

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS) (NO.2)
REGULATIONS 2008

2008 No. 2544

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 legislation relating to child support maintenance. The provisions amend regulations governing both the old and current 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 resolution procedure 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 current scheme”.

4.4 Further amendments to child support legislation have been made by the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”). The powers added to Section 29 of the 1991 Act by Section 20 of the 2008 Act are commenced for the purposes of making these Regulations and will be commenced for all other purposes on 27 October 2008.

4.5 Statutory Instruments entitled:

- The Child Support Information Regulations 2008; and
 - The Child Support (Consequential Provisions) Regulations 2008
- Are also due to be published in October 2008.

5. Territorial Extent and Application

5.1 This instrument applies 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

Policy

7.1 Child Support legislation is focused around the general principle that all parents take financial responsibility for all of their children. Child maintenance is an amount of money that parents who do not normally live with the children concerned (referred to as “absent parent” in the old scheme and “non-resident parent” in the current scheme) pay as a contribution to the upkeep of their children (these are called “qualifying children”).

7.2 In the old 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 qualifying 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 £6.00 a week), but there are some exceptions, including those in receipt of certain sickness and disability benefits.

7.3 In the current scheme, the child maintenance calculation is based on a simple system of rates depending on the non-resident parent’s weekly 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 other 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 qualifying child, 20% for two children and 25% for three or more children. For non-resident parents who do not earn very much or who are in receipt of certain benefits, the reduced rate or flat rate (currently £5 a week) is used. Some non-resident parents, such as students and those on benefit sharing the care of a qualifying child, may pay nothing.

7.4 The 1991 Act allows the Secretary of State to make a deduction from earnings order, whereby child support maintenance is collected direct from a non-resident parent’s earnings, without the need for a court order. This is usually in circumstances where the non-resident parent has failed to make payments or otherwise is refusing to co-operate with the Child Support Agency (“the Agency”). A deduction from earnings order may be made in respect of ongoing maintenance, arrears of maintenance, or both. The 2008 Act introduces powers to allow such orders to be used as a method of payment.

7.5 The 2008 Act establishes the Child Maintenance and Enforcement Commission (“the Commission”), a Non Departmental Public Body, which will

assume responsibility for the delivery of the child maintenance system, including the functions currently exercised by the Agency (in particular, calculating, collecting and enforcing child maintenance liabilities).

7.6 The overall objective of the Commission is:

- To maximize the number of those children who live apart from one or both of their parents for whom effective maintenance arrangements are in place.

This main objective will be supported by two subsidiary objectives:

- To encourage and support the making and keeping by parents of appropriate voluntary maintenance arrangements, and
- To support the making of statutory maintenance arrangements, which includes ensuring that parents comply with their responsibilities.

7.7 The introduction of the Commission is a fundamental reform. The Commission will be led by an independent Board, operating at arm's length from Ministers.

7.8 The 2008 Act requires the Commission to develop services that deliver the best outcomes for children by focusing on maximising the number of effective child maintenance arrangements in place – which is the Commission's overarching objective. This objective, supported by other reforms being taken forward in the 2008 Act, including removing the link between the statutory maintenance service and the benefits system, which will enable and empower parents to decide whether a voluntary maintenance arrangement or the statutory maintenance service is best for them.

7.9 The Commission will be responsible for providing information and support to parents to help them decide the most effective type of arrangement for them. Alongside these new functions the Commission will also be required to provide a more effective statutory maintenance service when parents choose for the Commission to assess, collect and enforce payments instead of making a voluntary maintenance arrangement.

7.10 A date for the transfer of child support functions from the Department of Work and Pensions to the Commission has yet to be confirmed.

Regulations

7.11 The Child Support (Miscellaneous Amendments) (No.2) Regulations 2008 amends several sets of regulations, governing both the old and current schemes.

Regulation 2(2) and 2(4) – Amendment to the Child Maintenance (Collection and Enforcement) Regulations 1992

7.12 From October 2008, non resident parents who have not already agreed a method of paying their child maintenance to the Agency will be offered the choice of either a direct debit or a Deduction from Earnings Order (DEO) as a basic method of payment. The change will not affect those non-resident parents who are able to agree to pay the parent with care directly through a maintenance direct arrangement or those who have their child maintenance deducted through their benefit.

7.13 Figures collected by the Agency have shown direct debits and DEOs to be the most effective ways to collect child maintenance. The compliance rate for payment by

direct debit is currently running at 92%, and DEO at 76%. These rates have remained unchanged for the past three years.

7.14 It is up to the Agency to decide the appropriate method of payment in each individual case. When the original legislation was drafted the intention was to offer non-resident parents a flexible range of payment options in order to encourage compliance. Deduction from Earnings Order is not included in the list of collection methods as a basic method of collection because up to now the legislation has provided only for its use as an enforcement tool where the non-resident parent has either failed to co-operate with another method of payment or defaulted on payment. This amendment includes DEO as method of collection and introduces the ability for the non-resident parent to make representations to the Agency where there is good reason for the DEO not to be used.

7.14 Initially, the non-resident parent will have the choice of paying maintenance via a direct debit or DEO. Where the Agency is satisfied that payments cannot be made by direct debit the non-resident parent will be asked to choose a DEO. If the non-resident parent makes representations that there is good reason for a DEO not to be used the Agency will need to consider this before issuing a DEO. There will also be a right of appeal to a Magistrates' court or the Sheriff in Scotland (the DEO will not be made until all appeal rights/ time limits have expired).

7.15 There may be a negligible impact on business as a result of these regulations; although we consider the provisions enabling business to charge the non-resident parent £1 for each order will offset any additional costs incurred.

Regulation 2(3) - Amendment to the Child Support (Collection and Enforcement) Regulations 1992 (S.I. 1992/1989)

7.16 These regulations are made in respect of the old scheme only. Regulation 11(4) has been amended to make provision for circumstances in which the non-resident parent has two or more employers.

7.17 Currently, the Protected Earnings Rate (an amount of money – based on the old scheme assessment formula – which the non-resident parent must retain after paying child maintenance) cannot be split or apportioned where a Deduction from Earnings Order is appropriate and the non-resident parent has more than one employer. This means that the full Protected Earnings Rate must be applied in respect of each employer subject to such an order. This reduces the amount of maintenance that can be collected via a Deduction from Earnings Order, in comparison with cases where the non-resident parent has a single source of income.

7.18 The amended regulations will bring the treatment of non-resident parents with more than one employer into line with those with a single source of income. The Protected Earnings Rate can now be applied as a percentage, equivalent to the amount earned by the non-resident parent with each employer, as a percentage of the overall income.

7.19 These amendments will also apply to Deduction from Earnings Orders used as an “initial method of collection.”

Regulation 3 – Amendment to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991)

7.20 These regulations are made in respect of the current scheme. Regulation 3A is amended to enable the Agency to revise a decision not to make a maintenance calculation.

7.21 The need for the amendment arises because a Commissioner held that the legislation at present does not allow revision of a decision not to make a maintenance calculation in response to an application for child support maintenance. This means that currently parents must appeal to a Tribunal. The amendment allows the Agency to revise the decision without the need to involve a Tribunal.

Regulation 4 and 5 – Amendment to the Child Support (Maintenance Assessment Procedure) Regulations 1992 and the Child Support (Maintenance Calculation Procedure) Regulations 2000

7.22 This is a minor and technical amendment which will allow the alignment of the maintenance period of an old application with that of a new application against the same non resident parent. A maintenance period is the seven day period beginning on the first effective date of a new or repeat application or a change in circumstances. Essentially it determines when a weekly amount of maintenance is payable from.

7.23 As a result of the repeal of section 6 of the Child Support Act 1991 (which removed the compulsion for parents with care on benefit to use the Agency to make a maintenance arrangement), all applications will be made on a voluntary basis. This allows parents to make an independent arrangement without applying to the Agency, or where they are unable to reach agreement, either parent can make an application to the Agency under section 4 of the 1991 Act. We anticipate that there will be a higher incidence of repeat applications under these new arrangements in cases where maintenance is not paid under a private arrangement.

7.24 This amendment will allow the Agency to set the effective date on the same day of the week as the first day of the original maintenance period in prescribed circumstances. For example if the previous maintenance period ran from Wednesday to Tuesday, the Agency can align a repeat claim using the same days.

7.25 The dates will be aligned in cases where an application has been made in the past in relation to the non resident parent, whether or not by the same parent with care, and the previous maintenance assessment or calculation is no longer in force. This will ensure that there is consistency in the days included in the maintenance period for the non resident parent regardless of the number of applications that are made.

Regulation 6 – Amendment to the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (S.I. 2001/155)

7.26 These regulations are made in respect of the current scheme only. Paragraph 6(3) of the Schedule to these regulations is amended so that bonus or commission payments do not need to be “made in anticipation of the calculation of profits” to be considered as income earned by the non-resident parent where the child maintenance liability is calculated.

7.27 The policy intention is to take such payments into account, regardless of whether they have been paid in anticipation of profits. These amended regulations correct a previous drafting error that was identified following a Commissioner's Decision.

Regulation 7 – Amendment to the Child Support (Transitional Provisions) Regulations 2000

7.28 The effect of the abolition of the Child Maintenance Bonus is to extend the Child Maintenance Premium (the amount of child maintenance that can be disregarded as income within a claim for income related benefits) to all clients. It is therefore no longer necessary to make provision for parents with care to be transferred to the current scheme (where they occupy the same household) to allow them both to benefit from Child Maintenance Premium. This amendment removes that provision.

Consultation

7.29 The Department for Business Enterprise and Regulatory Reform have been made aware of the potential increase in the use of Deduction from Earnings Orders as a result of the amendments to the collection and enforcement regulations.

7.30 No consultation has taken place with regard to the remaining regulations. These are minor and technical in nature; thereby not requiring liaison with external stakeholders.

Guidance

7.31 The Agency is developing a communication strategy to ensure that its clients are kept informed of the changes, which will include discussions with key stakeholders and amending relevant leaflets and web-based guidance when the changes are due to be brought into force.

Consolidation

7.32 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 impact assessment has not been published for this instrument as it has only a negligible impact on the private and voluntary sectors.

8.2 There is not expected to be any measurable impact on the costs of public sector administration as a result of these regulations.

9. Contact

9.1 Paul Nash at the Child Support Agency, Caxton House (5th floor), Tothill Street, London, SW1H 9NA, telephone 020 7340 4059, or e-mail paul.nash2@dwp.gsi.gov.uk can answer any queries regarding this instrument.