

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2006
2006 No. 1520

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 is a package of miscellaneous amendments to various pieces of legislation relating to child support maintenance payments. Some amendments apply to the new child support scheme as introduced for cases with an effective date (as determined under specific provisions) on or after 3rd March 2003 and certain linked cases, and others amend regulations which relate to both old and new schemes.

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

3.1 None.

4. Legislative Background

4.1 This is a set of negative regulations made under powers in the Child Support Act 1991 (“the 1991 Act”).

4.2 The child support scheme in the 1991 Act was substantially amended by the Child Support, Pensions and Social Security Act 2000 (“the 2000 Act”). Some of the amendments are fully in force, whilst others have so far been brought into force for the purposes of specified cases only. This means there are effectively two schemes.

4.3 In this memorandum, the child support scheme in force prior to the amendments to the 1991 Act made by the 2000 Act is referred to as “the old scheme” and the child support scheme in force following those amendments is referred to as “the new scheme”.

4.4 The primary purpose of this package of regulations is to assist with the implementation of the Child Support Agency’s Operational Improvement Plan, which was published on 9th February 2006. The overall aim of the Operational Improvement Plan is to improve service to clients, increase the amount of money collected, achieve greater compliance from non-resident parents, and provide a better platform from which to implement future policy.

5. Extent

5.1 These regulations apply to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

Policy

7.1 Child maintenance is an amount of money that parents who do not normally live with the children concerned (the “absent” or “non-resident parent”) pay as a contribution to the upkeep of their children (these are called “qualifying children”).

7.2 In April 2005 Ministers asked the then new Chief Executive of the Child Support Agency, Stephen Geraghty, to undertake a review of the Agency's operations. Following this review Ministers concluded that, given the scale of the resources required to transform the Child Support Agency within our current legislative framework, that in their current state neither the Agency nor the policy on the delivery of child support are fit for purpose.

7.3 Accordingly, the Secretary of State invited Sir David Henshaw to lead a process to redesign the child support system. On 9th February 2006 the Secretary of State announced the decision to commission Sir David Henshaw to redesign the child support system.

7.4 Additionally, in order to help stabilise and improve the performance of the Agency in the short term, Stephen Geraghty published an Operational Improvement Plan also on 9th February 2006.

7.5 It is in order to support the Child Support Agency’s Operational Improvement Plan that these amendments to secondary legislation are proposed.

7.6 In the old child support scheme, a formula is used to work out how much child maintenance is payable by the absent parent. It takes into account the number and ages of the children. The ability of both parents to contribute towards child maintenance is calculated unless the parent with care (the main provider of day-to-day care of the qualifying children) is in receipt of benefit. Ability to pay is calculated by looking at the income available to parents after making allowances for their basic day-to-day expenses. Absent parents are normally expected to pay at least a minimum amount of maintenance for their children (currently £5.80 a week), but there are some exceptions, including those in receipt of certain sickness and disability benefits.

7.7 In the new scheme, the child maintenance calculation is based on a simple system of rates depending on the non-resident parent’s net income or benefit status. The amount of child maintenance depends on:

- the number of qualifying children the child maintenance is for;
- the non-resident parent’s income and circumstances; and
- the number of children living with the non-resident parent (these are called “relevant other children”).

In most cases the amount of maintenance is worked out as a percentage of the non-resident parent's income – 15% for one child, 20% for two children and 25% for three or more children. For non-resident parents (NRPs) who do not earn very much or who are in receipt of certain benefits, the reduced rate or flat rate (usually £5 a week) is used.

7.8 There is no date set at present for conversion of all cases to the new scheme cases. In the meantime the cases which are converted are limited to those which have a link to a new scheme application. For example, a non-resident parent who has a pre-March 2003 maintenance assessment will transfer to the new arrangements if there is a successful application for maintenance by a different person with care for another qualifying child for whom the non-resident parent has to pay child maintenance.

7.9 Regulations set out the allowable methods by which non-resident parents can make payments of child support maintenance. The Secretary of State decides which method of collection shall apply after considering representations from the non-resident parent and the parent with care. Where it is considered appropriate, the Child Support Act 1991 allows the Agency to implement a deduction from earnings order (DEO) whereby child support maintenance is collected direct from a non-resident parent's earnings, without the need for a court order. It is an offence for an employer not to implement, without acceptable reason, a deduction from earnings order, as requested by the Agency. The employer can levy an administrative charge for operating a DEO. Regulations set out the details of how DEOs are operated.

7.10 The Child Support Act allows the Agency to also take action through the courts to collect child support maintenance due. As a first step they can obtain a liability order to register the debt. Once this has been granted, there are a number of options for the Agency to try to obtain the debt due.

7.11 The Child Support (Miscellaneous Amendments) Regulations 2006 make amendments to a number of the sets of regulations which cover child support. The provisions amend regulations governing both the new and old schemes.

Regulation 2 – Amendment of the Information, Evidence and Disclosure Regulations

Regulation 2 amends regulations 2 and 3 of the Child Support (Information, Evidence and Disclosure) Regulations 1992. The amendment will list a credit reference agency, within the meaning given by section 145(8) (Chapter 39) of the Consumer Credit Act 1974, as an organisation required to supply evidence to allow the Agency to identify and trace the non-resident parent, and assess his or her financial standing, and to trace the parent with care in order to recover any overpayments of child support maintenance.

These amendments will allow risk profiling to become a purpose for which evidence may be required. Risk profiling will enable the Agency to use credit reference information, such as a numerical credit score of the non-resident parent, and combine it with other known variables such as age, income, address, whether care of the children is shared between the parents, and child's name (as well as information held elsewhere in the Department) in order to predict likely levels of compliance on a case by case basis. This will allow the Agency to adapt its resources and behaviours according to how likely each individual non-resident parent is to cooperate, i.e. the

more experienced case workers will focus on clients who show the greatest risk of non-compliance according to their credit score and other factors.

Regulation 3 - Amendment of the Collection & Enforcement Regulations

Regulation 3(2) amends regulation 3(1) of the Child Support (Collection & Enforcement) Regulations 1992, which lists the methods of payments for child support maintenance. The amendment will add credit cards to the list. The Agency intends to accept credit card payments mainly for 'one-off' payments of arrears or initial payments of maintenance pending receipt of the first payment from, for example, a direct debit. Credit cards will not routinely be used for regular payment of ongoing maintenance.

Regulation 3(2) also amends regulation 3(1) to allow a non-resident parent to enter into a voluntary arrangement with the Agency and his employer for maintenance to be paid directly from his earnings. This arrangement will differ from deduction from earnings orders which are imposed without the need for agreement. Offering the NRP the ability to pay his maintenance voluntarily directly from his earnings will extend customer choice and help to increase compliance.

Regulation 3(3) amends regulation 11(2) so as to enable a deduction from earnings order to be imposed where the Agency is only wishing to recover arrears. Although section 31 of the 1991 Act provides for DEOs to be used for recovery of arrears, the regulations do not currently allow for this. This is because they do not provide for calculation of the protected earnings proportion (PEP) in such cases. This amendment fills a gap in the existing regulations.

Regulation 3(4) amends regulation 26 in order to fill a gap in relation to expenses in actions in Scotland which involve disqualification from driving in consequence of a wilful refusal or culpable neglect to pay child support. Section 40B(3) of the Child Support Act states that a Disqualification Order must state the amount in respect of which it is made. This is to be the aggregate of two figures – the first being the amount of child support a court has previously agreed is due and the second an amount in respect of the costs of the application for disqualification. Although a regulation was made in 2000 to allow quantification of the second figure for England and Wales, no such regulation has been made for Scotland. Without the proposed change the amount cannot be quantified and Sheriffs will not be prepared to award costs as they will have difficulty with the provisions of the Act which regulate the award of expenses.

Regulation 3(5) amends regulation 28 to remove the time limit within which debts can be enforced using a liability order. Regulation 28 currently provides that a liability order cannot be sought more than 6 years after the day on which the payment in question became due. This means that while the Agency may seek to collect debt by other means (for example, a deduction from earnings order) where the 6 years has expired, it cannot enforce payment through an action in the courts. The current time limit applies only to England and Wales. No such limit is applicable in Scotland.

Removal of the limit does not apply retrospectively (i.e. debts that have already fallen under the 6 year limit before the amendment comes into force will remain unenforceable), but will apply to all cases where the debt has not yet reached the 6 year limit when these Regulations come into force. Removing the limit will enable the

Agency to enforce older debts as part of its drive to improve enforcement and deliver money to more children.

Regulation 4 - Amendment of the Decisions & Appeals Regulations

Regulation 4 revokes regulation 5A(2) and (3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

A default maintenance decision (DMD) is made, as a last resort, when the Agency cannot obtain the information needed to make a maintenance calculation (MC). The amount is £30 a week for 1 qualifying child, £40 for 2 and £50 for 3 or more children. Once the Agency has obtained the necessary information the DMD is “revised” and replaced by a MC.

The provisions at regulation 5A(2) and (3) set the effective date when the DMD is revised. They impose a penalty on certain NRPs who have not cooperated with the Agency. If the amount due under the MC is less than that due under the DMD but the NRP had failed to cooperate, the DMD is only replaced from when the information needed to make the MC was received. The higher DMD rate is left in place for the earlier period.

In many cases, although the Agency has obtained sufficient information to make a MC, they are unable to use it to replace the DMD because the information does not go all the way back to the start. Until the Agency can get hold of information for the earlier period, which may take some time, the case is trapped at the DMD rate.

Following a review of legislation in this area it has been concluded that powers under the Child Support Act allow a DMD to be changed (or “superseded”) to a MC from a current date once sufficient information becomes available. This does not require any change to legislation. It will mean that cases can be more quickly progressed to a MC which will properly reflect the NRP’s circumstances. The Agency will continue to pursue information for the outstanding past period and once it is obtained the DMD will be revised.

However, if a case is superseded to a MC in this way, the provisions at regulation 5A(2) can no longer work and powers in the Act provide no simple alternative means of imposing a penalty. Ministers have therefore considered whether the penalty provisions are of any value and have concluded that they add unnecessary complexity to the delivery of the main scheme and should be removed.

Regulation 5 - Amendment of the Maintenance Calculation Procedure Regulations

Regulation 5 inserts a new provision into the Child Support (Maintenance Calculation Procedure) Regulations 2000 to allow an initial maintenance calculation to be made from an interim effective date.

At present the Agency are unable to make a MC until they have got sufficient information to do so from the original effective date of the MC up to the current date. The “effective date” is the date from which maintenance starts. In many cases sufficient information is only held from a later date. The amendment will allow a MC to be made in such circumstances from an “interim effective date”. This will enable the Agency to get maintenance flowing. The Agency will continue to pursue

information for the past period. When they have obtained it they will make a further MC from the original effective date. These provisions will only be used in cases which are proving particularly difficult to progress.

Regulation 6 – Amendment of the Collection and Enforcement and Miscellaneous Amendments Regulations

Regulation 6(2) brings fully into force (that is, for both old and new scheme cases) a previous amendment allowing use of debit cards for collection of child support maintenance.

Regulation 6(3) amends regulation 6 of the Child Support (Collection and Enforcement and Miscellaneous Amendments) Regulations 2000 to ensure that arrears of child support maintenance which have accrued under the old scheme can be treated and collected in the same manner as arrears which accrue under the new scheme once the case converts to the new scheme.

Cases which convert to the new scheme may have arrears accrued under the old rules. The effect of the saving in regulations 6 was that, even after conversion those arrears would continue to be treated under the old scheme rules for the purposes of collection and enforcement. This amendment effectively “turns off” that saving so that all arrears can be treated the same. This will minimise administration for both the Agency and employers.

Consultation

7.12 The Operational Improvement Plan was published on 9th February 2006 and distributed to staff and stakeholders. It was also posted on the Child Support Agency’s website www.csa.gov.uk. On the same day a statement was made in both Houses announcing that Sir David Henshaw had been commissioned to redesign the child support system. The Secretary of State for Work and Pensions and Lord Hunt stated that secondary legislation would be introduced to strengthen deduction from earnings orders and the use of credit reference agency information. Both statements were debated.

7.13 Sir David Henshaw has invited comments on how the current process for child support may be improved to guarantee the best possible arrangements for ensuring that parents take financial responsibility for their children when they live apart. The consultation stage of the redesign ended on 19th May 2006. Sir David Henshaw has met with a wide range of people and has received a large number of letters and emails, all of which have contributed greatly to the future of child support.

7.14 A communication strategy is being developed to ensure the Agency’s clients are kept informed of the changes.

Consolidation

7.15 The Law Relating to Child Support is available on the internet at <http://www.dwp.gov.uk/advisers/docs/lawvols/orangvol/> and is generally updated twice-yearly.

8. Impact

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

8.2 The impact on the public sector is nil.

9. Contact

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