

*This Draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 12 July 2018 and published on 16 July 2018 (ISBN 978-0-11-117126-4). It is being issued free of charge to all known recipients of that draft Statutory Instrument.*

*Draft Regulations laid before Parliament under section 52(2) and (2A)(b) of the Child Support Act 1991, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2018 No. \*\*\***

## **FAMILY LAW**

### **CHILD SUPPORT**

## **The Child Support (Miscellaneous Amendments) Regulations 2018**

*Made* - - - - *\*\*\**

*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 14(1) and (3), 32A(4)(a) and (b), 32C(1) and (2)(h), (k), (l), (n), (o) and (p), 32D(1)(b), 32E(2)(a) and (b), 32F(1)(b), 32I, 32J(1) and (2)(d), (e) and (i), 32K(1)(b), 39B(8) (b) and (10), 39F(a), 40(11), 41E, 51(1) and (2)(i), and 52(4) of, and paragraph 4(1) of Schedule 4B to, the Child Support Act 1991(1):

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 52(2)(2) and (2A)(b)(3) of the Child Support Act 1991.

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- (1) **1991 c. 48** (“the 1991 Act”). Section 14 was amended by paragraph 9 of the Schedule to the Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (2012/2007). Section 14(1) was amended by sections 12 and 26 of, and paragraphs 11(1) and 11(7) of Schedule 3 to, the Child Support, Pensions and Social Security Act 2000 (**2000 c.19**) (“the 2000 Act”). Section 14(1) was further amended by sections 58 of, and Schedule 8 to, the Child Maintenance and Other Payments Act 2008 (**2008 c.6**) (“the 2008 Act”). Section 14(3) was amended by section 86(1) and (2) of, and paragraph 27(b) of Schedule 7 and Schedule 8 to, the Social Security Act 1998 (**1998 c.14**), section 13(4) of, and paragraphs 1, 10(1) and (3) of Part 1 of Schedule 3 to, the 2008 Act and **S.I. 2012/2007**. Sections 32C(2)(K), 32F(1)(b) and 32J(2)(e) were amended by **S.I. 2012/2007**. Section 39B was inserted by section 27 of the 2008 Act. Section 41E was inserted by section 33 of the 2008 Act. Schedule 4B was substituted by section 6 of, and Schedule 2 to, the 2000 Act, and has been brought into effect only for the types of cases specified in article 3 of the Child Support Pensions and Social Security Act 2000 (Commencement No.12) Order **S.I. 2003/192**. See the definition of “prescribed” in section 54.
- (2) Section 52(2) was substituted by section 25 of the 2000 Act, amended by sections 57, 58 of, paragraph 1(22) of Schedule 7, Schedule 8 and section 102 of, and paragraph 8 of Schedule 11 to, the Welfare Reform Act 2012.
- (3) Section 52(2A) was substituted by section 57 of, and paragraphs 1(22)(b) and (23) of Schedule 7 to, the 2008 Act.

## PART 1

### GENERAL

#### Citation and commencement

1.—(1) These Regulations may be cited as the Child Support (Miscellaneous Amendments) Regulations 2018.

(2) These Regulations, with the exception of regulation 3 (Part 3), come into force 14 days after these Regulations are made.

(3) Regulation 3 (Part 3) come into force 21 days after these Regulations are made.

## PART 2

### AMENDMENTS RELATING TO THE GROUNDS FOR VARIATION OF A MAINTENANCE CALCULATION

#### Amendment of the Child Support Maintenance (Calculation) Regulations 2012

2.—(1) The Child Support Maintenance (Calculation) Regulations 2012(4) are amended as follows.

(2) After regulation 69 (non-resident parent with unearned income) insert—

#### “Assets exceeding a prescribed value

**69A.**—(1) Where this paragraph applies, the other cases prescribed under paragraph 4(1) of Schedule 4B to the 1991 Act(5) are cases where the Secretary of State is satisfied that there is an asset in which the non-resident parent has a legal or beneficial interest and the value of that interest exceeds the prescribed value.

(2) In this regulation “asset” means—

- (a) money, whether in cash or on deposit, including any money which is due to a non-resident parent where the Secretary of State is satisfied that requiring payment of the monies to the non-resident parent immediately would be reasonable;
- (b) gold, silver or platinum bullion bars or coins;
- (c) a virtual currency which is capable of being exchanged for money;
- (d) land or rights in or over land;
- (e) shares within the meaning of section 540 of the Companies Act 2006(6);
- (f) stock and unit trusts within the meaning of section 6 of the Charging Orders Act 1979(7);
- (g) gilt edged securities within the meaning of paragraphs 1 and 1A of Part 1 of Schedule 9 to the Taxation of Chargeable Gains Act 1992(8); or

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(4) [S.I. 2012/2677](#).

(5) Paragraph 1 of Schedule 2(II) to the 2000 Act substituted Schedule 4B to the 1991 Act in relation to the cases specified in article 3 of [S.I. 2003/192](#) with effect from 3 March 2003.

(6) [2006 c.46](#).

(7) [1979 c.53](#).

(8) [1992 c.12](#). Paragraph 1A of Part 1 of Schedule 9 was inserted by paragraph 8 of Schedule 40 to the Finance Act [1996 \(c.8\)](#).

- (h) a chose in action which has not been enforced on the date of an application for a variation under regulation 56 and where the Secretary of State is satisfied that such enforcement would be reasonable.
- (3) In this regulation “asset” includes any asset which is subject to a trust where the non-resident parent is a beneficiary.
- (4) Paragraph (1) does not apply in the case of any asset which—
  - (a) has been received by the non-resident parent as compensation for personal injury suffered by the non-resident parent;
  - (b) is being used in the course of the non-resident parent’s trade or business;
  - (c) the Secretary of State is satisfied could have been purchased from the gross weekly income of the non-resident parent which has been taken into account for the purposes of a maintenance calculation;
  - (d) will need to be sold in order to meet any additional maintenance payment required as a result of a variation under paragraph 4(1) of Schedule 4B to the 1991 Act where the Secretary of State is satisfied that the sale of that asset would cause hardship to a child of the non-resident parent, or would otherwise be unreasonable having taken into account all relevant circumstances; or
  - (f) is a legal or beneficial interest in land where the land in question is the primary residence of the non-resident parent or any child of the non-resident parent.
- (5) The “prescribed value” is £31,250.
- (6) In the case of an asset which is subject to a mortgage or charge, the value of that asset will be its value after a deduction is made for any amount owing under the mortgage or charge.
- (7) The Secretary of State shall calculate the weekly value of an asset by applying the statutory rate of interest to the value of the asset and dividing by 52.
- (8) For the purposes of this regulation—
  - “statutory rate of interest” means interest at the statutory rate prescribed for a judgment debt<sup>(9)</sup> or, in Scotland, the statutory rate of interest included in or payable under a decree in the Court of Sessions applicable on the date upon which the variation takes effect;
  - “virtual currency” means a digital representation of value which is not issued by a central bank or a public authority; is accepted by natural or legal persons as a means of payment; and can be transferred, stored or traded electronically.”.

## PART 3

### AMENDMENTS RELATING TO DEDUCTIONS FROM JOINT AND BUSINESS ACCOUNTS

#### **Amendment of the Child Support (Collection and Enforcement) Regulations 1992**

**3.—**(1) The Child Support (Collection and Enforcement) Regulations 1992<sup>(10)</sup> are amended as follows.

- (2) In regulation 25A (interpretation of this Part)—
  - (a) in paragraph (1)—
    - (i) before the definition of “assessable income” insert—

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<sup>(9)</sup> The statutory rate of interest is prescribed by section 17 of the Judgments Act 1838 (c.110).

<sup>(10)</sup> S.I. 1992/1989. Regulations 25A to 25AD were inserted by S.I. 2009/1815.

““another account-holder” means an account-holder other than the liable person in a case where a regular deduction order or a lump sum deduction order is proposed or made in respect of a joint account”; and

after the definition of “gross weekly income”(11) insert—

““joint account” includes an account used by a partnership(12) formed in England or Wales, of which the liable person is a partner”;

- (b) in paragraph (3)(b), after “liable person” insert “or (where the order is made in respect of a joint account) another account-holder”; and
- (c) in paragraph (4), for “or a liable person” substitute “, a liable person or another account-holder”.

(3) After regulation 25A insert—

**“Regular deduction order in respect of a joint account**

**25A1.**—(1) Before making a regular deduction order in respect of a joint account the Secretary of State shall serve a notice containing the information set out in paragraph (2) and the further information set out in paragraph (3) or (4) (as appropriate).

(2) The information for each account-holder is—

- (a) that the Secretary of State is proposing to make an order in respect of the account;
- (b) the name of the liable person;
- (c) the number and sort code of the account;
- (d) that the order would be made to secure the payment of child support maintenance payable by the liable person;
- (e) the dates on which the Secretary of State is proposing to make deductions under the order;
- (f) that each account-holder has an opportunity to make representations to the Secretary of State about the matters in sub-paragraphs (a) and (e);
- (g) that the order is likely to be made in the terms set out in the notice if representations are not made; and
- (h) the period for making representations.

(3) The further information to the liable person is—

- (a) the amounts that the Secretary of State is proposing to deduct under the order in respect of arrears of child support maintenance payable under the calculation and amounts of child support maintenance which will become payable under the calculation;
- (b) that the liable person has an opportunity to make representations to the Secretary of State about the matters in sub-paragraph (a);
- (c) that the order is likely to be made in the terms set out in the notice if representations are not made; and
- (d) the period for making representations.

(4) The further information to another account-holder is—

- (a) the amounts that the Secretary of State is proposing to deduct under the order;

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(11) The definition “gross weekly income” was inserted by S.I. 2013/1517.

(12) “Partnership” is defined in section 1 of the Partnership Act 1890 (c. 39).

- (b) that another account-holder has an opportunity to make representations to the Secretary of State about the matters in sub-paragraph (a);
  - (c) that the order is likely to be made in the terms set out in the notice if representations are not made; and
  - (d) the period for making representations.
- (5) The period for making representations to the Secretary of State in respect of the matters referred to in paragraphs (2)(a), (e) and (3)(a) or (4)(a) is—
- (a) 14 days, beginning with the day on which the account-holder receives the notice; or
  - (b) such longer period as the Secretary of State considers reasonable in the circumstances of the case.
- (6) A regular deduction order may not be made before the period for making representations has expired and the Secretary of State has considered any representations in respect of the matters referred to in paragraphs (2)(a), (e) and (3)(a) or (4)(a) made to the Secretary of State during that period.”
- (4) In regulation 25E (notification by the deposit-taker to the Secretary of State)—
- (a) in paragraph (1) omit “in writing”; and
  - (b) after paragraph (5) insert—
    - “(5A) The deposit-taker at which a regular deduction order is directed must within 7 days of changing the name of an account-holder, beginning with the day on which the deposit-taker changes that name, notify the Secretary of State of the old name of the account-holder and the new name of that account-holder, if the order—
      - (a) is made in respect of a joint account; and
      - (b) remains in force at any time within that 7 day period.”.
- (5) In regulation 25G (review of a regular deduction order)—
- (a) for paragraph (1) substitute—
    - “(1) The following persons may apply to the Secretary of State for a review of a regular deduction order—
      - (a) a deposit-taker at which the order is directed;
      - (b) the liable person against whom the order is made; or
      - (c) another account-holder (in the case of an order made in respect of a joint account).”; and
  - (b) in paragraph (2)—
    - (i) in sub-paragraph (a) for “the liable person or the deposit-taker” substitute “the liable person, the deposit-taker or another account-holder (in the case of an order made in respect of a joint account)”;
    - (ii) at the beginning of sub-paragraph (b) insert “the applicant is the liable person and”;
    - (iii) after sub-paragraph (e) omit “or”; and
    - (iv) after sub-paragraph (f) insert—
      - “(g) for a joint account, another account-holder satisfies the Secretary of State that the amount contributed by the liable person to the account specified in the order—
        - (i) has decreased; or
        - (ii) will decrease within a period of 3 months of the date on which the account-holder applied for a review of the order; or

- (h) for a joint account, another account-holder who did not make representations within the period for making representations under regulation 25A1(5), 25IA(3) or 25KA(3) both—
  - (i) satisfies the Secretary of State that that account-holder had reasonable excuse for not making representations within that period; and
  - (ii) applies for a review of the order within 3 months of the expiry of the period for making representations under regulation 25A1(5), 25IA(3) or 25KA(3).”
- (6) In regulation 25I (variation of a regular deduction order)—
  - (a) for paragraph (1) substitute—
    - “(1) Subject to regulation 25IA, the Secretary of State may vary a regular deduction order by changing the amount to be deducted in the circumstances set out in paragraph (2).”; and
  - (b) in paragraph (2)—
    - (i) after sub-paragraph (c) omit “or”; and
    - (ii) after sub-paragraph (d) insert—
      - “; or
      - (e) where the order is made in respect of a joint account, the amount contributed to the account by the liable person has changed or the Secretary of State has reason to believe that it will change within 3 months of the date on which the order is made or varied.”;
  - (c) at the end of paragraph (3), insert “or the deduction dates”; and
  - (d) after paragraph (4) insert—
    - “(5) Paragraphs (2) and (4) of this regulation also apply to a regular deduction order made in respect of a joint account.”.
- (7) After regulation 25I insert—

**“Variation of a regular deduction order in respect of a joint account**

- 25IA.**—(1) Before varying a regular deduction order made in respect of a joint account—
- (a) to increase the amounts deducted; or
  - (b) to vary the deduction dates,
- the Secretary of State shall serve on each account-holder a notice containing the information set out in paragraph (2).
- (2) The information is—
- (a) that listed in regulation 25A1(2)(b), (c), (e), (g), (h) and (3)(a) or (4)(a) (as appropriate);
  - (b) that the Secretary of State is proposing to vary the order in respect of the joint account;
  - (c) an explanation as to why the Secretary of State is proposing to vary the order; and
  - (d) that the account-holder has an opportunity to make representations about the matters in sub-paragraph (b) and regulation 25A1(2)(e) and (3)(a) or (4)(a) (as appropriate).

- (3) The period for making representations to the Secretary of State in respect of the matters referred to in paragraph (2)(b) and regulation 25A1(2)(e) and (3)(a) or (4)(a) (as appropriate) is—
- (a) 14 days, beginning with the day on which the account-holder receives the notice; or
  - (b) such longer period as the Secretary of State considers reasonable in the circumstances of the case.
- (4) The regular deduction order may not be varied before the period for making representations has expired and the Secretary of State has considered any representations in respect of the matters referred to in paragraph (2)(b) and regulation 25A1(2)(e) and (3)(a) or (4)(a) (as appropriate) made to the Secretary of State during that period.”
- (8) In regulation 25J (lapse of a regular deduction order)—
- (a) in paragraph (2)—
    - (i) after sub-paragraph (a) omit “or”; and
    - (ii) after sub-paragraph (b) insert—  
“; or
  - (c) the Secretary of State—
    - (i) is satisfied that the liable person has ceased making contributions to the account; or
    - (ii) has reason to believe that the liable person will cease making contributions to the account in the next deduction period;”;
  - (b) after paragraph (4) insert—  
“(5) This regulation applies to a regular deduction order whether or not made in respect of a joint account, except for paragraph (2)(c) which applies to a regular deduction order made in respect of a joint account only.”
- (9) In regulation 25K (revival of a regular deduction order) in paragraph (1)—
- (a) after sub-paragraph (a) omit “or”; and
  - (b) after sub-paragraph (b) insert—  
“; or
  - (c) following the lapse of an order under regulation 25J(2)(c) the liable person has started making contributions to the account again.”
- (10) After regulation 25K insert—

**“Revival of a regular deduction order proposed in respect of a joint account**

**25KA.**—(1) Before reviving a regular deduction order made in respect of a joint account, the Secretary of State shall serve on each account-holder a notice containing the information set out in paragraph (2).

- (2) The information is—
- (a) that listed in regulation 25A1(2)(b), (c), (e), (g), (h) and (3)(a) or (4)(a) (as appropriate);
  - (b) that the Secretary of State is proposing to revive the order in respect of the account;
  - (c) an explanation as to why the Secretary of State is proposing to revive the order; and
  - (d) that the account-holder has an opportunity to make representations about the matters in sub-paragraph (b) and regulation 25A1(2)(e) and (3)(a) or (4)(a) (as appropriate).

(3) The period for making representations to the Secretary of State in respect of the matters referred to in paragraph (2)(b) and regulation 25A1(2)(e) and (3)(a) or (4)(a) (as appropriate) is—

- (a) 14 days, beginning with the day on which the account-holder receives the notice; or
- (b) such longer period as the Secretary of State considers reasonable in the circumstances of the case.

(4) A regular deduction order may not be revived before the period for making representations has expired and the Secretary of State has considered any representations in respect of the matters referred to in paragraph (2)(b) and regulation 25A1(2)(e) and (3)(a) or (4)(a) (as appropriate) made to the Secretary of State during that period.”

(11) In regulation 25L (discharge of a regular deduction order) in paragraph (1)—

(a) for sub-paragraph (f) substitute—

“(f) unless sub-paragraph (g) applies, a regular deduction order has lapsed under regulation 25J(2) and—

- (i) 6 months have passed beginning with the day the lapse took effect; or
- (ii) 6 months have passed beginning with the day the lapse took effect and during this period of time the Secretary of State has not served any notice under regulation 25KA.”;

(b) after sub-paragraph (g) omit “or”; and

(c) at the end of sub-paragraph (h) insert—

“; or

(i) the liable person is no longer an account-holder in relation to the account.”.

(12) For regulation 25M (period in which representations may be made) substitute—

**“Period in which representations may be made**

**25M.** Subject to regulation 25MA(3), where a lump sum deduction order has been made under section 32E(1) of the Act, the period for making representations to the Secretary of State in respect of the proposal specified in that order is 14 days, beginning with the day on which a copy of the order was served.”

(13) After regulation 25M insert—

**“Notice where an interim lump sum deduction order has been made in respect of a joint account**

**25MA.**—(1) Where the Secretary of State serves a copy of the interim order made in respect of a joint account on each account-holder, that order must be accompanied by a notice containing the information set out in paragraph (2).

(2) The information is—

- (a) the name of the liable person;
- (b) that the Secretary of State has made the interim order in respect of the account and is proposing to make a final order in respect of that account;
- (c) that an interim order or final order which specifies an account held with a deposit-taker shall operate as an instruction to the deposit-taker not to do anything that would reduce the amount standing to the credit of the account below the amount specified in the order (or, if already below that amount, that would further reduce it);



- (d) that the interim order has been made because the liable person is required to pay an amount of arrears of child support maintenance and the Secretary of State is seeking to secure the payment of some or all of that amount;
  - (e) the earliest date proposed by the Secretary of State for paying the amount of arrears of child support maintenance secured under a final order;
  - (f) that the account-holder has an opportunity to make representations about the proposal specified in the interim order;
  - (g) that a final order is likely to be made in the terms set out in the notice if representations are not made; and
  - (h) the period for making representations.
- (3) The period for making representations to the Secretary of State in respect of the matters referred to in paragraph (2)(b), (d) and (e) is—
- (a) 28 days, beginning with the day on which the account-holder receives the notice; or
  - (b) such longer period as the Secretary of State considers reasonable in the circumstances of the case.
- (4) A final order may not be made before the period for making representations has expired and the Secretary of State has considered any representations in respect of the matters referred to in paragraph (2)(b), (d) and (e) made to the Secretary of State during that period.”.
- (5) In this regulation—
- “interim order” means an order under section 32E of the Act; and
  - “final order” means an order under section 32F of the Act.”.
- (14) In regulation 25N (disapplication of sections 32G(1) and 32H(2)(b) of the Act)—
- (a) in paragraph (1) after sub-paragraph (a) insert—
    - “(aa) another account-holder, another account-holder’s partner or a child in relation to whom another account-holder is a person with care<sup>(13)</sup> is suffering hardship in meeting ordinary living expenses;”;
  - (b) in paragraph (1)(b) after “liable person” insert “or another account-holder”;
  - (c) in paragraph (1)(d) for “the liable person” substitute “either the liable person or another account-holder”; and
  - (d) in paragraphs (2) and (3)(b) after “liable person” insert “, another account-holder”.
- (15) In regulation 25O (information) after paragraph (5) insert—
- “(5A) A deposit-taker at which a lump sum deduction order is directed must within 7 days of changing the name of an account-holder, beginning with the day on which the deposit-taker changes that name, notify the Secretary of State of the old name of the account-holder and the new name of that account-holder, if the order is—
    - (a) made in respect of a joint account; and
    - (b) in force at any time during that 7 day period.”.
- (16) In regulation 25U (discharge of a lump sum deduction order) in paragraph (1)—
- (a) after sub-paragraph (f) omit “or”; and
  - (b) after sub-paragraph (g) insert—
    - “; or
    - (h) the liable person is no longer an account-holder in relation to the account.”.

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<sup>(13)</sup> A “person with care” is defined in section 3(3) of the 1991 Act.

- (17) In regulation 25X (accounts of a prescribed description) for paragraph (3) substitute—
- “(3) Paragraph (1)(b) does not apply where a regular deduction order or a lump sum deduction order is made in respect of an account which is used by—
- (a) the liable person as a sole trader; or
  - (b) a partnership formed in England or Wales, of which the liable person is a partner.”.

(18) After regulation 25X insert—

**“Deduction orders in respect of joint accounts**

**25XA.** A regular deduction order or a lump sum deduction order may be made in respect of a joint account which is held by the liable person and one or more other persons.

**Sharing information with account-holders**

**25XB.** Where the Secretary of State serves a notice on an account-holder under regulation 25A1, 25IA, 25KA or 25MA, that notice may be accompanied by such information about the liable person as the Secretary of State considers essential to enable the account-holder to make representations in respect of the proposal specified in the notice.

**Information provided by a deposit-taker before the making of an order**

**25XC.—**(1) Before making a regular deduction order or a lump sum deduction order in respect of a joint account, the Secretary of State may by way of notice require a deposit-taker to provide the information set out in paragraph (3) to the Secretary of State.

(2) The information required under paragraph (1) must be provided within 14 days, beginning with the day on which the Secretary of State’s notice was served on the deposit-taker.

(3) The information is—

- (a) the name of each account-holder;
- (b) the residential address or the address for correspondence, if different, of each account-holder;
- (c) the number and sort code of the account;
- (d) the type of account;
- (e) the amount standing to the credit of the account specified in the request; and
- (f) details of any transactions on the account in the 6 month period before the Secretary of State’s notice was served on the deposit-taker.”.

(19) In regulation 25AC (offences)—

- (a) in paragraph (a) for “regulation 25E(1) to (5)” substitute “regulation 25E(1) to (5A)”;
- (b) in paragraph (c) for “regulation 25O(1) to (5)” substitute “regulation 25O(1) to (5A)”;
- (c) after paragraph (d) omit “and”; and
- (d) after paragraph (e) insert—
 

“;and

  - (f) regulation 25XC (information provided by a deposit-taker before the making of an order).”.

(20) After regulation 25AD (Secretary of State to warn of consequences of failing to comply with an order or to provide information) insert—

## “Review

**25AE.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in regulations 25A to 25AD of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must, in particular—

- (a) set out the objectives intended to be achieved by those provisions;
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(3) The first report under this regulation must be published before the end of the period of 5 years, beginning with the date on which the Child Support (Miscellaneous Amendments) Regulations 2018 come into force.

(4) Subsequent reports under this regulation must be published at intervals not exceeding 5 years.

(5) In this regulation, “regulatory provision” has the meaning given by section 32(4) of the Small Business, Enterprise and Employment Act 2015(14).”.

## PART 4

### AMENDMENTS RELATING TO WRITE OFF OF ARREARS OF CHILD SUPPORT MAINTENANCE

#### **Amendment of the Child Support (Management of Payments and Arrears) Regulations 2009**

**4.**—(1) The Child Support (Management of Payments and Arrears) Regulations 2009(15) are amended as follows.

(2) In regulation 2(1)(interpretation)—

(a) after the definition of “a 1993 scheme case” insert—

““a 2003 scheme case” means a case in respect of which the provisions of the Child Support, Pensions and Social Security Act 2000 have been brought into force in accordance with article 3 of the Child Support, Pensions and Social Security Act 2000 (Commencement No.12) Order 2003(16);

“a 2012 scheme case” means a case in respect of which the provisions of the Child Maintenance and Other Payments Act 2008 have been brought into force in accordance with article 2 of the Child Maintenance and Other Payments Act 2008 (Commencement No.10 and Transitional Provisions) Order 2012(17), article 2 of the Child Maintenance and Other Payments Act 2008 (Commencement No.11 and Transitional Provisions) Order 2013(18) or article 2 of the Child Maintenance and

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(14) 2015 c. 26.

(15) S.I. 2009/3151. Relevant amending instrument is S.I. 2012/3002.

(16) S.I. 2003/192 (c. 11).

(17) S.I. 2012/3042 (c. 122).

(18) S.I. 2013/1860 (c. 79).

Other Payments Act 2008 (Commencement No.12 and Savings Provisions) and the Welfare Reform Act 2012 (Commencement No.15) Order 2013(19);”;

(b) after the definition of “child in Scotland”, insert—

““Child Maintenance Service system” means the computer system used by the Child Maintenance Service which administers a 2012 scheme case or arrears from a 1993 or 2003 scheme case;

“Child Support Agency system” means the computer system used by the Child Support Agency which administers a 1993 or 2003 scheme case;”.

(3) In regulation 13G (Circumstances in which the Secretary of State may exercise the power in section 41E of the 1991 Act)—

(a) after paragraph (e) omit “or”;

(b) after paragraph (f) insert—

“(g) the arrears relate to liability for child support maintenance accrued under a 1993 or 2003 scheme case and the non-resident parent has failed to make any payments of child support maintenance within the 3 month period which precedes the date of the written notice sent by the Secretary of State under regulation 13H(1), or, where the arrears fall within regulations 13K(1)(a), (b) or (d), within the 3 month period which precedes the date of the decision of the Secretary of State under section 41E(1) of the 1991 Act;

(h) the arrears relate to liability for child support maintenance accrued under a 1993 or 2003 scheme case which has transferred from the Child Support Agency system to the Child Maintenance Service system and the non-resident parent has failed to make any payments of child support maintenance within the 3 month period which precedes the date of the written notice sent by the Secretary of State under regulation 13H(1), or, where the arrears fall within regulations 13K(2)(a) or (b), within the 3 month period which precedes the date of the decision of the Secretary of State under section 41E(1) of the 1991 Act; or

(i) the arrears relate to sequestrated debt in Scotland for a 1993, 2003 or 2012 scheme case once the trustee administering the sequestration has confirmed that the period of sequestration has ended.”.

(4) In regulation 13H (Secretary of State required to give notice)—

(a) after paragraph (1) insert—

“(1A) Where the arrears fall within regulation 13(K)(1)(c) or (e) or (2)(c) the requirement under paragraph (1) to send written notice to the non-resident parent only applies where the Secretary of State receives written representations within the period of 60 days beginning with the date the notice is received by the person with care or, where relevant, a child in Scotland.”

(b) in paragraph (2) after “died” insert “or the arrears fall within regulations 13G(i), 13K(1)(a), 13K(1)(b), 13K(1)(d), 13K(2)(a) or 13K(2)(b)”;

(c) in paragraph (3)(b)—

(i) after “arrears” where it first appears insert “except where the arrears fall within regulation 13K(1)(c)”;

(ii) after “relate” insert “except where the arrears fall within regulation 13K(1)(c) or (e) or (2)(c)”;

- (d) at the beginning of paragraph 3(d) insert “subject to paragraph 3(da)” and at the end of paragraph (3)(d) omit “and”;
- (e) after paragraph (3)(d) insert—
- “(da) where the arrears fall within regulation 13K(1)(c) or (e) or (2)(c)—
- (i) advise the person with care or, where relevant, a child in Scotland that they may make written representations as to whether the liability in respect of the arrears should be extinguished, and that any such representations must be sent by post to the Secretary of State within the period of 60 days beginning with the date the notice is received;
- (ii) where a notice is sent to the non-resident parent in accordance with paragraph (1A), advise the non-resident parent that they may make written representations which must be sent by post to the Secretary of State within the period of 21 days beginning with the date the notice is received; and”;
- (f) in paragraph (4), for “If” substitute “Subject to paragraph 4A, if”.
- (g) after paragraph (4) insert—
- “(4a) Where any of the conditions of write off mentioned in regulation 13K(1)(c) or (e) or (2)(c) apply, if no written representations are received by the Secretary of State within the period of 60 days beginning with the date the notice is received by the person with care or, where relevant, a child in Scotland, the Secretary of State may make the decision to extinguish the arrears.”.
- (5) In regulation 13I (Secretary of State to take account of the parties’ views), after “13H(3)(d)” insert “or within the 60 day period referred to in regulation 13H(3)(da)(i) or within the 21 day period referred to in regulation 13H(3)(da)(ii)”.
- (6) In regulation 13J(2) (Notification of decision to write off), after “died” insert “or where the arrears fall within regulation 13K(1)(a) or (2)(a) or where the arrears fall within regulation 13K(1)(c) or (e) or (2)(c) and the Secretary of State has not received written representations by post from the person with care or, where relevant, a child in Scotland, within the 60 day period referred to in regulation 13H(3)(da),”.
- (7) After regulation 13J (notification of decision to write off) insert—

**“Conditions of write off**

- 13K.—**(1) The arrears mentioned above are—
- (a) the arrears are less than £65;
- (b) the effective date of the maintenance assessment or maintenance calculation was on or before 1st November 2008 and the arrears are £1,000 or less;
- (c) the effective date of the maintenance assessment or maintenance calculation was on or before 1st November 2008 and the arrears are over £1,000;
- (d) the effective date of the maintenance calculation was after 1st November 2008 and the arrears are £500 or less; or
- (e) the effective date of the maintenance calculation was after 1st November 2008 and the arrears are over £500.
- (2) The arrears mentioned above are—
- (a) the arrears are less than £65; or
- (b) the arrears are £500 or less; or

(c) the arrears are over £500.”

## PART 5

### AMENDMENTS RELATING TO PASSPORT DISQUALIFICATION ORDER

#### **Amendment of the Child Support (Collection and Enforcement) Regulations 1992**

**5.**—(1) The Child Support (Collection and Enforcement) Regulations 1992<sup>(20)</sup> are amended as follows.

(2) In regulation 26 (extent of this part) substitute “29(2), 35(5) and 35A(5)” for “29(2) and 35(5)”.

(3) After regulation 35, in Part IV (disqualification from driving order) insert—

#### **“Disqualification for holding or obtaining a United Kingdom passport**

**35A.**—(1) For the purposes of enabling an inquiry to be made under section 39B(4) of the Act as to the liable person’s ability to earn a living, means and conduct, a justice of the peace may issue a summons to the liable person to appear before a magistrates’ court and to produce a United Kingdom passport held by the liable person and, if the person does not appear, may issue a warrant for their arrest.

(2) In any proceedings under section 39B of the Act, a statement in writing to the effect that wages of any amount have been paid to the liable person during any period, signed by or on behalf of the liable person’s employer, is evidence of the facts stated.

(3) Where an application under section 39B of the Act has been made but no disqualification order is made, the application may be renewed on the ground that the circumstances of the liable person have changed.

(4) A disqualification order must be in the form prescribed in Schedule 5.

(5) The amount to be included in the disqualification order under section 39B(8)(b) of the Act in respect of the costs of the application for the disqualification order must be such amount as in the view of the court is equal to the costs reasonably incurred by the Secretary of State in respect of the costs of the application for the disqualification order.

(6) An order made under section 39B(9) of the Act may be executed anywhere in England and Wales by any person to whom it is directed or by any constable acting within the constable’s police area, if the liable person fails to appear or produce or surrender their United Kingdom passport to the court.

(7) An order made under section 39B(9) of the Act may be executed by a constable even if it is not in the constable’s possession at the time but the order shall, if demanded, be shown to the liable person as soon as reasonably practicable.

(8) The court shall send to the Secretary of State for the Home Department a United Kingdom passport produced to the court under section 39B(9) of the Act”.

(4) After Schedule 4 insert, as Schedule 5, the Schedule set out in the Schedule to these Regulations.

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(20) S.I. 1992/1989.

### **Amendment of the Child Support Fees Regulations 2014**

6.—(1) The Child Support Fees Regulations 2014<sup>(21)</sup> are amended as follows.

(2) In regulation 13 (collection and enforcement of fees), after paragraph (2)(a) insert—

“(aa) section 39B(disqualification for holding or obtaining travel  
authorisation)<sup>(22)</sup>;

(ab) section 39G (application of sections 39B and 39F to Scotland);”

Signed by authority of the Secretary of State for Work and Pensions

Date

*Name*  
Minister of State  
Department for Work and Pensions

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<sup>(21)</sup> S.I. 2014/612.

<sup>(22)</sup> Sections 39B and 39G of the 1991 Act were inserted by section 27 of the 2008 Act.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Child Support (Miscellaneous Amendments) Regulations 2018 No. 1279*

SCHEDULE

Regulation 5(4)

SCHEDULE TO BE INSERTED AS SCHEDULE 5 TO THE CHILD SUPPORT (COLLECTION AND ENFORCEMENT) REGULATIONS 1992

“SCHEDULE 5

Regulation 35A(4)

*FORM OF ORDER OF DISQUALIFICATION FOR HOLDING OR OBTAINING A UNITED KINGDOM PASSPORT*

Sections 39B to 39G of the Child Support Act 1991 and regulation 36 of the Child Support (Collection and Enforcement) Regulations 1992

Magistrates’ Court

Date:

Liable Person:

Address:

A liability order (“the order”) was made against the liable person by the [ ] Magistrates’ Court on [ ] under section 33 of the Child Support Act 1991 (“the Act”) in respect of an amount of [ ].

The court is satisfied–

(i) that the Secretary of State sought under section 35 of the Act to take control of goods to recover the amount then outstanding in respect of which the order was made;

[and/or]

that the Secretary of State sought under section 36 of the Act to recover through [ ] County Court by means of [a third party debt order] [a charging order], the amount then outstanding in respect of which the order was made;

(ii) that such amount, or any proportion of it, remains unpaid; and  
(iii) having inquired in the liable person’s presence as to the liable person’s means and whether there has been [wilful refusal] [culpable neglect] on their part.

The decision of the court is that the liable person be disqualified for [holding or obtaining] a United Kingdom passport from [date] for [period] unless the aggregate amount in respect of which this order is made is sooner paid. \*



This order is made in respect of–

Amount outstanding (including any interest, fees, penalty payments, costs and charges):

Aggregate amount:

And you [the liable person] must surrender to the court any United Kingdom passport held.

Justice of the Peace

[or by order of the Court

Clerk of the Court].

*\*Note:* The period of disqualification may be reduced as provided by section 39E(1)(a) of the Act if part payment is made of the aggregate amount. The order will be revoked under section 39E(2) of the Act if full payment is made of the aggregate amount.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend child support regulations.

Regulation 2 inserts a new regulation 69A into the Child Support Maintenance (Calculation) Regulations 2012. The new regulation makes provision for specified assets to be calculated as having a weekly value which is taken into account in order to vary a maintenance calculation. The weekly value of the asset is treated as additional income of the non-resident parent. Virtual currencies which are capable of being traded for conventional currencies are assets for the purposes of the new regulation. Not all virtual currencies are capable of being traded in this way. Some are closed currencies which exist only within virtual communities, and have no link to real economies.

Regulation 3 makes amendments to the Child Support (Collection and Enforcement) Regulations 1992 and provides for the application of regular deduction orders and lump sum deduction orders to joint accounts. Such provision also extends the application of lump sum deduction orders to sole trader accounts and applies both orders to partnership accounts (where such a partnership is formed in England or Wales). In each of these cases, the person against whom one of these orders may be made will be an account-holder of the relevant account.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Child Support (Miscellaneous Amendments) Regulations 2018 No. 1279*

Regulation 4 makes amendments to the Child Support (Management of Payments and Arrears) Regulations 2009. It provides additional circumstances in which the Secretary of State may exercise the power to write off arrears in section 41E of the Child Support Act 1991.

Regulation 5 makes amendments to the Child Support (Collection and Enforcement) Regulations 1992. It makes provision in relation to disqualification for holding or obtaining a United Kingdom passport.

Regulation 6 makes amendments to the Child Support Fees Regulations 2014 (“the Fees Regulations”). It adds United Kingdom passport disqualification provisions to the exceptions listed in regulation 13(2) of the Fees Regulations which apply to the collection and enforcement of fees payable under the Fees Regulations.

An assessment of the impact of these Regulations on the costs of business and the voluntary sector is available from the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA, and is annexed to the Explanatory Memorandum to these Regulations which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk)