop altogether. This is to encourage the young person to further their education or training.

With the proposal to pass on child support, a receiving carer could lose their benefit if their weekly income exceeds the second threshold.

#### Example 13: Abatement of YP and YPP

Rydia is receiving YPP of \$440.96 a week. Her weekly income is \$298.08 per week. Her YPP is currently abated \$1 for every \$1 that her weekly income exceeds \$258.08 (the first threshold), meaning her YPP is abated by \$40. This reduces her YPP to \$400.96 per week.

Rydia starts receiving child support of \$20 per week, and therefore her weekly income increases to \$318.08. Under current rules, she would no longer be eligible for YPP as her weekly income now exceeds \$308.08 (the second threshold).

### Key features

The Bill proposes that a person would not immediately lose their YP or YPP if their weekly income exceeds the second threshold because of a child support payment passed on by Inland Revenue. Rather, the child support income would continue to abate their benefit at the rate of \$1 for every \$1.

If a person's income from all other sources exceeds the second threshold, they would still lose their YP or YPP. To achieve this result, income from employment and other sources would be considered against the threshold before any abatement for child support payments passed on by Inland Revenue would be undertaken.

**Example 14: Proposed YP/YPP abatement rules for child support payments**

Kain has \$298.08 weekly income and receives an abated YPP of \$400.96 per week.

Kain starts receiving child support of \$20 per week and his weekly income increases to \$318.08. Under the proposed abatement rules, Kain would have his YPP abated by a further \$20 to \$380.96 per week instead of losing his YPP altogether.

However, the new abatement rules would only apply to child support payments passed on by Inland Revenue. Therefore, if Kain's weekly income excluding any child support payments (e.g., wages) exceeded \$308.08, he would lose his eligibility for YPP.

# Child support as an allowable cost

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## ***Clauses 52-53***

### **Summary of proposed amendments**

The Bill proposes to treat a child support liability assessed by Inland Revenue as an “allowable cost” for determining a liable parent’s Temporary Additional Support (TAS). This proposal would also be extended to Special Benefit (SpB) by updating the Ministerial Direction.

Those already receiving TAS and SpB on 1 July 2023 would be able to have these costs backdated (taken into account) to the later of 1 July or the date they become liable for child support. They would have to apply before 30 September 2023 to have the costs backdated.

### **Background**

SpB is a form of hardship assistance that was replaced by TAS in 2006.

TAS is a form of hardship assistance paid to people who do not have enough income to meet their “essential costs”. Essential costs are made up of a person’s “allowable costs” and “standard costs”.

Allowable costs are regular, essential, and unavoidable expenses that cannot be reduced.

Beneficiaries assessed by Inland Revenue to pay child support are required to have the child support directly deducted from their main benefit or pension. Child support liability assessed by Inland Revenue has the attributes of a regular, essential, and unavoidable cost and should therefore be an allowable cost.

### **Key features**

The Bill proposes to allow the Ministry of Social Development (MSD) to consider formula-assessed child support liabilities as an allowable cost when determining a liable parent’s entitlement to TAS. This proposal does not extend to other child support arrangements (such as voluntary agreements or private arrangements) as they do not meet MSD’s standard of “regular, essential, and unavoidable”.

The proposed amendments in the Bill only apply to TAS. However, the proposed rules are intended to apply to both TAS and SpB. It is therefore proposed to update the Ministerial Direction for SpB to achieve this.

### **Backdating**

The proposal to include child support as an allowable cost is expected to result in an influx of calls from beneficiaries from 1 July 2023. There is a concern that beneficiaries may be disadvantaged if they cannot contact MSD as soon as they are eligible as allowable costs cannot normally be backdated.



Therefore, the Bill further proposes to temporarily allow MSD to backdate child support liabilities as an allowable cost for people who are already receiving TAS or SpB on 1 July 2023. It is expected that this would also spread the administrative impact on MSD.

Under the proposal, existing MSD beneficiaries would be able to backdate their child support liability to 1 July 2023 or the date on which they become liable to pay child support – whichever is later. To backdate their child support costs, these beneficiaries would have to apply to MSD on or before 29 September 2023.

## Redundant provisions

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### *Clauses 21–23, 25–28, and 65*

#### **Summary of proposed amendments**

The Bill proposes to repeal the following provisions that are no longer required:

- the prescribed forms and other rules relating to urgent maintenance orders in the Child Support Rules 1992 and Family Court Rules 2002, and
- schedule 2 of the Public and Community Housing Management Act 1992.

#### **Background**

The Child Support Amendment Act 2021 repealed the provision of the Child Support Act 1991 that allowed a person to apply to the Family Court for an urgent maintenance order if they had made an application for child support to Inland Revenue, but child support had not yet been assessed. This provision was originally included in the Child Support Act 1991 to cover the transition when child support moved to Inland Revenue in case there were unforeseen circumstances that meant Inland Revenue was unable to assess child support. However, the prescribed forms and other rules relating to urgent maintenance orders in the Child Support Rules 1992 and Family Court Rules 2002 were not repealed at the same time as the provision. The Bill proposes to repeal these forms and other rules as they are redundant.

In addition, schedule 2 of the Public and Community Housing Management Act 1992 was a transitional arrangement that has been replaced by regulations in the Public and Community Housing Management (Prescribed Elements of Calculation Mechanism) Regulations 2018 and is no longer operative. The Bill therefore proposes to repeal schedule 2.