



Deadline for Comment: 16 September 2019

Standard Practice Statement

ED0209

## Options for relief from child support debt

### Introduction

Standard practice statements describe how the Commissioner of Inland Revenue will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement sets out **the Commissioner's** practice for providing relief when the immediate payment of an overdue child support or domestic maintenance obligation is not possible. The relief is provided in the form of an agreement to pay the debt in instalments; writing off penalties in certain situations; or in limited circumstances, writing off part or all the child support debt.

Inland Revenue may collect a debt owed by a receiving carer in the same manner as for financial support owed by a liable person. **References to "liable person" may** therefore include a receiving carer.

All references to child support debt or a child support obligation are to be read as including a domestic maintenance debt or obligation unless otherwise noted.

**All references are to the Child Support Act 1991 (the "Act"), unless otherwise stated.** The relevant legislative provisions of the Act are set out in Appendix 1.

### Application

This Statement applies from the date of signing. It replaces *SPS 11/02 Child Support debt – Requesting an instalment arrangement* that was issued on 16 February 2011.

This Statement does not extend to other tax debt or student loan arrears. For more information on these, see *SPS 18/04 Options for relief from tax debt* and *SPS 11/03 Student Loans – Relief from repayment obligations* or any statements issued in replacement.

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## Standard practice

### Summary

1. This Statement **applies to the Commissioner’s discretion to provide relief when** considering requests for payment agreements to settle child support debt.
2. The Act provides limited discretion when a liable person is unable to pay their child support debt in full and on time. A liable person is encouraged to contact Inland Revenue as soon as possible if they think that they may have trouble paying their child support obligations. We can then discuss options for payment, which may include a payment agreement and/or writing off penalties (in full or in part).
3. Although it is best to contact Inland Revenue before getting behind with child support payments, it is never too late to discuss the options for resolving child support debt and minimising related penalties.
4. Requests for a payment agreement may be made in writing, by telephone, or any other manner acceptable to the Commissioner – for example, through myIR secure online services at <https://www.ird.govt.nz/>
5. Requests for financial relief will be considered on a case-by-case basis. A liable person will need to be able to show why they cannot make immediate payments towards their child support obligation. They may be asked to supply further information about their financial circumstances in support of their request for a payment agreement.
6. When the Commissioner is satisfied that a liable person is not able to make immediate payment, a payment agreement may be agreed to.
7. A payment agreement will be for more than the annual assessed amount of child support payable. This is because payment agreements must include the annual assessed rate of child support payable for a current year, plus a reasonable amount toward reducing the child support debt.
8. A payment agreement will be structured so that the child support debt will be paid in the shortest possible time.
9. When the Commissioner agrees to a payment agreement, the terms will be confirmed and **both the liable person’s and the Commissioner’s obligations under** the payment agreement will be set out. For liable persons with a myIR Secure Online Services account, confirmation may be made electronically.
10. A liable person who enters into a payment agreement should inform the Commissioner as soon as possible if there is a change to their circumstances that may affect:
  - an earlier decision to provide financial relief; or
  - their ability to repay their child support debt.
11. In certain circumstances, the initial late payment penalty and/or incremental penalties that were incurred prior to a payment agreement being made may be written off.

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12. When a payment agreement has been made, the Commissioner will provide relief to the liable person from ongoing incremental penalties for a particular month if all the payments that are due in that month are made.
13. Missing payments of an instalment may not undo the overall payment agreement. When the Commissioner is satisfied that a liable person is unable to pay their child support debt under a payment agreement, the terms of the payment agreement may be changed at the request of the liable person.
14. However, when a payment agreement is cancelled because a liable person does not comply with their repayment obligations, the Commissioner will consider whether other options may be available to collect the child support debt. Penalties will accrue on any unpaid amount.
15. Where a liable person has defaulted on child support obligations, the Commissioner will look to make automatic deductions from their salary/wages or benefit income, as generally required under sections 130 and 131.

### Detailed Discussion

16. A liable person should contact Inland Revenue as soon as possible if they think they are unable to pay their child support obligations on time and in full. Options for payment, which may include a payment agreement, can be discussed. The Commissioner will consider requests for relief on a case-by-case basis. Early contact may also minimise penalties where a payment agreement can be entered into.
17. Applications may be made by telephone, in person, in writing or by electronic means. Details on contact methods for Child Support are available at: <http://www.ird.govt.nz/contact-us/#>.

#### Available options for relief

18. The Commissioner may, when satisfied that immediate payment of child support debt is not possible, grant relief to a liable person by
  - agreeing to a payment agreement;
  - in some instances, being able to grant relief from initial late payment penalties and/or incremental late payment penalties; or
  - writing off part or all of the debt to the extent it is child support that was payable in respect of a period in which the receiving carer was a social security beneficiary (Crown entitlement) and payment will place the liable person in serious hardship.
19. Mandatory relief is also available for initial late payment penalties charged on the first payment due, if a payment arrangement is entered into, or a deduction notice is issued, (which includes that first payment), within 3 months of the issue date of the first assessment.
20. Where a payment agreement is adhered to, a mandatory write-off of related incremental penalties will occur.

#### When will relief be provided?

21. For the Commissioner to consider a payment agreement, the liable person must be able to show that they are not able to make immediate payment of their child support debt.

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22. The Commissioner will consider all options available for payment but will look for arrangements that will see this debt repaid in the shortest possible time while also ensuring the liable person maintains their current child support obligations.

### Payment agreements

23. A payment agreement may consist of one or more payments to settle a child support debt. To ensure that the liable person meets their current child support obligations a payment agreement will include any current-year child support payable.
24. When a payment agreement includes current-year child support obligations, it will provide for the annual rate of child support payable for a current year, plus a reasonable amount toward reducing the outstanding debt.

### Information to support application

25. **Inland Revenue's** decision on whether to agree to a payment agreement will be based on the circumstances of each case, with the aim of recovering the child support debt in the shortest possible time. The Commissioner will also consider whether the liable person can reasonably afford to pay their child support debt at the rate proposed in their payment agreement application.
26. The liable person may need to provide information to support their application for a payment agreement including their proposed payment plan. Alternatively, they may be asked to complete a *Child support – repayment of arrears* (IR130) form. The information provided will be used to assist the Commissioner in considering the application and to determine whether the liable person has other options for settling their child support debt. The IR130 form is available on our website at [www.ird.govt.nz/forms-guides](http://www.ird.govt.nz/forms-guides).
27. A liable person may ask for the payment agreement to be renegotiated at any time. Generally, the Commissioner will renegotiate a payment agreement only after two years from the date the agreement was entered into. However, where the Commissioner becomes aware of a material change in the circumstances of the liable person, the Commissioner reserves the right to renegotiate the agreement at any time.

### Defaulting on instalments

28. Inland Revenue acknowledges that a **liable person's circumstances can change** for reasons outside their control. For example, they may face an unforeseen household expense or default by debtors can erode their cash flow and affect their ability to maintain a payment agreement.
29. If this happens, the liable person should contact Inland Revenue promptly to discuss an adjustment to their payment agreement. If the Commissioner is satisfied that the liable person is unable to continue to meet their payment agreement, it may be re-negotiated or other options to recover the debt will be considered.
30. If a liable person does not comply with the terms of a payment agreement, the Commissioner may cancel that arrangement and look to collect the debt in another way. However, before doing so, the reasons for the default will be considered and the Commissioner will take into account the **liable person's** overall child support compliance behaviour, including:
  - regularity of payments;

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- current financial circumstances;
  - the circumstances under which the payments were missed; and
  - **the liable person's** cooperativeness and willingness to maintain current child support obligations and resolve their debt.
31. The Commissioner may also decline to enter into a payment agreement if the liable person has not complied with earlier agreements and there was no reasonable cause for the non-compliance.

### Charging of penalties

32. If child support obligations are not paid in full and on time, an initial late payment penalty is charged on the unpaid amount as follows:
- The greater of 2% of the unpaid amount or \$5.00 is charged on the day after the due date;
  - 8% of the unpaid amount (excluding the 2%) is charged 8 days after the due date.
33. Amounts remaining unpaid during the following 11 months will be charged an incremental late payment penalty of 2% each month. Amounts still unpaid after this will be charged a penalty of 1% each month.

### Discretionary relief from penalties

34. When a liable person enters into a payment agreement, the Commissioner can grant the liable person relief from the payment of late payment penalties, either the initial or the incremental penalties (or both). The Commissioner can grant relief by writing off the whole or part of the penalty. Each of the write offs that may be available are discussed below.

### *Incremental penalties unpaid before agreement entered into (s 135FA)*

35. The Commissioner may grant relief in respect of incremental penalties that were unpaid at the time a payment agreement was entered into if she is satisfied that the recovery of those penalties would place the liable person in serious hardship, or that it would be fair and reasonable to grant relief.
36. The payment agreement must be entered into on or after 1 April 2016 and require the liable person to pay, in 1 sum or 2 or more instalments under a payment agreement, the amount of child support outstanding and the initial late payment penalties as well as any child support that the person will become liable to pay during the term of the payment agreement.
37. Before the Commissioner decides to grant relief due to serious hardship, she must have regard to the matters referred to in ss 6 and 6A of the Tax Administration Act 1994 which pertain to protecting the integrity of the tax system and encouraging voluntary compliance.

### *Incremental penalties where some or all of the debt paid (s 135G)*

38. Where the liable person has paid some or all of the financial support debt and initial late payment penalties, the Commissioner may grant relief from the payment of the related incremental penalties if she is satisfied that the recovery of the penalties would place the liable person in serious hardship, or it would be fair and reasonable to grant relief.

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### *Residual initial/incremental penalties (s 135GA)*

39. The Commissioner may grant relief to a liable person from the payment of initial late payment penalties and/or incremental penalties if the liable person has paid or had written off all their financial support debt and the Commissioner is satisfied that recovery of those penalties would place the person in serious hardship or that it would be fair and reasonable to grant relief.
40. Similarly, the Commissioner may grant relief to a liable person from the payment of initial late payment penalties and/or incremental penalties if the Commissioner has written off some or all of the benefit component of an amount of child support that is payable by the person and the Commissioner is satisfied that the recovery of those penalties would place the person in serious hardship or that it would be fair and reasonable to grant relief.
41. In this instance the Commissioner must be satisfied that the penalties relate to, or arise from, some or all of the written-off benefit component.

### *Determining serious hardship*

42. In determining whether serious hardship exists, the Commissioner will consider whether the liable person will suffer significant financial difficulties that arise because:
  - (a) the liable person would likely be unable to meet minimum living expenses estimated according to normal community standards; or
  - (b) the liable person must meet the cost of medical treatment for an illness or injury of the liable person, or their dependant; or
  - (c) the liable person or their dependant has a serious illness; or
  - (d) the liable person must meet the cost of education for their dependant.
43. Serious hardship does not include significant financial difficulties due to having to pay tax or child support, because the liable person may become bankrupt or **that the person's social activities and entertainment** may be limited, or the liable person may not be able to afford expensive or high-quality goods or services.
44. **The definition of serious hardship refers to "normal community standards".** While these standards must be considered in the context of the wider community of New Zealand, the actual expenditure of liable persons in different parts of the country may vary. When calculating a **liable person's** minimum living expenses, the Commissioner will consider the reasonable costs of food, heating and accommodation in the **liable person's** area, based on information provided by Statistics New Zealand. However, this is just a starting point and the Commissioner will have regard to expenditure incurred that is outside the norm due to the **liable person's** specific circumstances.
45. **The definition of serious hardship also refers to a "dependant".** Whether a person is a liable person's dependant will be determined on a case-by-case basis. The Commissioner will consider whether the person depends on the liable person for financial support, what degree of financial support is provided, and to what extent providing financial support affects the liable person's ability to meet minimum living expenses according to normal community standards.

### *Fair and reasonable test*

46. Whether it is fair and reasonable to write off incremental penalties depends on the circumstances of each case. Some of the factors that the Commissioner will consider include:

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- whether the payment was late due to a circumstance beyond the liable **person's control, including medical or mental incapability**, incarceration, hospitalisation, travel disruption, natural disasters, civil emergencies;
- whether the person generally has a good payment history;
- whether the person took reasonable steps to mitigate the debt;
- whether the person genuinely misunderstood the payment requirements;
- whether the person paid other debts or acquired assets in preference to paying financial support.

### Mandatory relief

47. Other provisions of the Act direct the Commissioner to grant relief from the payment of initial late payment penalties or incremental penalties if certain criteria are met.

### *Full or substantial compliance with payment arrangement (s 135GB)*

48. Where a liable parent has a child support debt that includes their first payment of child support and they entered into a payment arrangement after 1 April 2016 with the Commissioner within 3 months of the date of the assessment, the initial late payment penalty will be written off if the arrangement is fully or substantially adhered to.
49. A payment arrangement includes a payment agreement, or a deduction notice issued under s 154.
50. A first payment is the first time a person is liable to make a payment of child support under a new liability. This includes when a liable person's **liability** ceases then restarts at a later date (except when this is due **to the person's** status changing between a person who is entitled to receive child support to being the person who is liable to pay). It does not include the situation where a liable person has an existing liability and they incur an additional liability, for example, the addition of a qualifying child.
51. An assessment may be a formula assessment, voluntary agreement or an order of the court. The payment arrangement needs to have been made within 3 months of the date the assessment is issued.
52. A payment arrangement has been fully or substantially complied with when:
- it has operated for a period that the Commissioner considers reasonable; and
  - there has been no default in the payments under the arrangement; or
  - the only default is to an extent, or arising from a cause, that the Commissioner considers reasonable.
53. The extent of the default means the level or range of the default. Is the level or **range of the default reasonable in the Commissioner's opinion?** This will depend upon the facts of each case.
54. A default that arises from a reasonable cause will include a default due to a cause beyond the control of the liable person such as a serious illness, accident or disaster.
55. The Commissioner considers that the payment arrangement has operated for a reasonable period when the first payment of child support that was due, is cleared by the arrangement. If the arrangement has been fully or substantially

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complied with over this time, then the initial late payment penalty can be written off.

### *Relief from incremental penalties unpaid before agreement entered into on or after 26 September 2006 (s 135J)*

56. The Commissioner must write off incremental penalties unpaid at the time a payment agreement is entered into if the liable person has complied with the payment agreement up to a particular review date.
57. Any payment agreement must require the liable person to pay the amount of the initial debt (child support plus initial late payment penalties) along with the amount of child support that the person will become liable to pay during the term of the agreement.
58. A review date will be set for a payment agreement. That review date will be at 26-week intervals from the date the liable person enters into the payment agreement.
59. A person has complied with the payment agreement up to a particular review date if the person has paid every instalment in full when required to by the agreement.
60. If a person has satisfied the criteria above, the incremental penalties will be written off proportionally to the amount of the initial debt that has been repaid over the last 26-week period.
61. In addition, if the liable person makes all the payments as agreed during the last month, the Commissioner must write off all the ongoing incremental penalties charged during that last month (s 135M).
62. When a liable person has not complied with a payment agreement, but the Commissioner is satisfied that the non-compliance was caused by:
  - circumstances beyond **that person's** control and a reasonable cause for the delay of payment; or
  - the delay in payment of the debt was caused by an honest oversight, and there is no history of default with previous payments of financial support, and the oversight was corrected promptly; or
  - the liable person had acted on in good faith, on an error made by Inland Revenue leading to the debt, and it would be fair and reasonable to grant relief;

the incremental penalties may still be written off.

63. If a liable person has not complied with a payment agreement and has not contacted Inland Revenue to discuss options, it is likely that the payment agreement will be cancelled. Should a payment agreement be cancelled, incremental penalties will remain and continue to accrue on any unpaid child support debt.
64. After the payment agreement has been completed, and the child support debt and any initial late payment penalties have been paid, some incremental penalties may still remain. Those remaining incremental penalties may be written off (refer paragraph 38).



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### Write-off of Crown entitlement (s180A)

65. Child support (not including domestic maintenance) will be payable to the Crown in respect of the period that the receiving carer is in receipt of a social security benefit.
66. A write-off of the amount of child support that is owed to the Crown may be available if the Commissioner is satisfied that recovery of part or all of the amount will place the liable person in serious hardship and/or would involve an **inefficient use of the Commissioner's resources**.
67. A liable person cannot request that their child support debt be written off because they consider that collection would be an inefficient use of the **Commissioner's resources**. Whether recovery is an inefficient use of resources is solely a decision for the Commissioner to make under the duties charged to her under ss 6 and 6A of the Tax Administration Act 1994.

### Other relief that may be available

#### *Reasonable cause (s 135B)*

68. Where the Commissioner is satisfied that the delay in payment was due to a reasonable cause and the liable person made payment of the debt as soon as practicable, relief may be granted.
69. Reasonable cause means an event or circumstance that is beyond the control of the liable person and includes a serious illness, an accident or a disaster. The Commissioner must be satisfied that it was the event or circumstance that caused a reasonable delay in the payment of the debt.

#### *Failure by another person to make deduction (s 135C)*

70. Where the Commissioner is satisfied that the circumstances that contributed to the delay in the payment of the debt were due to or caused directly or indirectly by the failure of any person to make a deduction as instructed by a notice issued by the Commissioner under Part 10 of the Act and the liable person has taken reasonable steps to mitigate the effects of those circumstances, the Commissioner may grant relief if after having regard to the nature of those circumstances it would be fair and reasonable to do so.

#### *Honest oversight (s 135D)*

71. The Commissioner may grant relief to a liable person if she is satisfied that the penalty arose due to an honest oversight and the person has no history of missing payments and the person paid the debt as soon as they became aware of the oversight.

#### *Error made by Inland Revenue (s 135E)*

72. The Commissioner may grant relief to a liable person if she is satisfied that the delay in payment which resulted in the penalty being applied was due to an error made by an officer of Inland Revenue and the person has acted in good faith and has altered his or her position in reliance on the error and it would be fair and reasonable to do so.

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### *Debt waived or uplifted (s 135F)*

73. Where the Commissioner is satisfied that the payee has waived the right to the payment to which the penalty relates or has uplifted the debt, relief may be granted if it would be fair and reasonable to do so.

### *Reviewing a decision*

74. If a liable person is concerned that their circumstances have not been given proper consideration, they should raise their concern and ask for the decision to be reviewed.
75. If a liable person is still not satisfied with the level of service they receive, they can obtain more information about the Inland Revenue Complaints Management Service at <https://www.classic.ird.govt.nz/contact-us/disputes-process/complaints-process/complaints-process.html> or phone 0800 274 138 (Monday to Friday between 8am and 5pm).

This Standard Practice Statement is signed on

Rob Wells  
Manager, Technical Standards

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## APPENDIX 1 – LEGISLATION

### Child Support Act 1991

#### 135A Application of sections 135B to 135GA

- (1) Sections 135B to 135GA apply in relation to a penalty that is payable by a liable person in relation to a financial support debt.
- (2) The Commissioner may grant relief to a liable person on any of the grounds specified in sections 135B to 135GA by—
  - (a) writing off the whole or part of a penalty; or
  - (b) if a penalty has been paid, in whole or in part, refunding to the liable person the whole or any part of that penalty that has been paid, with or without the writing off of any part of that penalty that has not been paid.

#### 135B Discretionary relief if reasonable cause

- (1) The Commissioner may grant relief to a liable person in the manner prescribed by section 135A if the Commissioner is satisfied that—
  - (a) there was a reasonable cause for the delay in payment of the debt to which a penalty relates; and
  - (b) the liable person remedied the default as soon as practicable.
- (2) For the purposes of this section, reasonable cause means an event or circumstance in relation to a liable person that—
  - (a) is beyond the control of the liable person, including a serious illness, an accident, or a disaster; and
  - (b) caused, in the opinion of the Commissioner, a reasonable delay in the payment of a financial support debt by the liable person.

#### 135C Discretionary relief if failure of another person to make deduction

The Commissioner may grant relief to a liable person in the manner prescribed by section 135A if the Commissioner is satisfied that—

- (a) the circumstances that contributed to the delay in the payment of the debt to which a penalty relates were due to, or caused directly or indirectly by, the failure of any person to make a deduction under Part 10; and
- (b) the liable person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
- (c) having regard to the nature of those circumstances, it would be fair and reasonable to grant relief.

#### 135D Discretionary relief if honest oversight by liable person with no history of default

The Commissioner may grant relief to a liable person in the manner prescribed by section 135A if the Commissioner is satisfied that—

- (a) the delay in payment of the debt to which a penalty relates is due to an honest oversight by the liable person; and
- (b) the liable person has no history of default in previous payments of financial support; and
- (c) the liable person paid the debt as soon as he or she became aware of the oversight.

#### 135E Discretionary relief if error made by Department

The Commissioner may grant relief to a liable person in the manner prescribed by section 135A if the Commissioner is satisfied that—

- (a) the delay in payment of the debt to which a penalty relates was due to an error made by an officer of the Department; and
- (b) the liable person has acted in good faith and has altered his or her position in reliance on the error; and
- (c) having regard to the circumstances of the case, it would be fair and reasonable to grant relief.

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### 135F Discretionary relief if debt waived or uplifted

The Commissioner may grant relief to a liable person in the manner prescribed by section 135A if the Commissioner is satisfied that—

- (a) the payee has—
  - (i) waived under section 179A the right to the payment to which the penalty relates; or
  - (ii) uplifted under section 180 the debt to which the penalty relates; and
- (b) it would be fair and reasonable to grant relief.

### 135FA Discretionary relief from incremental penalties unpaid before agreement entered into on or after 1 April 2016

(1) For the purposes of this section,—

initial debt, in relation to a payment agreement, means the amount the liable person owes at the time that the agreement is entered into in respect of financial support and initial late payment penalties

payment agreement means an agreement entered into on or after 1 April 2016 between a liable person and the Commissioner that requires the liable person to pay, in 1 sum or 2 or more instalments of specified amounts,—

- (a) the amount of the initial debt; and
  - (b) the amount of financial support (if any) that the person will become liable to pay during the term of the payment agreement.
- (2) The Commissioner may grant relief to the liable person in the manner prescribed by section 135A in respect of the incremental penalties of the liable person that were unpaid at the time a payment agreement was entered into if the Commissioner is satisfied—
- (a) that recovery of those incremental penalties would place the liable person in serious hardship (as defined in section 135G(3)); or
  - (b) that it would be fair and reasonable to grant relief.
- (3) Before making a decision under subsection (2)(a), the Commissioner must have regard to the matters referred to in sections 6 and 6A of the Tax Administration Act 1994.

### 135G Discretionary relief from payment of incremental penalties

(1) The Commissioner may grant relief to a liable person from the payment of incremental penalties in the manner prescribed by section 135A if—

- (a) the liable person has paid some or all of the financial support debt and initial late payment penalties to which the incremental penalties relate; and
  - (b) the Commissioner is satisfied—
    - (i) that recovery of the incremental penalties would place the liable person in serious hardship; or
    - (ii) that it would be fair and reasonable to grant relief.
- (2) Before making a decision under subsection (1)(b)(i), the Commissioner must have regard to the matters referred to in sections 6 and 6A of the Tax Administration Act 1994.
- (3) In this section and sections 135GA and 180A(1)(b)(i),—

serious hardship, in relation to a liable person,—

- (a) includes significant financial difficulties that arise because of—
  - (i) the liable person's inability to meet minimum living expenses according to normal community standards; or
  - (ii) the cost of medical treatment for an illness or injury of the liable person or the liable person's dependant; or
  - (iii) a serious illness suffered by the liable person or the liable person's dependant; or

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### (iv) the cost of education for the liable person's dependant:

- (b) does not include significant financial difficulties that arise because—
  - (i) the liable person is obligated to pay tax or financial support; or
  - (ii) the liable person may become bankrupt; or
  - (iii) **the liable person's, or the liable person's dependant's, social activities and entertainment may be limited;** or
  - (iv) the liable person is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards.

### 135GA Discretionary relief for residual penalty-only debt

- (1) The Commissioner may grant relief to a liable person from the payment of initial late payment penalties or incremental penalties or both in the manner prescribed by section 135A if—
  - (a) **the liable person has paid, or had written off in accordance with this Act, all of the liable person's financial support debt;** and
  - (b) the Commissioner is satisfied—
    - (i) that recovery of those penalties would place the liable person in serious hardship (as defined in section 135G(3)); or
    - (ii) that it would be fair and reasonable to grant relief.
- (2) The Commissioner may grant relief to a liable person from the payment of initial late payment penalties or incremental penalties or both in the manner prescribed by section 135A if—
  - (a) the Commissioner has under section 180A written off some or all of the benefit component of an amount of child support (as defined in section 180A(2)) that is payable by the liable person to the Crown under this Act; and
  - (b) the Commissioner is satisfied that those penalties relate to, or arise from, some or all of that written-off benefit component; and
  - (c) the Commissioner is satisfied—
    - (i) that recovery of those penalties would place the liable person in serious hardship (as defined in section 135G(3)); or
    - (ii) that it would be fair and reasonable to grant relief.
- (3) Before making a decision under subsection (1)(b)(i) or (2)(c)(i), the Commissioner must have regard to the matters referred to in sections 6 and 6A of the Tax Administration Act 1994.

### 135GB Relief from initial late payment penalty if full or substantial compliance with payment arrangement entered into or made on or after 1 April 2016 and within 3-month period

- (1) The Commissioner must write off an initial late payment penalty if satisfied that—
  - (a) that penalty was imposed in respect of a debt that is or includes the first payment of financial support payable by the liable person under a formula assessment, voluntary agreement, or order of the court issued or made before, on, or after 1 April 2016; and
  - (b) a payment arrangement was entered into or made on or after 1 April 2016 and within the 3 months that began on the date of issue or making of the assessment, agreement, or order under which that first payment is payable, and has been fully or substantially complied with in accordance with subsection (5).
- (2) The payment arrangement referred to in subsection (1)(b) must be a payment agreement specified in subsection (3) or a deduction notice specified in subsection (4).
- (3) The payment agreement is one that the liable person entered into with the Commissioner to pay, in 1 sum or 2 or more instalments of specified amounts,—
  - (a) the first payment mentioned in subsection (1)(a); and

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- (b) other payments of financial support that were or would become payable (under the assessment, agreement, or order mentioned in subsection (1)(a), or any other assessment, voluntary agreement, or order of the court) by the liable person.
- (4) The deduction notice is one that the Commissioner gave a person under section 154 in relation to the liable person in order to collect, in 1 sum or 2 or more deductions and payments,—
  - (a) the first payment mentioned in subsection (1)(a); and
  - (b) other payments of financial support that were or would become payable (under the assessment, agreement, or order mentioned in subsection (1)(a) or any other assessment, voluntary agreement, or order of the court) by the liable person.
- (5) The payment arrangement referred to in subsection (1)(b) has been fully or substantially complied with in accordance with this subsection if the arrangement has operated for a period that the Commissioner considers reasonable and—
  - (a) it is a payment agreement, and to date there has been either no default in the payment in accordance with that agreement of the 1 sum, or every one of the 2 or more instalments, specified in subsection (3), or only default of that kind to an extent, or arising from a cause, that the Commissioner considers reasonable; or
  - (b) it is a deduction notice, and to date there has been either no default in the making in accordance with that notice of every one of the 2 or more deductions and payments specified in subsection (4), or only default of that kind to an extent, or arising from a cause, that the Commissioner considers reasonable.
- (6) If an initial late payment penalty written off under subsection (1) has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the penalty paid.

### 135J Relief from incremental penalties unpaid before agreement entered into on or after 26 September 2006

- (1) For the purposes of this section,—

initial debt, in relation to a payment agreement, means the amount the liable person owes at the time that the agreement is entered into in respect of financial support and related initial late payment penalties

payment agreement means an agreement entered into on or after 26 September 2006 between a liable person and the Commissioner that requires the liable person to pay, in 1 sum or 2 or more instalments of specified amounts,—

- (a) the amount of the initial debt; and
- (b) the amount of financial support (if any) that the person will become liable to pay during the term of the payment agreement

review date means—

- (a) the day that is 26 weeks after the date that the liable person enters into the payment agreement; and
- (b) each of the days on which there expire periods of 26 weeks that consecutively succeed the first period of 26 weeks described in paragraph (a); and
- (c) the day on which the payment agreement expires.

- (2) If a liable person has entered into a payment agreement, and the person has complied with the payment agreement up until a particular review date in accordance with subsection (3), the Commissioner must, on that review date,—
  - (a) review the incremental penalties in relation to the initial debt of the liable person that were unpaid at the time the payment agreement was entered into; and
  - (b) write off those penalties proportionally in accordance with subsection (4).
- (3) For the purposes of subsection (2), a person has complied with the payment agreement up until a particular review date if—
  - (a) the person has paid every instalment in full that has fallen due in accordance with the agreement; or

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- (b) in the case of an agreement to pay 1 sum only, the person has paid that sum in accordance with the agreement.
- (4) For the purposes of subsection (2), the proportion of incremental penalties that must be written off must be calculated in accordance with the following formula:

$$r = (a \times c \div b) - d$$

where—

- r is the amount of incremental penalty that is to be written off
- a is the total amount of the initial debt that has been paid since the payment agreement was entered into
- b is the initial debt
- c is the total amount of incremental penalties related to the initial debt of the liable person that were unpaid at the time that the payment agreement was entered into
- d is the total amount of incremental penalties related to the initial debt of the liable person that have already been written off in accordance with this section since the payment agreement was entered into.
- (5) If an incremental penalty that is written off under this section has been paid in whole or in part, the Commissioner must refund to the liable person the whole or part of the incremental penalty that has been paid.

### 135L Writing-off of incremental penalties if non-compliance with arrangement

(1) Subsection (2) applies if,—

- (a) at the time of a review date in relation to a payment agreement under section 135J or 135K, the liable person has failed to pay any amount in accordance with the agreement; and
- (b) the Commissioner is satisfied, in respect of each failure to make a payment in accordance with the payment agreement, that the circumstances in relation to the failure would, if they were related to the payment of a debt to which a penalty relates, entitle the Commissioner to grant relief under any of the provisions of sections 135B to 135E.

(2) The Commissioner may disregard a failure to make a payment for the purpose of applying section 135J or 135K as the case may be.

...

### 135M Relief from ongoing incremental penalties if payment agreement in force

(1) This section applies if—

- (a) an incremental penalty is by operation of law imposed on a person at the expiry of a 1-month period; and
- (b) during that 1-month period, the person is liable to pay financial support, initial late payment penalties, or incremental penalties that are payable in 1 sum, or in 2 or more instalments, under a payment agreement entered into between the person and the Commissioner; and
- (c) every sum or instalment payable under the payment agreement during that 1-month period has during that 1-month period been paid in full in accordance with the payment agreement.

(2) The Commissioner must grant relief to the liable person—

- (a) by writing off the incremental penalty referred to in subsection (1)(a); or
- (b) if that incremental penalty has been paid, in whole or in part, by refunding to that person the whole or the part of that incremental penalty that has been paid, with or without writing off any part of that incremental penalty that has not been paid.