

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2009
2009 No. 396

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 This is a package of miscellaneous amendments to various pieces of legislation relating to child maintenance payments. The provisions make minor changes to policy intent in a number of areas:

- the provisions dealing with the circumstances in which a child support decisions can be superseded have been simplified and areas of duplication have been removed;
- references to the Secretary of State have been changed to the Child Maintenance and Enforcement Commission;
- persons who have been hospital in-patients for more than 52 weeks are no longer exempt from paying the flat rate of maintenance from their benefit (as their benefit payments are no longer down-rated after they have been in hospital for more than 52 weeks);
- members of committees (established by the Child Maintenance and Enforcement Commission) are subject to the unauthorised disclosure provisions; and
- the kinds of employment to which the different information offences apply are set out; and the regulations ensure that Employment and Support Allowance is correctly catered for within the legislation.

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

3.1 None

4. Legislative Context

4.1 These regulations are subject to negative resolution procedure and are made under powers in the Child Support Act 1991 (“the 1991 Act”) and the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”).

4.2 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 pay as a contribution to the upkeep of their children. Child maintenance legislation is focused around the general principle that all parents take financial responsibility for all of their children.

4.3 The child maintenance 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 child maintenance schemes.

4.4 In this memorandum, the child maintenance 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”.

4.5 Further amendments to the 1991 Act have been made by the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”). Only one amendment, relating to the offence for the unauthorised disclosure of information, is relevant to these regulations (see paragraph 7.17 below).

4.6 Another Statutory Instrument containing miscellaneous and consequential amendments to child maintenance legislation (but subject to the affirmative resolution procedure) is also intended to come into force from 6 April 2009 and was laid before Parliament on 27 January 2009.

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

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, in which case only the absent parent’s income is taken into account. 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 those on benefit sharing the care of a qualifying child, may pay nothing.

Regulations

7.4 The Child Support (Miscellaneous Amendments) Regulations 2009 amend several sets of regulations, governing both the old and current schemes.

Regulation 2 - Amendments to the Child Support (Maintenance Assessment Procedure) Regulations 1992 (SI 1992/1813)

7.5 Following the introduction of the Employment and Support Allowance this consequential amendment is needed to ensure that the Commission is able to treat income-related Employment and Support Allowance in the same manner as Income Support and income-based Jobseeker’s Allowance when making decisions relating to child support maintenance.

Regulation 3 – Amendments to the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992 (SI 1992/1816)

7.6 These regulations are amended to take account of the changes made by Regulation 4 (below). The wording has been updated to take into account the amended paragraph numbers.

Regulation 4 – Amendments to the Social Security and Child Support (Decision and Appeals) Regulations 1999 (SI 1999/991)

7.7 Regulation 4 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999. These regulations set out the rules for revising and superseding decisions made in relation to social security and child support. The regulations are amended for two purposes.

7.8 The first purpose is to substitute references to the Commission where appropriate in consequence of the transfer of child support functions from the Secretary of State under the Child Maintenance and Other Payments Act 2008. The transfer took place on the 1st November 2008. The transitional provisions in that Act ensured that all existing regulations referring to the Secretary of State would apply in relation to the Commission without the need for textual amendment. However, as it is more helpful to the reader to see the references to the Commission in the text, existing regulations are to be amended wherever a suitable opportunity arises.

7.9 The second purpose is to simplify the rules in relation to supersession of child support decisions. These are the rules that determine how changes of circumstances are reflected in the maintenance calculation and whether or not such changes can be backdated.

7.10 The approach taken in the drafting of this amendment is to:

- reduce the number of case specific rules where general rules can be relied on;
- omit rules which are redundant; and
- simplify existing rules where possible.

7.11 The new regulation 6A and the new Schedule 3D replace much lengthier provisions. The focus is on making the regulations clearer for the end users.

7.12 As part of the simplification exercise, the provisions which extended the system of revision and supersession (as set out in section 16 and 17 of the Child Support Act 1991) to decisions relating to imposition of penalties and fees and to adjustments for overpayments and voluntary payments have been omitted. The references to penalties and fees are redundant. The position with regard to adjustments is described below.

7.13 Where a non-resident parent has overpaid an amount of child support maintenance or has made certain voluntary payments while waiting to be notified of a maintenance calculation, these may be offset against arrears from a past maintenance calculation or set against a current maintenance calculation by way of an adjustment to the amount payable. The Commission may apply whatever adjustment it considers appropriate (but not so as to reduce the payment below £5 per week). This adjustment relates to the scheduling of payments from the non-resident parent and does not need to be dealt with by revision or supersession. Those are processes more suited to decisions affecting the calculation itself. This does not affect any substantive rights of the parties. The right of appeal to a tribunal in relation to such an adjustment is retained.

7.14 New regulation 6A sets out the circumstances in which a decision may be superseded. The most significant change here is the omission of the provision relating to overpayments and voluntary payments (see above). Another change is to clarify that a change of circumstances which results in a cessation of the maintenance calculation (such as the last or only child dying or leaving full time education) is dealt with by supersession. This means that decisions of a similar kind are dealt with by the same process and carry the same rights of appeal.

7.15 New Schedule 3D sets out the circumstances in which the effective date of a supersession decision is not the date determined by the general rule in section 17 of Child Support Act 1991 (that is the date on which either of the parties applied for a supersession or, where the decision is made on the Commission's own initiative, the date of the decision). The general rule does not allow for backdating (as this will often result in overpayment to the person with care). However, backdating is appropriate in some circumstances. The new Schedule 3D provides for certain fundamental changes, such as a qualifying child dying or a person with care ceasing to care for a child, to be given effect from the date of change. There are also special rules for cases where the non-resident parent becomes entitled to a benefit or there is a new qualifying child. These are not policy changes. The number of cases specific exceptions has been reduced and replaced by more general exceptions, but the overall effect should be same.

Regulation 5 – Amendments to the Child Support (Maintenance Calculation and Special Cases) Regulations 2000 (SI 2000/155)

7.16 This amendment removes from the categories of persons liable for the nil rate of child support maintenance those persons who have been hospital in-patients for 52 weeks or more. This is a result of the revocation of the Social Security (Hospital In-Patients) Regulations 1975 (SI 1975/555) on 10 April 2006 by the Social Security (Hospital In-Patients) Regulations 2005 (SI 2005/3360), from which date the benefits of hospital in-patients are no longer downrated. As a consequence of this change, such persons are no longer subject to the nil rate of child support maintenance.

Regulation 6 – Amendments to the Child Support Information Regulations 2008 (SI 2008/2551)

7.17 Regulation 14 of the Information Regulations requires consequential amendment, further to amendments to section 50 of the Child Support Act 1991 (which took effect on 1 November 2008). The amended 1991 Act makes provision for two different offences of unauthorised disclosure of information, depending on the kind of employment a person is in. These regulations ensure that the appropriate offence applies to the kinds of employment listed. In addition, members of Committees established by the Commission (who are not members of the Commission themselves) will be subject to the criminal provisions for the unauthorised disclosure of information.

Regulation 7 – Saving

7.18 The provision in regulation 7 ensures that the changes to the Decisions and Appeals Regulations do not impact on old scheme cases. It is necessary to spell this out as the regulations are made under powers that apply to current and old scheme cases.

Consolidation

7.19 The 2008 Act makes provision for a new statutory child maintenance scheme based on the non-resident parent's gross income and using data supplied by HM Revenue and Customs. It is intended that that scheme will be introduced from 2011 and parents on the existing schemes will be invited either to apply for the new scheme or make a private maintenance agreement. That process is expected to take around three years, after which the existing schemes will close.

7.20 The introduction of the gross income scheme will necessitate new regulations, which will replace existing regulations and thus provide an opportunity to consolidate. There are no plans to consolidate existing regulations in the intervening period but that will be kept under review.

8. Consultation

8.1 No consultation has taken place with regard to these regulations. These are minor and technical in nature; thereby not requiring consultation with external stakeholders. Additionally, there is no impact on the private or voluntary sectors and only negligible impact on the public sector.

9. Guidance

9.1 The Commission 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.

10. Impact

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

10.2 The impact on the public sector is negligible and limited to the Commission.

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

11. Regulating Small Business

11.1 The regulations do not affect small business.

12. Monitoring & Review

12.1 This instrument makes only minor changes to regulations and there is no fundamental impact on 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

Paul Nash at the Child Maintenance and Enforcement Commission can answer any queries regarding the instrument, Telephone: 020 7853 8017 or E-mail: Paul.Nash2@childmaintenance.gsi.gov.uk.