

**EXPLANATORY MEMORANDUM TO**  
**THE SOCIAL SECURITY (CHILD MAINTENANCE AMENDMENTS)**  
**REGULATIONS 2008**

**2008 No. 2111**

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 These Regulations amend Income Support and Jobseeker's allowance so as to:
  - increase the weekly amount of child maintenance that can be disregarded to £20;
  - ensure that all child maintenance is taken into account in the same way, regardless of its source;
  - make other minor and consequential changes which help clarify the policy and correct anomalies.

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

- 3.1 None

**4. Legislative Background**

- 4.1 On 5<sup>th</sup> June 2008 the Child Maintenance and Other Payments Act ("the Act") received Royal Assent. The Act established a new Child Maintenance and Enforcement Commission to replace the Child Support Agency and removed the compulsion for benefit claimants to apply to the Child Support Agency for child maintenance, leaving them free to make their own arrangements.
- 4.2 These Regulations are consequential to provisions in the Act and are required to ensure that the treatment of maintenance in Income Support and Jobseeker's allowance is consistent with other income-related benefits, regardless of the arrangement under which it is received. The relevant regulations for Housing Benefit and Council Tax Benefit were laid on 11<sup>th</sup> April 2008. Equivalent changes to Employment and Support Allowance regulations will be made separately in a general ESA amendment package.
- 4.3 To ensure that the effect of these changes apply evenly to all relevant Income Support/Jobseeker's allowance customers it is necessary to make minor consequential changes to provisions in the Social Security

(Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003 which were made on the introduction of Child Tax Credit.

- 4.4 The Regulations also give effect to the increase in the child maintenance disregard that was announced by the Chancellor in his Pre-Budget Report of October 2007.
- 4.5 These Regulations incorporate amendments to the following Regulations;
- the Income Support (General) Regulations 1987 (“IS Regulations”)
  - the Jobseeker’s Allowance Regulations 1996 (“JSA Regulations”)
  - the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003.

## **5. Territorial Extent and Application**

- 5.1 This instrument extends to Great Britain.

## **6. European Convention on Human Rights**

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

## **7. Policy Background**

### To increase the disregard on child maintenance income to £20 per week

- 7.1 In October 2007, the Chancellor announced in his Pre-Budget Report that the disregard for child maintenance income would be increased to £20 per week in Income Support, income-based Jobseeker’s Allowance and income-related Employment and Support allowance and would be fully disregarded in Housing and Council Tax Benefits. The aim of the increase is to alleviate child poverty and to add an additional incentive to parents to make their own maintenance arrangements.
- 7.2 The current disregard for child maintenance income depends on the child support scheme under which it has been assessed. Child maintenance assessed before 3 March 2003 (old scheme) had no disregard, but benefit customers were eligible for a Child Maintenance Bonus on starting work. Child maintenance calculated on or after 3 March 2003 (new scheme) attracted a £10 disregard known as Child Maintenance Premium. This distinction is being removed by means of

a Commencement Order to the Child Support, Pensions and Social Security Act 2000.

- 7.3 The £20 disregard, which is being introduced by these Regulations to take effect from October 2008, will therefore apply to all child maintenance received under any arrangement and from any source.

Remove reference to payments on application

- 7.4 The current regulations state that “payment” made to the benefit customer would include any payment which would be made or derived from a liable relative if the benefit customer applied for it. The practical effect of these provisions is that in calculating benefit the Decision Maker is able to make an assumption of the maintenance income the customer could receive if an application was made.
- 7.5 Under the new policy there is no compulsion on benefit customers to apply to Child Support Agency for child maintenance and customers are free to make their own arrangements. Amendments are therefore required to remove the references to payments available on application to align the regulations with the policy.

Revoke regulations relating to the attribution of Child Support Maintenance

- 7.6 The Child Maintenance and Other Payments Act 2008 removed the compulsion for parents with care in receipt of benefit to apply to the Child Support Agency for child maintenance. From October 2008 they are free to make their own arrangements and child maintenance will be paid under a number of different types of agreement and in a variety of ways. The policy is to encourage parents to make their own arrangements whilst ensuring that they are not financially disadvantaged by their decision because of the benefit rules.
- 7.7 Additionally, the Child Maintenance and Enforcement Commission will not make a recovery from any child maintenance they collect on behalf of the Secretary of State as was the case under the Child Support Agency. The Commission will send all payments they receive directly to the parent with care.
- 7.8 The regulations relating to child support maintenance under the Child Support Agency are to be revoked to give effect to the new policy.

Extend the Liable Relative regulations to include child maintenance payments.

- 7.9 From October 2008, child maintenance income will be taken into account under provisions in regulations relating to payments from liable relatives. For clarity, the text in relevant headings and individual regulations has been amended to make it clear that these regulations provide for the attribution child maintenance or liable relative income.

Provide a definition of child maintenance

- 7.10 The removal of the compulsion for parents with care in receipt of benefit to apply to the Child Support Agency will result in child maintenance being paid under a number of different types of agreement in the future. The IS and JSA Regulations are to be amended to clarify the different types of child maintenance arrangements that may be made. These changes are consistent with similar changes in Housing Benefit, Council Tax Benefit and the Employment and Support Allowance.

Clarify the regulations in relation to payments of maintenance made to third parties

- 7.11 A liable relative will sometimes make a payment to a third party in lieu of a payment to the customer. Under current provisions, how such a payment is brought into account depends on the Decision Maker's use of discretion to determine whether or not it is "unreasonable" to treat such payments as a liable relative payment or as other income. This can result in inconsistent decisions being made because different Decision Makers may interpret the term "unreasonable" differently to each other.
- 7.12 The policy is that payments for items that are already covered by the benefit rates are taken into account as income.
- 7.13 The relevant liable relative regulations are amended to clarify when payments to third parties are to be taken into account as a liable relative payments and when they can be completely disregarded. This will ensure consistency in decision making.

Amend Regulations providing for the attribution of non-periodical payments of maintenance

- 7.14 The current Regulations provide that when a customer receives a lump sum liable relative payment that cannot be attributed to a specific period, it is taken into account at a weekly rate which;
- in a case where no periodical payment is made, equals the rate of benefit payable plus £2,

- in a case where a periodical payment is made, equals the difference between the rate of benefit payable had the periodical payment not been made and the periodical payment plus £2.

7.15 The introduction of the new child maintenance disregard requires amendments to be made to these regulations to ensure that the attribution rules do not negate the effect of the disregard and all customers will benefit in full under the new policy.

Amend Regulations to remove anomalies in the attribution of non-periodical maintenance payments between customers receiving child dependant allowances as part of their benefit entitlement and those receiving Child Tax Credit

7.16 Changes to Regulations were made on the introduction of Child Tax Credits (CTC) which led to different rules between those IS and JSA customers who received CTC and those who did not.

7.17 Currently Regulations provide that if a customer receiving a child dependants' allowance receives a periodical payment of child maintenance that exceeds the child allowance then any additional lump sum payment of maintenance is treated as capital. A customer in identical circumstances but in receipt of CTC rather than child allowance, would have the additional maintenance payment taken into account as income.

7.18 This anomaly cannot be justified and we have amended the Regulations to attribute lump sum payments in the same way regardless of whether the customer is or is not in receipt of CTC.

Revoke regulations relating to the treatment of liable relative payments as capital

7.19 As a consequence of the amendment to the Regulations to ensure equal treatment of lump sum payments of maintenance in CTC and non-CTC cases the circumstances that would require this regulation to be applied no longer exist. Therefore this regulation is being revoked as it is redundant.

Amend regulations to remove reference to a revoked regulation

7.20 The definition of a liable relative used in IS Regulations refers to a regulation that was repealed in 1992. The incorrect reference is being replaced by the relevant statutory provision.

*Consultation*

- 7.21 The Social Security Advisory Committee agreed these regulations should not be referred for consultation.

*Guidance*

- 7.22 Guidance on the changes made by these regulations will be provided to Decision Makers as soon as possible.

*Consolidation*

- 7.23 It is not intended to consolidate the regulations for the income-related benefits. A consolidated text will in due course be available online via the DWP website. It is accessible to the public free of charge.

## **8. Impact**

- 8.1 A full impact assessment has not been published for this instrument as it has no impact on private and voluntary sectors..
- 8.2 These regulations are as a consequence of the Child maintenance and Other Payments Act and in themselves will only have a minor impact on the public sector.

## **9. Contact Details**

Any queries regarding this instrument should be directed to the following:

- David Wilyman at the Jobcentre Plus (telephone 0113 2327294, e-mail [david.wilyman@jobcentreplus.gsi.gov.uk](mailto:david.wilyman@jobcentreplus.gsi.gov.uk)) can answer any queries regarding the minor amendments to the IRB Regulations.
- Maria Kolpa at the Jobcentre Plus (telephone 0113 2327084, e-mail [maria.kolpa@jobcentreplus.gsi.gov.uk](mailto:maria.kolpa@jobcentreplus.gsi.gov.uk)) can answer any queries regarding the minor amendments to the IRB Regulations.