EXPLANATORY MEMORANDUM TO
THE CONTRACTING OUT (FUNCTIONS RELATING TO CHILD SUPPORT) ORDER 2006

2006 No. 1692

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This Order will enable the Child Support Agency to contract out certain functions of its work, including debt recovery, tracing non-resident parents and clerical case management. Specifically, the Order, made under section 69 of the Deregulation and Contracting Out Act 1994 ("the 1994 Act"), enables the Secretary of State to authorise another person (such as a private sector company) to exercise statutory functions relating to child support, with the exception of certain functions which are either excluded from contracting out by section 71 of the 1994 Act (such as rights of entry and seizure, and the power to make subordinate legislation), or alternatively excluded on policy grounds.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Background

4.1. The Child Support Act 1991 ("the 1991 Act") was enacted by Parliament to make provision for the assessment, collection and enforcement of periodical maintenance payable by certain parents with respect to children of theirs who are not in their care; for the collection and enforcement of certain other kinds of maintenance; and for connected purposes. The 1991 Act has been amended by the Child Support Act 1995, Part 1 of the Social Security Act 1998 and Part 1 of the Child Support, Pensions and Social Security Act 2000 ("the 2000 Act").

4.2. There are presently two schemes of child support in force and in operation: "*the old scheme*" and "*the new scheme*".[1] The old scheme is the scheme provided for in the 1991 Act prior to the coming into force of those amendments made by the provisions of the 2000 Act which were brought into force for the purposes of specified cases on 3rd March 2003. The new scheme is the scheme provided for in the 1991 Act following the coming into force of the provisions of the 2000 Act. The Order will apply to both old and new scheme cases.

[1] See: the Child Support, Pensions and Social Security Act 2000 (Commencement No. 12) Order 2003 (SI 2003/192) as amended by the Child Support, Pensions and Social Security Act 2000 (Commencement No. 13) Order 2003 (SI 2003/346).

4.3. This Order is made under section 69 of the 1994 Act and will give the Secretary of State the power to authorise a person to exercise on his behalf certain functions relating to child support under or by virtue of the provisions of the 1991 Act.

4.4. The statutory instrument is drafted in its current form because the contractors will be required to undertake a wide range of activities in relation to clerical case management, debt collection and additional trace activity. Contractors will, therefore, be required to exercise almost the full range of statutory functions in child support.

5. Extent

5.1. This Order applies to Great Britain.

6. European Convention on Human Rights

6.1. The Parliamentary Under-Secretary of State, the Lord Hunt of Kings Heath has made the following statement regarding Human Rights:

In my view the provisions of the Contracting Out (Functions Relating to Child Support) Order 2006 are compatible with the Convention rights.

7. Policy background

7.1. See Annex A.

8. Impact

8.1. A Regulatory Impact Assessment has not been produced for this instrument as it has no impact on the costs of business, charities or voluntary bodies.

8.2. The impact on the public sector is nil.

9. Contact

Ivor Millen at the Department for Work and Pensions, Child Support Policy Division, 5th Floor, The Adelphi, Tel: 020 7712 2251 or E-mail: Ivor.Millen@dwp.gsi.gov.uk can answer any questions regarding this instrument.

ANNEX A

POLICY BACKGROUND

Background:

1. The Child Support Agency ("the Agency") is an Executive Agency of the Department for Work and Pensions ("DWP"). The Agency became operational in England, Wales, Scotland and Northern Ireland in 1993.

2. The introduction of the 1991 Act was motivated by concern about the different levels of maintenance decided by the Courts, to promote social responsibility amongst parents, to ensure that the state does not take a disproportionate financial responsibility for raising children and to contribute to the reduction in child poverty. Proposals for reform of the child support scheme were published in the Green Paper, *CHILDREN FIRST: a new approach to child support* (Cm 3992), in July 1998. Following consultation, final proposals were published in the White Paper, *A new contract for welfare: CHILDREN'S RIGHTS AND PARENTS' RESPONSIBILITIES* (Cm 4349), in July 1999. The 2000 Act set out the structure of the reformed child support scheme. The new arrangements were introduced for prescribed cases from 3rd March 2003.[2]

Operational Improvement Plan:

3. The Agency's Chief Executive outlined in the "*Child Support Agency Operational Improvement Plan 2006-2009*", published in February 2006, that the Agency faces a number of significant challenges to improve service delivery to its clients and to achieve more responsibility from non resident parents[3]; more money for more children; and a reduction in child poverty. To address these challenges the Agency has developed a three year strategy for transforming its service delivery. The strategy combines policy changes, productivity enhancements and targeted dedicated resources to deliver the improvements required. It places clients at the heart of the strategy, focusing on their needs and setting out how the Agency intends to provide them with a quality, and efficient service through incremental improvement.

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[2] See: the Child Support, Pensions and Social Security Act 2000 (Commencement No. 12) Order 2003 (SI 2003/192) as amended by the Child Support, Pensions and Social Security Act 2000 (Commencement No. 13) Order 2003 (SI 2003/346).

3 Under the new child support scheme, a non resident parent is a parent who is not living in the same household with the child and the child has his home with a person who is, in relation to him, a person with care. The correct term under the old child support scheme is an "absent parent". The term "non resident parent" is used throughout this memorandum in relation to old and new scheme cases simply for ease of reference.

A person with care is the person with whom a child has his home, who usually provides day to day care for the child (whether exclusively or in conjunction with any other person). A parent with care is a person who is, in relation to a child, both a parent and a person with care.

4. Policy and productivity enhancements alone are however insufficient to deliver all the planned improvements by March 2009 if approved resource levels and spending limits are to be met. In effect, the Agency has a capacity gap. The Agency therefore proposes to meet some of this temporary surge in demand through contracting out certain elements of its core business to the private sector. There are benefits to be gained by redeploying up to 700 staff freed up from these areas of work into frontline client facing delivery, and the usage of specific external expertise to improve the Agency's success in tracing parents and securing child maintenance.

Contracting Out – how the initiative evolved:

5. The development of the Operational Improvement Plan identified that there would be a significant capacity gap if all improvements were to be delivered as promised entirely within Agency staffing levels. This led to a decision by the Agency's Executive Team to select areas of the Agency's services that would be suitable for contracting out to private sector suppliers. The Agency's Contracting Out project was formed in September 2005 as part of the Operational Improvement Programme to deliver and manage the contracting out process and engage the successful suppliers.

6. In October 2005, to assist the Agency in developing its contracting out proposals, a reputable firm of management consultants was engaged to validate the viability of contracting out potential work packages, ascertain initial market interest and provide advice on how best to package the selected areas to be contracted out. This firm considered a number of areas that might be suitable for contracting out, including debt collection, clerical case management[4] and tracing. Discreet market soundings were made to companies with a proven track record and history of bulk case processing, tracing and debt collection**.** As a result, the consultants were able to determine that there was a demand for and expertise of debt collection, tracing and clerical case management, within the private sector. The consultants concluded that the Agency's Executive Team had identified the most suitable packages to be contracted out on the basis that the majority of the work had a finite lifespan; were discrete areas of the Agency's business and were commercially attractive to the marketplace.

7. It is expected that contractors will be authorised to carry out Secretary of State's functions in child support. Without the ability to perform these functions, the contractor will not be able to undertake the work required which will place some of the Agency's proposals as set out in its Operational Improvement Plan at risk as the additional staffing resources required will not be generated. Contracting out these services is one of the business critical enablers for the Operational Improvement Plan.

[4] A case is made clerical when it cannot be progressed on CS2 (the Agency's windows based new computer system), or is linked to a case on CS2 that cannot be progressed, or is an existing clerical, or a technical fix to enable case progression is not available.

Debt collection:

8. It is intended to use contractors to seek repayment of child support debt. The Agency will require contractors to pursue enforcement of the debt where the non resident parent fail to make or adhere to a reasonable repayment proposal.

9. The contractors will enhance the Agency's debt reduction capacity by providing a full range of processes for the recovery of individual debt. The intention will be for contractors to establish a satisfactory payment arrangement within a prompt timescale. The contractors will enforce the payment of debt through the Magistrates' Court and the County Court as appropriate, including the obtaining of County Court Judgments, registering Liability Orders, obtaining Third Party Debt Orders and Charging Orders and the consideration of Bailiff action. They will be encouraged to identify and utilise potential areas of innovation that may expedite the recovery of debt for the Agency. Any innovative means will operate within existing legislation. However, any sanctions arising from enforcement, including the pursuance of an Order for Sale against a residence, the seizure of goods or property in lieu of payment (bailiff action) or an application to commit to prison or disqualify from driving must be implemented by the Agency. Contractors will return cases to the Agency where they consider such measures would represent the most effective method of collecting a debt and where other attempts at enforcement have proved unsuccessful or are considered inappropriate. The contractor will not be able to discount the debt to secure payment and will refer the case back to the Agency for ongoing collection activity once a regular payment pattern is established. Using contractors to collect debt will allow the Agency to manage non resident parents with child support debt more effectively and result in more money for more children. The Agency will pay the contractors' fees direct: there will be no reduction in the child support maintenance payable from the collection of a debt as a result of using contractors.

Tracing:

10. When a non-resident parent's contact details have been established, the process of contacting the non-resident parent to gather information for the calculation and the establishment of payments can begin. In a number of cases, however, uncooperative non-resident parents avoid dealing with the Agency, for example by refusing to answer calls and letters or frequently moving within the same vicinity or providing incorrect information. Although some of these cases can be progressed irrespectively, such behaviour frustrates the payment and establishment of regular child support maintenance. In these circumstances, the contractor will be required to locate the non resident parents and conduct a face-to-face interview to capture all of the information required to undertake a maintenance assessment/calculation and/or enforce a payment.

11. Contractors will be also asked to trace/pursue non-resident parents from the information provided and seek completion of the necessary paperwork that

will enable a maintenance assessment/calculation to be made and regular payment pattern to proceed. Where a non-resident parent cannot be located and the contractor is satisfied that all known methods are exhausted then the case details will be returned to the Agency.

Clerical case management:

12. The objective of contracting out the management of clerical cases is to enable staff currently working on this activity within Clerical Processing Centres and Business Unit Clerical Teams based within each Business Unit to be redeployed within the Agency. Processing clerical cases is an extremely resource intensive activity and current projections indicate that the Agency would have to double its staffing in this area to meet customer demand. This is a finite area, with all clerical cases expected to be replaceable back onto CS2, the new mainframe computer system, by 2009. Given the short lifespan of the contract, the Agency considers this area as suitable for contracting out as there will be a quick scaling up and down of operations, minimal hand-offs and minimal IT system usage compared to other areas of work. The resources released by contracting out this work can be redeployed into frontline processing, enabling the Agency to reduce its' backlog of new scheme applications.

13. The contractor will be required to undertake a wide range of activities in delivering the entire clerical case management process. These activities include: information gathering; tracing activity; requesting/collecting information; making calculations; calculating old and new rules maintenance assessments/maintenance calculations respectively; informing clients how much is payable; arranging collection of maintenance; transmission of payments; case maintenance; considering the impact of changes in circumstances on the calculation/assessment; providing regular information on maintenance received/paid on; and taking action to restore regular payments where they are not received (including limited enforcement action). The activities to support service delivery include: the general process; disagreements; parentage; early conversion; and financial activity. The contractor will not be required to consider appeals made by clients (they will be referred back to the Agency to progress), but will be required to impact any changes if the appeal is upheld.

Selection of contractors:

14. The Agency intends to use an existing Departmental framework, the "DWP Debt management and Enforcement Initiative Framework" to appoint contractors in relation to debt collection and additional trace activities. This framework was established following a competitive tendering process. It is intended that the work that the Agency proposes to contract out in relation to debt collection and trace activities will be contracted out under this existing framework in the form of a service variation to the contract in July 2006.

15. A different procurement route is being taken for clerical case management. This work cannot simply be included as an amendment under any existing Departmental Frameworks, as different skills, expertise, financial capability, staffing levels and processing requirements are needed to undertake this work package. Consequently, the Agency will select contractors following a competitive tendering exercise carried out in accordance with the relevant procurement rules. The procurement process is currently at the Invitation To Tender stage, with the contract expected to be signed with the preferred contractor by the end of July 2006, subject to Parliamentary approval of this order.

Monitoring of contractors:

16. The contract between the contractor and the Agency in relation to clerical case management, debt collection and trace will set out the Agency's business requirements including the end-to-end process; from when a case is selected as suitable for debt collection through to its eventual return to the Agency; define the process for collecting and paying child maintenance; define hand-offs between the Agency and the contractor; specify what procedures, processes and methodology used by the Agency are mandatory; specify financial reporting and management information requirements and methodology; define the mandatory tools to be used throughout the process; define the requirement for the movement of work to the contractor from the Agency; specify the financial and data security requirements for the debt collection process; specify what access will be given to the contractor for Agency's systems and processes; define standards of quality to be exercised by contractor and the technical support requirement for the contractor by the Agency.

17. The DWP has established contract management processes and procedures that supervise the contractors' performance against pre-agreed service standards. The current plan for contracting out clerical case management, debt collection and trace, is to have in place a dedicated contract management team. The team will work closely with the Department's commercial team to manage the levels of service and ensure that standards of ethics, practice and performance are adhered to. A requirement will also be imposed on the contractor to work to a code of ethics and practice, the 'Credit Services Association Code of Practice'. Contractors will be asked to provide reports of their progress on a monthly basis. The Agency may request ad hoc data reports.

18. Contractors will be obliged to set out in relation to debt collection, monitoring information requirements in a number of categories: Performance; Cases Enforced; Cases Returned to the Authority; Complaints; and Positive Customer Contact.

19. The contractors' obligations in relation to audit, data protection, confidentiality, freedom of information, human rights and security issues will be set out in its contract with the Agency.

Security of data held by contractors

20. The Agency has rigorous procedures in place to prevent the mis-use of data in its possession, including the requirement for all employees to sign confidentiality agreements, and the random checking of system access by designated managers. The DWP has over twenty detailed Information Technology (IT) Security and Data Protection policy documents which the Agency must comply with. These cover a diverse range of security matters, from Anti Virus Policy, Monitoring Official Systems Policy, the Social Security Administration Act 1992 and the Freedom of Information Act. As the contractors will be using the Agency's computer equipment, the contractors' staff will be bound by the same rules and policies as the Agency's employees. The business requirement, which forms the basis for the contract, includes the following safeguards:

- Contractors will have a contractual obligation to ensure that all records of the Agency's clients are kept accurately and securely;
- Contractors will have a contractual obligation to ensure that their sites are secure and that their systems have security levels to comply with the latest DWP Information Security System Standards;
- Providing evidence that data supplied by the Agency or information gathered by the contractors is used solely for the purpose of the Agency's business and for no other purpose by the contractors, their associated companies (if any), their current or future employees, directors, consultants or contractors;
- Confirming that a basic identification check has been carried out on all employees who have access to Agency information, including verification of identity, take-up of references, criminal record declaration and a nationality check; and
- Complying with the Data Protection Act 1998, and all other legislation which governs access to the Agency's data, to ensure that there is no unauthorised or unlawful processing of personal data, or accidental loss or destruction of, or damage to personal data.

This list is not exhaustive.

21. As part of the procurement process, potential contractors have been asked to detail how they will meet the security requirements stipulated, within existing DWP and Agency policies, specifically regarding employees, accommodation, systems, equipment and sensitive case handling issues so as to minimise the risk of mis-use. As part of site set-up and throughout the life of the contract the contractors will be obliged to allow the DWP and the Agency access to their site in order for audit and security teams to conduct an evaluation to ensure that all relevant legislation and procedures are being met. The contractors will be obliged to comply with any changes recommended by this security evaluation and allow security and audit teams on site throughout the contract lifespan as required.

22. The DWP and Agency have previously worked and are currently working with external parties involved in handling personal data. The procedures and

practices to be put in place will ensure that the data held will remain secure to the best of the Agency's and the Contractors' ability.

Publicity and Communications:

23. Ministers announced the Agency's Operational Improvement Plan on 9 February 2006. The Operational Improvement Plan made reference to contracting out some of the Agency's services to the private sector. Since then the Agency has had discussions with Client Representative Groups about the Operational Improvement Plan.

24. The Agency consulted the Citizens' Advice Bureau (CAB) about proposals for contracting out work. The main CAB concern was over the potential for private debt collectors to use aggressive tactics inappropriately in recovering debt. The CAB has suggested that its debt specialists should work with the Agency to ensure that this issue is addressed. Debt collection agencies are already retained under a Departmental framework agreement which includes an approved code of practice. This will continue to be the case once the Order is enacted.

25. The Agency has also consulted employers and representatives of payroll administration companies at a recent stakeholder meeting. The employers were concerned that contracted debt collection agencies would take them to court to recover the maintenance arrears of their employees if a deduction from earnings order (DEO) is not implemented for entirely legitimate reasons. They were assured that they would not be liable for the debts of their employees under the terms of the new Order in these circumstances, and that, therefore, this problem should not arise.

26. Employers were concerned about their ability to recognise a Deduction from Earnings Order (DEO), issued by a contracted organisation, rather than the Agency itself, as a legitimate order. They were assured that the service requirement issued to contractors will require contractors to include the same approved wording in any notifications as currently used by the Agency: this will include the fact that a DEO is made under the authority of the Child Support Act 1991. Employers were also concerned that they should be given advance notification about forthcoming changes: the Agency issued a letter to all stakeholders on 26 May 2006 providing advance notice, and ongoing liaison and communications channels (such as the Her Majesty's Revenue and Customs employers' bulletin) will build further on this.

27. The Agency has responded to a number of Parliamentary Questions on the Operational Improvement Plan including two concerning the contracting out of debt collection[5].

[5] PQ Nos: 45043 and 45581. The Answers to both these questions were published in Hansard on 27 February 2006.

28. The Operational Improvement Plan and the Agency's intention to contract out areas of work are in the public domain. A communication strategy is being developed to ensure clients are kept informed of the changes in service.

29. Employees from the Agency are being given the opportunity to hear from Executive Team members, about the Operational Improvement Plan. Information on how the Operational Improvement Plan will impact staff has been communicated to them in "*team talk*" bulletins in November and December 2005, February and March 2006 and, staff roadshows across the country delivered by Agency Board members. Further Question & Answer workshops are planned with staff directly impacted by contracting out and these will take place in May 2006. The Operational Improvement Plan is also available on the Agency's intranet site.

30. The Chief Executive of the Agency, Stephen Geraghty and the Secretary of State have also appeared before the Work and Pensions Committee of the House of Commons on 15th February 2006 at which contracting out debt collection was discussed. Following their appearance the Agency has also supplied the Committee with supplementary evidence concerning the standards of behaviour, codes of practice and ethics that the contractors will work too. A contract management team will be set up to ensure that the successful contractor does adhere to these.

31. With regard to the Agency's clients, prior to the transfer of current clerical cases to the contractor, the Agency will notify all clients in writing that their case will henceforth be dealt with at the contractor's office(s). The notification will also provide the contractor's contact details. For all cases referred to the clerical contractor following contract commencement, the contractor shall be obliged to telephone or issue an approved letter to both the parent with care and the non resident parent within one week of transfer, providing the same information.

32. With regard to debt collection, the Agency will be responsible for contacting non resident parents two weeks prior to referring their case to the contractor. This contact will inform the non resident parent of the intention to refer their case to the contractor, and offer them the opportunity to make an agreement and regular payments prior to this referral. No contact will be made with the parent with care prior to referral, as the Agency will still be dealing with all other aspects of the case, aside from the collection of maintenance from the non resident parent.