

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament and published on 30th April 2019 (ISBN 978-0-11-118664-0). It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Draft Regulations laid before Parliament under section 52(2) of the Child Support Act 1991 and section 44(2) of the Protection of Freedoms Act 2012, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

FAMILY LAW

CHILD SUPPORT

SOCIAL SECURITY

The Child Support (Miscellaneous Amendments) Regulations 2019

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 14(1), 41E, 43, 51(1) and 52(4) of, and paragraph 10 of Schedule 1 to, the Child Support Act 1991(1) (“the 1991 Act”), sections 5(1)(p) and 189(1) and (4) to (6) of the Social Security Administration Act 1992(2) (“the 1992 Act”), section 6(1) and (2) of the Child Maintenance and Other Payments Act 2008(3) and sections 40 and 44(1) of the Protection of Freedoms Act 2012(4) (“the 2012 Act”).

In accordance with section 173(1)(b) of the 1992 Act, the Social Security Advisory Committee has agreed that the proposals in respect of Part 2 of these Regulations should not be referred to it.

In accordance with section 43 of the 2012 Act, the Secretary of State has, in relation to Part 4 of these Regulations, consulted such persons appearing to the Secretary of State to be representative of

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- (1) 1991 c. 48. Section 14(1) was amended by sections 12 and 26 of, and paragraphs 11(1) and 11(7) of Schedule 3 to, the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”) and by section 58 of, and Schedule 8 to, the Child Maintenance and Other Payments Act 2008 (c. 6) (“the 2008 Act”). Section 41E was inserted by section 33 of the 2008 Act. Section 43 was substituted by section 21 of the 2000 Act. See the definition of “prescribed” in section 54. Schedule 1 was substituted by the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 1, and paragraph 10 of that Schedule was amended by the Child Maintenance and Other Payments Act 2008 (c. 6), Schedule 4, paragraph 9. References in the 1991 Act to “the Commission” were replaced by references to “the Secretary of State” by S.I. 2012/2007.
- (2) 1992 c. 5. Section 189(1) was amended by Schedule 7 to the Social Security Act 1998 (c. 14), Schedule 3 to the Transfer of Functions Act 1999 (c. 2), and Schedule 6 to the Tax Credits Act 2002 (c. 21). See the definition of “prescribed” in section 191 as amended by paragraph 10 of Schedule 5 to the Welfare Reform Act 2007 (c.5). Section 189(4) was amended by S.I. 2013/252.
- (3) 2008 c. 6. Section 6(1) was amended by S.I. 2012/2007. Section 6(2) was amended by the Welfare Reform Act 2012 (c. 5), section 140.
- (4) 2012 c. 9. See the definition of “appropriate national authority” in section 46.

the views of persons entitled to exercise the power of entry, and such other persons, as the Secretary of State considers appropriate.

In accordance with section 52(2) of the 1991 Act and section 44(2) of the 2012 Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Child Support (Miscellaneous Amendments) Regulations 2019.

(2) Regulation 13 comes into force on the 21st day after the day on which these Regulations are made.

(3) Otherwise, these Regulations come into force on the day after the day on which they are made.

Extent

2. Regulations 10 to 12 extend to England and Wales and to Scotland only.

PART 2

Amendments relating to deductions from benefits

Amendments of the Social Security (Claims and Payments) Regulations 1987

3. The Social Security (Claims and Payments) Regulations 1987⁽⁵⁾ are amended as follows.

4. In Schedule 9, omit paragraphs 7A and 7B.

5.—(1) Schedule 9B is amended as follows.

(2) In paragraph 1, in the definition of “maintenance”, for “paragraph 3” substitute “paragraph 3(1)”.

(3) In paragraph 3—

(a) in sub-paragraph (1)—

(i) omit the words from “Except where” to “his partner”;

(ii) for “£1.20” substitute “£8.40”;

(iii) omit “, subject to sub-paragraph (2),”;

(b) after sub-paragraph (1), insert—

“(1A) No deduction may be made under sub-paragraph (1) if the beneficiary is liable to pay maintenance.”;

(5) S.I. 1987/1968. Relevant amending instruments are S.I. 1993/478, 1996/2344, 2001/18 and 2014/612.

- (c) omit sub-paragraph (2).

Amendments of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013

6. The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013⁽⁶⁾ are amended as follows.

- 7. In Schedule 6, omit paragraph 10.

8.—(1) Schedule 7 is amended as follows.

- (2) In paragraph 1, in the definition of “maintenance”—

- (a) for “paragraph 3” substitute “paragraph 3(1)”;
(b) for “paragraph 4(1)(b)” substitute “paragraph 4(1)(a), (b)”.

- (3) In paragraph 3—

- (a) in sub-paragraph (1)—
 - (i) omit “Except where universal credit is awarded to the beneficiary,”;
 - (ii) for “£1.20” substitute “£8.40”;
 - (iii) omit “, subject to sub-paragraph (2),”;
 - (iv) for “or jobseeker's allowance” substitute “, jobseeker's allowance or universal credit”;
- (b) after sub-paragraph (1) insert—

“(1A) No deduction may be made under sub-paragraph (1) if the beneficiary is liable to pay maintenance.”;
- (c) omit sub-paragraph (2).

PART 3

Write off of arrears of child maintenance support

Amendments of the Child Support (Management of Payments and Arrears) Regulations 2009

9.—(1) The Child Support (Management of Payments and Arrears) Regulations 2009⁽⁷⁾ are amended as follows.

- (2) In regulation 13G—

- (a) omit the “or” at the end of paragraph (h);
(b) at end of paragraph (i) insert “; or”;
(c) after that paragraph insert—

⁽⁶⁾ S.I. 2013/380. Relevant amending instrument is S.I. 2014/612.

⁽⁷⁾ S.I. 2009/3151. Relevant amending instruments are S.I. 2012/3002 and 2018/1279.

“(j) the non-resident parent has been discharged under section 184 of the Bankruptcy (Scotland) Act 2016⁽⁸⁾ (protected trust deed: discharge of debtor) from liability for the arrears.”.

(3) In regulation 13H(2), after “13G(i)” insert “, 13G(j)”.

PART 4

Powers of entry and information

Amendments of the Child Support Act 1991

10. The Child Support Act 1991 is amended as follows.

11. In section 15⁽⁹⁾—

(a) after subsection (4) insert—

“(4ZA) But the power under subsection (4) to enter any premises is exercisable only under the authority of a warrant issued under section 15A if—

(a) the premises are occupied, and

(b) an inspector has applied for admission to the premises for the purposes of exercising the power under that subsection but admission has been refused.”;

(b) in subsection (9), at the beginning, insert “Subject to subsection (9A),”;

(c) after subsection (9) insert—

“(9A) A person is guilty of an offence under subsection (9)(a) as a result of intentionally delaying or obstructing an inspector’s entry to premises that are occupied only if, at the time of the delay or obstruction, entry to the premises is authorised by a warrant issued under section 15A.”

12. After section 15 insert—

“Inspectors: warrants authorising entry

15A.—(1) The appropriate court may issue a warrant authorising entry to premises if, on an application made by an inspector, the court is satisfied that—

(a) any of the conditions in subsection (2) is met, and

(b) each of the conditions in subsection (3) is met.

(2) The conditions referred to in subsection (1)(a) are—

(a) that, having attempted to exercise the power conferred by section 15(4), an inspector has been refused entry to the premises,

(b) that it is not practicable to communicate with any person entitled to grant entry to the premises, or

(c) that entry to the premises is unlikely to be granted unless a warrant is produced.

(3) The conditions referred to in subsection (1)(b) are—

(a) that the premises are liable to inspection under section 15 (see section 15(4A)),

⁽⁸⁾ 2016 asp 21.

⁽⁹⁾ Section 15 was amended by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 14. There are other amendments but none is relevant to this instrument.

- (b) that the premises are premises to which it is reasonable for an inspector to require entry in order to exercise the inspector's functions under section 15,
 - (c) that the premises are occupied, and
 - (d) that the occupier has been given at least 21 days' notice of intention to apply for a warrant.
- (4) An application for a warrant must be supported—
- (a) in England and Wales, by an information in writing;
 - (b) in Scotland, by evidence on oath.
- (5) The warrant must specify the premises to which the warrant relates.
- (6) A warrant authorises an inspector's entry to the specified premises, at any reasonable time and either alone or accompanied by such persons as the inspector thinks fit, for the purpose of exercising the inspector's functions under section 15.
- (7) But a warrant does not authorise an inspector to enter those premises at any time when the occupier is temporarily absent.
- (8) A warrant ceases to have effect at the end of the period of one month beginning with the day it is issued.
- (9) An inspector entering premises under a warrant must, if so required, produce the warrant for inspection by an occupier of the premises.
- (10) In this section—
- “the appropriate court”—
 - (a) in relation to premises in England and Wales, means a magistrates' court;
 - (b) in relation to premises in Scotland, means the sheriff or summary sheriff;
- “inspector” means an inspector appointed under section 15;
- “occupier” and “premises” have the same meanings as in section 15;
- “warrant” means a warrant issued under this section.”.

Amendment of the Child Support Information Regulations 2008

13. In regulation 4(2) of the Child Support Information Regulations 2008⁽¹⁰⁾, after subparagraph (k), insert—

- “(l) a qualifying lender (within the meaning given in section 19(7) of the Welfare Reform and Work Act 2016⁽¹¹⁾);
- (m) a trustee, manager or administrator of an occupational pension scheme (within the meaning of section 1(1) of the Pension Schemes Act 1993⁽¹²⁾).”.

⁽¹⁰⁾ S.I. 2008/2551 to which there are amendments which are not relevant to these Regulations.

⁽¹¹⁾ 2016 c. 7.

⁽¹²⁾ 1993 c. 48. Section 1 was amended by the Pensions Act 2004 (c. 35), section 239, the Finance Act 2007 (c. 11), Schedule 20, paragraph 24(1), and Schedule 27, paragraph 3(2), and S.I. 1999/1820, 2007/3014 and 2019/192.

PART 5

Maintenance calculation

Amendment of the Child Support Maintenance Calculation Regulations 2012

14. For regulation 36(2) of the Child Support Maintenance Calculation Regulations 2012⁽¹³⁾ substitute—

“(2) The amount identified as income for the purposes of paragraph (1)(a) is to be taken after any deduction for relieviable pension contributions made by the non-resident parent’s employer in accordance with net pay arrangements.”.

PART 6

Collection fee

Amendment of the Child Support Fees Regulations 2014

15. In regulation 7(6) of the Child Support Fees Regulations 2014⁽¹⁴⁾, for “the payments” to the end, substitute “specifies that payments shall be made to, or through, the Secretary of State in accordance with regulation 2(1)(b) of the Child Support (Collection and Enforcement) Regulations 1992⁽¹⁵⁾”.

Signed by authority of the Secretary of State for Work and Pensions

Date

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

⁽¹³⁾ S.I. 2012/2677 to which there are amendments which are not relevant to these Regulations.

⁽¹⁴⁾ S.I. 2014/612.

⁽¹⁵⁾ S.I. 1992/1989.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments relating to child support maintenance (“maintenance”).

Part 2 makes provision about the recovery of maintenance arrears by deduction from benefits which are payable to a non-resident parent. Regulations 3 to 5 amend the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968) to change the circumstances in which deductions from benefits may be made. Regulations 6 to 8 amend the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (S.I. 2013/380) to allow for such arrears to be recoverable from universal credit and for maintenance to be deducted from universal credit where there are earnings.

The amount which may be deducted from benefits is, in both cases, increased from £1.20 per week to £8.40 per week.

In both cases no deductions from benefits for recovery of maintenance arrears may be made if the non-resident parent in receipt of benefits is liable to pay maintenance.

Part 3 (regulation 8) amends the Child Support (Management of Payments and Arrears) Regulations 2009 (S.I. 2009/3151) to allow arrears of child support maintenance to be written off where the non-resident parent’s estate was subject to a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 2016 (asp 21)) but that deed has expired.

Part 4 relates to powers of entry and to obtain information. Regulations 10 to 12 amend the Child Support Act 1991 (c.48) to create a procedure whereby inspectors can apply to the appropriate court in England and Wales and in Scotland to obtain a warrant for entry to premises in order to carry out their functions under that Act. Regulation 13 amends the Child Support Information Regulations 2008 (S.I. 2008/2551) to require a qualifying lender (within the meaning given in section 19(7) of the Welfare Reform and Work Act 2016 (c.7)) and a trustee or manager of an occupational pension scheme (within the meaning of section 1(1) of the Pension Schemes Act 1993 (c.48)) to provide information to the Secretary of State in connection with the Secretary of State’s functions under the Child Support Act 1991.

Part 5 (regulation 14) amends the Child Support Maintenance Calculation Regulations 2012 (S.I. 2012/2677) so that in relation to the calculation of gross weekly income of a non-resident parent, the figure notified as employment income by Her Majesty’s Revenue and Customs is no longer to be that taken before any allowable deductions from earnings.

Part 6 (regulation 15) amends the Child Support Fees Regulations 2014 (S.I. 2014/612) to clarify when there are considered to be arrangements for collection of the maintenance for the purposes of the payability of the collection fee to the Secretary of State.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.