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HOUSE OF LORDS,  
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Prime Minister

Review of Child Maintenance

1. I welcome proposals for a formula based assessment of child maintenance and improved investigatory, enforcement and collection machinery, all of which should improve the lot of children and, by removing uncertainty, reduce the level of stress and conflict on family breakdown.

2. Broadly, the proposals made by officials in "Children Come First" fit in as an integral part of the review of the family justice system announced in the course of the Children Bill last session and it is important, I think, that we present them as such. Seen in isolation they might be characterised as cost cutting and as anti-fathers: were that to happen it could prejudice their popularity and the rest of the review.

3. Officials have inevitably concentrated at this stage on designing a model to deal with periodical payments to children. I am concerned, however, that of necessity they have been unable to consider in much detail how that model would interact or be co-ordinated with

- (a) the courts' continuing and parallel involvement in determining financial and property provision for both children and spouses and enforcing it;
- (b) court orders for such provision;

(c) benefit entitlement and

(d) existing cases or orders.

I am also concerned that it should be possible to depart from the formula in special circumstances. I attach a note covering all these matters in more detail.

4. The matters mentioned above raise complex and detailed issues which in my view require systematic analysis and should be the subject of detailed consultations, not least because, state benefits apart, our officials have limited experience of and information about practice in the area of financial provision and property adjustment on family breakdown. Accordingly, there may be matters requiring our attention which have not yet been identified. Until we see what consultations produce I think it would be premature to decide whether to legislate next session.

5. Finally, I should add that I continue to believe that there will be immediate additional costs for the courts and legal aid from the more effective enforcement and collection already planned. The extent to which these will be offset by the introduction of a new system depends crucially upon that system's effectiveness. If the new system were not a success not only would our policy be compromised but we might face increased costs overall. The resource implications, therefore, cannot properly be assessed until we have clarified the detail of the outstanding issues.

6. I am sending copies of this memorandum to Geoffrey Howe, Tony Newton, Malcolm Rifkind, David Waddington, Peter Fraser, Kenneth Baker and Norman Lamont and to John Major, Peter Brooke, Kenneth Clarke, David Hunt and Sir Robin Butler.

13 July 1990

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## NOTE

### Parallel Involvement

1. If the investigation of means, assessment of child support and enforcement and collection were taken over from courts by an agency, it would mean many lone parent families having to seek support piecemeal from two separate bodies, with the courts remaining responsible for lump sums and property transfer orders in favour of both the child and the caring spouse and also for periodical payments in respect of the caring spouse.

2. With two separate organisations operating on the same facts when investigating and assessing claims and on the same income and assets when enforcing them, there would be a high potential for double handling, inconsistency and conflict which could bring the system into disrepute and prove unnecessarily expensive. For example, although the same facts are likely to be relevant to the courts when making orders and the agency when operating the formula, two enquiries might be undertaken. Or again, the courts and the agency might make inconsistent findings of fact in assessing spousal and child maintenance respectively. Or the courts' continuing power to adjust property rights between spouses might undermine a formula assessment by, in effect, increasing or decreasing either party's income or, say, the housing costs of the liable parent and hence his exempt income under the formula. A further example of difficulty might arise from a large maintenance award to the spouse which left little over for an award by the agency without reducing the liable parent's income to less than benefit levels. And there could, for example, be direct conflict or competition if the agency attempted to enforce arrears in respect of child maintenance against property which the court also wished to use to meet arrears of spousal maintenance.

3. The problems of parallelism might be compounded if, as the officials' report suggests, a special tribunal were set up to determine disputes arising from the formula assessment. Further, given that the general thrust of family policy is towards all disputes concerning a child and his family being heard together,

it must be questioned whether it is desirable to isolate assessment disputes in a separate tribunal, especially if orders made by the normal courts were to be reasons for varying the formula (see paragraphs 4 to 6, below).

#### Other Orders for Providing Child Support

4. Courts in Australia and the USA have power to vary the amount payable under the formula where support is provided by the payment of a lump sum or transfer of property for the child's benefit. It would be a backward step if a lump sum or property transfer could not be substituted for all or part of the liability for periodical payments under a formula. One has only to think of the man, especially if self-employed, whose income fluctuates, is precarious or difficult to keep track of, to see how it might be in everyone's best interests (including the taxpayer's) to seize on a capital sum or property to provide support for the child.

5. There may also be a knock-on effect in providing a home for a child if the formula is too rigidly applied. At present there can be a trade off between periodical payments and transfer of all or part of the absent parent's share in the family home so that the caring parent and child may remain there or the proceeds of its sale be used to buy a new home. Even if we change the law to require the courts to give a high priority to the children's need for a home (as the officials' report suggests), both the courts and the absent parent may be less ready to do so unless it is possible to modify the sum payable under the formula. The result might be that more caring parents and children could be forced into the rented sector and face increased risks of homelessness.

6. It is, of course, important to avoid undermining the benefits offered by a formula. However, there are means of limiting the extent and circumstances where the formula sum may be altered, and the limited experience in Australia and in the USA seems to suggest that flexibility of this sort need not necessarily open a flood gate.

### Special Circumstances

7. The officials' report suggests that it should be possible to vary the formula to avoid hardship. There may be other circumstances where it should also be possible to depart from the formula. For example, if the absent parent has wilfully reduced his income the courts at present can make orders based on his true earning capacity. Unless there is a power in future to vary the formula upwards in such cases it will open a novel means of evasion. In the same way, it might, for example, be useful if the formula could be varied upward to meet school fees in cases where children were already being privately educated but where the formula would not produce sufficient monies to meet the fees. Dependent stepchildren might, as the report indicates, be another example of a special circumstance which should allow the formula to be varied.

### Benefit Interface

8. It is necessary to be clear about how the new proposals might affect entitlement to benefits. At present courts and legal advisers take benefit entitlement into account in making orders for or agreeing child maintenance. In principle that is something reform should aim to prevent and the formula should help in that respect. However, there is a need to be aware of the likely "losers", if only to be ready to meet the inevitable complaints. An example is mortgage interest. At present, in cases where even a high maintenance award would not enable the caring parent to meet the mortgage, it seems awards are sometimes calculated to keep income support, and hence mortgage interest, in payment by the state and thus preserve the family home for the children. Such a practice is not perhaps defensible, but preventing it may cause criticism if the result is to worsen the position of the individual children concerned.

9. Another example of difficulty in respect of benefit is enforcing maintenance against low earners. Doing so may result in the second household becoming dependent on state benefit such

as Family Credit. If that were to happen, the net result might produce two households receiving means tested benefits rather than one. Again, that may be acceptable but it is the sort of matter which needs to be fully explored before public discussions take place.

#### Existing Cases and Orders

10. It will be necessary to consider how the new formula assessment could affect existing cases. For example, there may be cases where a child is currently receiving little by way of periodical payments because, as part of an overall package for his and the caring parent support, the absent parent provided a lump sum or property instead. In such cases, should the child be able to claim maintenance calculated under the formula (the money or property might, for example, have been dissipated)? Further, on what basis, for example, should variations of existing orders be made once the new system is in force?

