

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS) (No. 2)
REGULATIONS 2009

2009 No. 2909

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. Purpose of the Instrument

2.1 The primary purpose of this instrument is to make amendments to ensure that parents with care of a child or children, in respect of whom child benefit is payable, are eligible to make an application for child maintenance until the child or children are nineteen years of age. Transitional provisions are made to protect the affected parents with care.

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

3.1 Regulations 1, 3(4), 4 and 5 of this instrument have a coming into force date of the day after the day on which the Regulations are laid before Parliament, in making such provision the Regulations breach the 21 day rule contrary to the requirement of paragraph 4.12 of Statutory Instrument Practice. The Department takes the 21-day rule convention extremely seriously and only breaks it in exceptional circumstances. The Department regrets the breach of the rule but considers that exceptional circumstances apply in this case.

3.2 The policy of the Child Maintenance and Enforcement Commission (“the Commission”) is to align the definition of a child for the purposes of child maintenance with entitlement to child benefit. On 10th April 2006 the Child Benefit (General) Regulations 2006 came into force and these Regulations changed entitlement to child benefit. The definition of child in the child support legislation was not amended to align with these changes. However, it was discovered very recently that the operational practice had retained the alignment, so causing overpayments of child maintenance by non-resident parents in cases which fell outside the definition of child but where child benefit continued to be payable in respect of the child in question. Following this discovery immediate steps have been taken to cease requiring non-resident parents to pay maintenance in respect of children affected by the mismatch in definitions of “child” for current cases where a decision has to be made by the Commission or where the matter is specifically brought to the attention of the Commission. The Commission will be taking further steps to ensure that action is taken in respect of all other cases that are identified.

3.3 These Regulations rectify the position re-instating the original policy intention. The Department and the Commission consider that it is important

that parents with care of children who are affected by these legislative changes should have to wait the shortest possible time to receive child maintenance again if their child is one in respect of whom child benefit is payable and they were excluded by the provisions amended by these Regulations, when it has always been the policy intention that they should receive child maintenance for that child.

4. Legislative Context

4.1 The Child Support Act 1991 (“the 1991 Act”) makes provision for the calculation, collection and enforcement of child maintenance, which is an amount of money that parents who do not normally live with the children concerned (the “non-resident parent”) pay as a contribution to the upkeep of their children (the “qualifying children”). Child maintenance legislation is focused around the general principle that all parents take financial responsibility for all of their children.

4.2 The 1991 Act gives the Secretary of State the power to make regulations to supplement the meaning of “child” for the purposes of that section.

4.3 The child support scheme in the 1991 Act was substantially amended by the Child Support, Pensions and Social Security Act (“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 that there are effectively two schemes.

4.4 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”. These Regulations affect both the old and current schemes. Further amendments to the 1991 Act have been made by the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”).

5. Territorial Extent and Application

5.1 This instrument applies 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

- **What is being done and why**

7.1 The Child Support Act 1991 provides the power for the Commission to collect child maintenance directly from the non-resident parent on behalf of

the parent with care (the main provider of day-to-day care of the qualifying children).

7.2 The Commission's long standing policy has been that a parent with care of a child or children living with them until their nineteenth birthday and where those parents are eligible for child benefit payments can make an application for child maintenance. This is a simple rule which clients understand and can be effectively administered.

7.3 Prior to expansion of the qualifying criteria for child benefit, which resulted from the Child Benefit (General) Regulations 2006, the Regulations relating to entitlement to child benefit and those relating to 'qualifying children' for child maintenance purposes were broadly consistent.

7.4 The child support regulations were not amended following the expansion of the criteria for child benefit in 2006. Therefore the established policy of treating eligibility for child benefit as confirmation of eligibility for child maintenance purposes was no longer fully supported by the relevant legislation for those children to whom the expansion of the child benefit criteria applied.

7.5 The definition of 'child' is being amended in the child support regulations to restore the position that a person in respect of whom child benefit is payable is also a qualifying child for child maintenance purposes until reaching nineteen years of age as provided for by the 1991 Act.

7.6 The Regulations cannot prescribe a person as a 'child' for child maintenance purposes beyond the age of nineteen years as provided for by the 1991 Act. The 2008 Act also makes provisions for a new system for calculating maintenance payments, which is planned for introduction during 2011. The 2008 Act provides for the extension of child support to children up to twenty years of age. Regulations will be further amended at that stage, to increase the maximum age of a 'child' to the date of their 20th birthday. Until then, the maximum age of a 'child' for child maintenance purposes will be nineteen years, as provided for by the 1991 Act.

7.7 These Regulations provide for a supersession decision to be made in certain circumstances in situations where a material change in circumstances causes an assessment to cease. The 1992 Regulations are also amended to detail in specified circumstances that the date from which such a supersession decision takes effect is the first day of the maintenance period in which the material change of circumstances occurred.

7.8 The instrument makes transitional provisions for certain maintenance assessments or calculations made on application under the 1991 Act, or a supersession decision under that Act to take effect on the date that these Regulations come into force in the specified circumstances. This provision is intended to ensure that any parent with care with a child affected by the fact that the child support legislation has not been aligned with the payability of child benefit will receive the advantage of these amendments from the day

they come into force if the same child or children is a person in respect of whom child benefit is payable on that day.

7.9 The Child Support (Transitional Provisions) Regulations 2000 are modified to ensure that cases affected by the discrepancies in the child support and child benefit legislation do not inadvertently convert from the old to the current statutory scheme. This is to ensure that cases closed for more than 13 weeks, as a result of the child not being treated as a qualifying child for child maintenance purposes – and then reopened when the amended regulations take effect – are not converted (as would generally be the situation where a case is closed for more than 13 weeks).

Consolidation

7.11 The law relating to child support is available on the internet at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-child-support/> and is generally updated twice-yearly.

8. Consultation

8.1 A 12-week consultation was not undertaken for this instrument. The Department considers exceptional circumstances apply in this case. The amendments do not introduce a change in policy and due to the need for current practice to be regularised as quickly as possible, extensive consultation is not considered appropriate. The need is for current practice to be regularised expeditiously and thereby minimise the period for which parents with care are unable to receive maintenance payments due to the relevant child support and child benefit legislation being out of alignment. The amendments regularise current practice and are therefore consistent with client group expectations. Key client and stakeholder groups are to be advised of the amendments to the legislation and the reasons for it, by the time the regulations are laid. Notification of the amended legislation will also be placed on the Child Support Agency's website at this time to ensure wide dissemination.

9. Guidance

9.1 The Commission will be notifying all clients that may have been affected, including non-resident parents who may have overpaid child maintenance, via the Child Support Agency's website. Clients will be invited to contact the Agency if they believe their child should not have been treated as a Qualifying Child (at any point from 10 April 2006 to the date these Regulations come into force) and may receive a refund as a result – subject to HM Treasury approval.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is low and is limited to the Commission. It is estimated that the cost of refunding non-resident parents,

who have incorrectly paid maintenance prior to these amending regulations being introduced, will be in the region of £1.1 million.

10.3 A full impact assessment has not been published for this instrument.

11. Regulating Small Business

11.1 The legislation does not apply to small businesses.

12. Monitoring & Review

12.1 The instrument enables the Commission to lawfully resume previous policy. The Commission actively engages with its stakeholders, including parents' representative groups, and will continue to do so to ensure that the policy intent is maintained.

13. Contact

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