

**EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT MAINTENANCE CALCULATION REGULATIONS
2012**

**THE CHILD SUPPORT MAINTENANCE (CHANGES TO THE BASIC RATE
CALCULATION AND MINIMUM AMOUNT OF LIABILITY)
REGULATIONS 2012**

2012 No.

1 This explanatory memorandum has been prepared by the Child Maintenance and Enforcement Commission on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2 Purpose of the Instrument

These instruments are made under powers contained in the Child Support Act 1991 as amended by the Child Maintenance and Other Payments Act 2008 Act. They set out how maintenance will be calculated under the new scheme of child maintenance. They will apply to applications for child maintenance made under the new scheme after the amendments made by the 2008 Act come into force for a particular case.

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

A further set of regulations, the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendments) Regulations 2012 (“the Consequential Regulations”), make amendments which are consequential on the Child Support Maintenance Calculation Regulations 2012 (“the Calculation Regulations”). The Consequential Regulations attract the negative procedure and are therefore subject to the 21-day rule. The Consequential Regulations will not be made before the Calculation Regulations, to avoid references to Regulations which do not yet exist, but this will unfortunately cause a breach of the 21-day rule. In paragraph 3.7 of its Twenty-second Report of Session 2010-12, the Joint Committee recommended that in such situations “the expected text [of the instrument attracting the negative procedure] [should be] made available for information along with the draft affirmative instrument to mitigate the effect of that breach”. Accordingly, a near-final draft of the expected text of the Consequential Regulations is annexed to this memorandum, for information purposes.

4 Legislative Context

4.1 A statutory child maintenance scheme has been in operation within Great Britain since 1993 and was established through the Child Support Act 1991.

A second statutory scheme was introduced for all applications received after March 2003 and currently operates alongside the 1991 scheme. Statutory schemes also operate within Northern Ireland which mirror those operating within Great Britain.

- 4.2 The Child Support Act 1991 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 their children pay as a contribution to the upkeep of those children.
- 4.3 Following Sir David Henshaw's report to the Secretary of State for Work and Pensions; *Recovering child support: routes to responsibility (Cm 6894)*: <http://www.dwp.gov.uk/docs/henshaw-complete22-7.pdf>, in July 2006 and the Government's response – *A fresh start: child support redesign (Cm 6895)*: <http://www.dwp.gov.uk/policy/child-maintenance/sir-david-henshaws-report/governments-response/> the Government brought forward the Child Maintenance and Other Payments Act 2008 which provided the overarching legislation for a simplified and improved system of child support.

5 Territorial Extent and Application

These instruments apply to England, Wales and Scotland. Provision will be made in regulations for reciprocal arrangements with Northern Ireland Ministers, before the new scheme commences.

6 European Convention on Human Rights

Maria Miller MP, the Minister for Disabled People, has made the following statement regarding human rights:

In my view the provisions of the Child Support Maintenance Calculation Regulations 2012 and of the Child Support Maintenance (Changes to the Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012 are compatible with the Convention rights.

7 Policy Background

- ***What is being done and why?***
- 7.1 Child maintenance legislation is based on the general principle that all parents take financial responsibility for all of their children. The main objective of child maintenance legislation is to maximise the number of effective maintenance arrangements for children who live apart from one or both of their parents. This is supported by two further objectives:
 1. To encourage parents to make and keep effective voluntary maintenance arrangements, to be known as family-based arrangements.
 2. To support parents in making applications for statutory child maintenance.

- 7.2 The 2003 scheme of child support was introduced to provide a radically simpler system than the highly complex system of calculation in the 1993 scheme.
- 7.3 Once the 2003 scheme had been in operation for some time it became evident that although there had been improvements from the 1993 scheme, the gathering of income information to calculate child maintenance was cumbersome and time consuming and did not allow for a quick and effective method of getting money to the children who need it.
- 7.4 These instruments (together with the 2008 Act) make changes in order to simplify the statutory child support scheme, improve service to customers, reduce costs to the taxpayer and increase the flow of child maintenance payments to children.
- 7.4.1 The majority of maintenance calculations in the new scheme will be based on gross weekly income obtained from income information provided by HMRC. Using income information provided by HMRC via an automated system request will avoid many of the delays experienced currently as a result of relying on non-resident parents to provide net income information. Under the new scheme, taxable income of non-resident parents who are; auxiliary coastguards, part-time fire-fighters, part-time lifeboat crew members, reserve or territorial force members and local authority councillors will no longer be disregarded, as is currently the case. The definition of current income for self-employed people will be from taxable profits from trade over an accounting period, usually running for one year. Tax Credits awarded to a non-resident parent's second household will no longer be considered income for the purposes of calculating child maintenance as is currently the case.
- 7.4.2 A non-resident parent's gross weekly income will be reviewed on an annual basis using income figures supplied by HMRC. This means calculations will be more cost-effective with fewer manual in-year changes being required.
- 7.4.3 In order for either parent to request a change to the maintenance calculation, it is provided that the change must result in a 25 per cent increase or decrease in gross income in order to reduce the disruption to maintenance liabilities that can currently arise, where frequent and small changes of income have to be considered. Most incomes do not change greatly from year to year and it is envisaged that apart from major changes, such as the addition of another child or the loss of a job, the maintenance liability will remain largely stable throughout the year which offers greater certainty to parents in what they should expect to pay or receive.
- 7.4.4 Child maintenance legislation allows for additional financial factors to be taken into account which are not captured in the maintenance calculation; this is known as a variation to the maintenance calculation. The new statutory scheme will bring about changes to the types of variation that parents with care can claim. The intention is that grounds available to parents with care will focus on capturing a non-resident parent's actual unearned income, such as income from savings, property and or investments rather than establishing a

notional income, which is the current method of calculating unearned income. Parents with care will no longer be required to provide evidence to support a variation, as they must do currently, as in most cases information will be available from HMRC.

- 7.4.5 Where parents have no agreement in place regarding shared care of their children or there is no identifiable pattern of shared care, the Commission can assume an amount of such care equivalent to one night a week. Any assumption of shared care will continue until the parents reach an agreement or an order is made by the court as a result of family proceedings. This will remove a difficult area of decision making which often resulted in cases remaining indefinitely paused while awaiting evidence from either party.
- 7.4.6 In equal shared care cases, a non-resident parent will be treated as such, if, and only if they provide day to day care to a lesser extent than the parent with care. Where the parent with care is receiving child benefit in respect of a qualifying child they are assumed to be the main carer of the child in the absence of evidence to the contrary.
- 7.4.7 To encourage parents to make their own maintenance arrangements children supported outside of the statutory scheme, through a family-based arrangement, court order or under child maintenance schemes abroad, will be acknowledged in the same way as qualifying children within the maintenance calculation. Non-resident parents will be required to provide evidence of a formal or informal agreement.
- 7.4.8 Effective dates, which are the dates on which a liability or a change to the child maintenance liability takes effect, will be aligned with the date of the change or the date the change was reported. This will make the scheme simpler to administer and easier for customers to understand how a maintenance liability is calculated than is currently the case.
- 7.4.9 Allowances for children in the current household of a non-resident parent have been reduced from present levels to produce a more equal treatment of children in first and second families.
- 7.4.10 The flat rate of child maintenance payable by a non-resident parent whose gross weekly income is more than £5 per week and less than £100 per week or who is in receipt of certain prescribed benefits, will remain at £5 per week until such time as the new scheme is opened to all applicants.
- 7.4.11A default maintenance decision is imposed on a non-resident parent when there is insufficient information regarding their circumstances to make a full calculation. The current weekly amounts were set in 2000 and have not increased since. The new default maintenance rate will be £39 for one child, £51 for two children and £64 for three or more children. Default rates will be reviewed periodically. The increase in the default rate will further increase the amount of money flowing to children.

7.4.12 The Child Support Maintenance (Changes to the Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012 make changes to the way in which the basic rate of child maintenance is calculated, where a non-resident parent has relevant other children (children other than the children who are the subject of the maintenance calculation). By reducing the percentage by which a non-resident parent's gross income is reduced to take account of relevant other children, the Regulations ensure that income is shared in a fairer way between the children who are the subject of the calculation and the relevant other children. The Regulations also make a technical change to ensure that the flat rate of maintenance will be £5 when the amendments in the 2008 Act are first commenced. The Department intends to increase the flat rate to £10 once the 2008 amendments have been commenced for all cases.

7.5 Commencement date: The Child Support Maintenance Calculation Regulations 2012 and The Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012 will come into force when the amendments made by the 2008 Act are commenced for a particular case and it is intended to commence the amendments for all cases by mid 2013.

- **Consolidation**

7.6 The law relating to child support is available on the internet site and is generally updated twice-yearly. This can be accessed via the link below:
<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-child-support/>

8 Consultation Outcome

8.1 A three month consultation on the draft regulations ran from 1 December 2011 to 23 February 2012. A total of 36 responses were received from representatives of bodies and organisations with an interest in child maintenance, for example, Families Need Fathers and Gingerbread.

8.2 The consultation was based upon ten specific questions; respondents were generally supportive of the draft regulations.

8.3 Some stakeholders expressed concerns on the period within which non-resident parents must advise of upward changes in their income. The views raised were considered and as a consequence the regulations have been amended to increase the period from seven days to fourteen days.

8.4 Concerns were raised about the removal of the Assets and Lifestyle Inconsistent with Declared Income grounds from the Variations scheme. The Government maintain the proposal to remove these grounds on the basis that they are difficult to administer, are complex for caseworkers and clients to understand and that actual income information obtained from HMRC will be more meaningful to parents.

- 8.5 A full analysis of consultation responses is available on the Department's website at: <http://www.childmaintenance.org>

9 Guidance

The Commission will ensure that clients, employers and stakeholders are kept informed of the changes. Staff will be trained in the new policies, relevant client notifications and leaflets will be prepared and web-based guidance will be available to support caseworkers.

10 Impact

- 10.1 The Child Support Maintenance (Changes to the Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012 have no impact on business or civil society organisations, and only a negligible impact on the public sector.
- 10.2 The Child Support Maintenance Calculation Regulations 2012 will have an indirect impact on business by changing the level of interaction employers will have with the Commission at client new application, and deduction from earnings order (DEO), set up stages. The beneficial impact of the related proposed Child Support Collection and Enforcement (Amendment) Regulations, more than offset any costs to business; a net reduction in burden.
- 10.3 The Child Support Maintenance Calculation Regulations 2012 impact on the Ministry of Justice due to an increase in the number of appeals and on HMRC due to the introduction of annual reviews. The Commission will meet any rise in costs should this occur.
- 10.4 A full impact assessment is attached to this memorandum and will be published alongside it on: www.legislation.gov.uk.

11 Regulating Small Business

The legislation does not apply to small businesses. However, the Child Support Maintenance Calculation Regulations 2012 will have an indirect impact on small business as for all businesses (as above).

12 Monitoring & Review

The Commission will closely monitor the operation of these regulations following implementation. The new calculation regulations are part of a wider group of policy changes affecting child maintenance. There will be a benefits realisation evaluation for the entire change programme which will include checking that the activities in the new scheme are delivering the intended outcomes. In particular, the success of the new scheme in achieving intended improvements in service to clients and efficiencies for the public sector and employers will be monitored and evaluated. The evaluation process will include monitoring the time taken to process and maintain cases using

management information as well as assessing client satisfaction through surveys. The first comprehensive evaluation will be published 30 months after the introduction of charging for the use of the new scheme.

13 Contact

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STATUTORY INSTRUMENTS

2012 No.

FAMILY LAW

CHILD SUPPORT

The Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations 2012

Made - - - - *******

Laid before Parliament *******

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 14(1), 29(3) and (3A), 32C(2)(d), 51(1) and (2), 52(4), 54 and 55(1) of the Child Support Act 1991(1) and sections 55(4) and 57(2) of the Child Maintenance and Other Payments Act 2008(2).

PART 1

General

Citation, commencement and interpretation

1.—a) These Regulations may be cited as the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations 2012.

(1) Regulations 2 and 3 come into force on the day on which section 42 of the 2008 Act (meaning of “child”) comes into force.

(2) Regulations 4 to 11 come into force in relation to a particular case on the day on which paragraph 2 of Schedule 4 to the 2008 Act (calculation by reference to gross weekly income) comes into force in relation to that type of case.

(3) Regulations 4(3) to (6) and 11 come into force in relation to an arrears-only case, not being a case in paragraph (3), on the day on which notification is given to the non-resident parent.

(1) 1991 c.48. Section 29(3) was substituted, and section 29(3A) was inserted, by the Welfare Reform Act 2009 (c.24). Section 32C was inserted by section 22 of the Child Maintenance and Other Payments Act 2008 (c. 6) (“the 2008 Act”). Section 54 is cited because of the meaning given to the word “prescribed”. Section 55 was substituted by section 42 of the 2008 Act.

(2) 2008 c. 6.

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(4) In this regulation—

“the 1991 Act” means the Child Support Act 1991;

“the 2008 Act” means the Child Maintenance and Other Payments Act 2008;

“arrears of child support maintenance” means—

- (a) any payment of child support maintenance which has become due in relation to a maintenance assessment or a maintenance calculation made under 2003 scheme rules and not paid; and
- (b) the Secretary of State is arranging for the collection of that maintenance under section 29 of the 1991 Act;

“arrears-only case” means a case in which—

- (a) there are arrears of child support maintenance; and
- (b) there is—
 - (i) no maintenance assessment or maintenance calculation made under 2003 scheme rules still in force; and
 - (ii) no application for a maintenance assessment or a maintenance calculation falling to be made under 2003 scheme rules still to be determined; and

“notification” means notice given by the Secretary of State to the non-resident parent informing the non-resident parent that the provisions of the Child Support (Collection and Enforcement) Regulations 1992(3) as amended by regulation 4(3) to (6) of these Regulations apply in their case.

(5) For the purposes of this regulation—

- (a) a maintenance calculation is made (or will fall to be made) under 2003 scheme rules if the amount of the periodical payments required to be paid in accordance with it is (or will be) determined otherwise than in accordance with Part 1 of Schedule 1 to the 1991 Act as amended by paragraph 2 of Schedule 4 to the 2008 Act; and
- (b) any reference to a non-resident parent includes reference to an absent parent.

(6) Any notification given by the Secretary of State under paragraph (4) must be sent by post to the non-resident parent’s last known or notified address and will be treated as having been given on the second day following the day on which it is posted.

PART 2

Meaning of “Child”

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations 1992

2.—(1) Schedule 1 (meaning of “child” for the purposes of the Act) to the Child Support (Maintenance Assessment Procedure) Regulations 1992(4) is amended as follows.

(2) For paragraph 1, substitute—

“1.—(1) A person satisfies such conditions as may be prescribed for the purposes of section 55(1)(b)(5) of the Act if that person satisfies any of the conditions in sub-paragraphs (2) and (3).

(2) The person is receiving full-time education (which is not advanced education)—

- (a) by attendance at a recognised educational establishment; or
- (b) elsewhere, if the education is recognised by the Secretary of State.

(3) The person is a person in respect of whom child benefit is payable.”

(3) S.I. 1992/1989.

(4) S.I. 1992/1813.

(5) Section 55 was substituted by section 42 of the 2008 Act.

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- (3) Omit paragraph 1A.
- (4) In paragraph 2—
 - (a) for “section 55 of the Act” substitute “this Schedule”; and
 - (b) in sub-paragraph (a), after “education” insert “, a higher national certificate”.
- (5) In paragraph 3, for “section 55 of the Act” substitute “this Schedule”.
- (6) In paragraph 4, for “section 55(1)(b) of the Act” substitute “paragraph 1A”.
- (7) For paragraph 6, substitute—

“6. In this Schedule “recognised educational establishment” means an establishment recognised by the Secretary of State for the purposes of this Schedule as being, or as comparable to, a university, college or school.”.

- (8) After paragraph 6 insert—

“Education otherwise than at a recognised educational establishment

7. For the purposes of paragraph 1A(b), the Secretary of State may recognise education provided for a person otherwise than at a recognised educational establishment only if satisfied that education was being so provided for that person immediately before that person attained the age of 16.”.

Amendment of the Child Support (Maintenance Calculation Procedure) Regulations 2000

3.—(1) Schedule 1 (meaning of “child” for the purposes of the Act) to the Child Support (Maintenance Calculation Procedure) Regulations 2000⁽⁶⁾ is amended as follows.

- (2) For paragraphs 1 and 1A, substitute—

“1.—(1) A person satisfies such conditions as may be prescribed for the purposes of section 55(1)(b)⁽⁷⁾ of the Act if that person satisfies any of the conditions in sub-paragraphs (2) and (3).

(2) The person is receiving full-time education (which is not advanced education)—

- (a) by attendance at a recognised educational establishment; or
- (b) elsewhere, if the education is recognised by the Secretary of State.

(3) The person is a person in respect of whom child benefit is payable.”.

- (3) Omit paragraph 1A.
- (4) In paragraph 2—
 - (a) for “section 55 of the Act” substitute “this Schedule”; and
 - (b) in sub-paragraph (a), after “education” insert “, a higher national certificate”.
- (5) In paragraph 3, for “section 55 of the Act” substitute “this Schedule”.
- (6) In paragraph 4, for “section 55(1)(b) of the Act” substitute “paragraph 1A”.
- (7) For paragraph 6, substitute—

“6. In this Schedule “recognised educational establishment” means an establishment recognised by the Secretary of State for the purposes of this Schedule as being, or as comparable to, a university, college or school.”.

- (8) After paragraph 6 insert—

⁽⁶⁾ S.I. 2001/157.

⁽⁷⁾ Section 55 was substituted by section 42 of the 2008 Act.

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“Education otherwise than at a recognised educational establishment

7. For the purposes of paragraph 1A(b), the Secretary of State may recognise education provided for a person otherwise than at a recognised educational establishment only if satisfied that education was being so provided for that person immediately before that person attained the age of 16.”.

PART 3

New Calculation Rules – Consequential and Miscellaneous Amendments

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

4.—(1) The Child Support (Collection and Enforcement) Regulations 1992⁽⁸⁾ are amended as follows.

(2) For regulation 4 (intervals of payment) and its heading, substitute—

“Payments to be scheduled over reference period

4.—(1) The Secretary of State may, for the purposes of determining the frequency and amount of the payments of child support maintenance required to be made by a liable person—

- (a) determine the total amount payable for the reference period on the assumption that the weekly rate of child support maintenance will not change over that period; and
- (b) require that amount to be paid by equal instalments over that period at intervals determined by the Secretary of State.

(2) The reference period in relation to the maintenance calculation is, subject to paragraph (3), the period of 52 weeks mentioned in section 29(3A) of the Act beginning with—

- (a) the initial effective date (where it is the first such period in relation to the maintenance calculation); or
- (b) the review date.

(3) In this regulation “initial effective date” and “review date” have the meanings given by regulations 12 and 19 of the Child Support Maintenance Calculation Regulations 2012⁽⁹⁾ respectively.”.

(3) In regulation 8(1) (interpretation of Part 3), in the definition of “normal deduction rate” for “week, month or other period” substitute “month and the equivalent of that sum for a 1, 2 and 4 week period”.

(4) For regulation 10 (normal deduction rate), substitute—

“10.—(1) The period by reference to which the normal deduction rate is set must be the period by reference to which the liable person is normally paid where that period is a 1, 2 or 4 weekly or monthly period.

(2) The employer must select the normal deduction rate which applies depending on the period by reference to which the liable person’s earnings are normally paid.

(3) Where the liable person is paid by reference to a period other than at a 1, 2 or 4 weekly or monthly period, the Secretary of State must discharge the deduction from earnings order in accordance with regulation 20.”.

(5) For regulation 11 (protected earnings proportion and protected earnings rate) and its heading, substitute—

⁽⁸⁾ S.I.1992/1989; relevant amending instruments are S.I. 1995/1045 and 2001/162.

⁽⁹⁾ S.I. 2012/[].

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“Protected earnings proportion

11.—(1) The period by reference to which the protected earnings proportion is set must be the same as the period by reference to which the normal deduction rate is set in accordance with regulation 10(1).

(2) The protected earnings proportion in respect of any period shall be 60% of the liable person’s net earnings in respect of that period as calculated at the pay-day of the liable person by the employer.”.

(6) In regulation 20(**10**) (discharge of deduction from earnings orders)—

(a) omit “or” at the end of paragraph (1)(e);

(b) at the end of paragraph (1)(f) insert—

“; or

(g) the circumstances in regulation 10(3) apply.”.

(7) In regulation 25C(1)(a)(**11**) (maximum deduction rate for regular deduction order) for “net” substitute “gross”.

Amendment of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992

5.—(1) The Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992(**12**) are amended as follows.

(2) In regulation 1(2) (interpretation) omit the definitions of “Maintenance Calculation Procedure Regulations” and “Maintenance Calculations and Special Cases Regulations”.

(3) In regulation 5(3)(c) (notifications by the Secretary of State) for “regulation 8 of the Maintenance Calculations and Special Cases Regulations” substitute “regulation 50 of the Child Support Maintenance Calculation Regulations 2012(**13**)”.

(4) In regulation 8A(d)(**14**) (maintenance calculations and maintenance orders – payments) omit the words from “in accordance with” to the end of that paragraph.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

6.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(**15**) are amended as follows.

(2) In regulation 1(3) (interpretation), omit the definitions of “the Arrears, Interest and Adjustment of Maintenance Assessments Regulations”, “the Maintenance Calculation Procedure Regulations”, “the Maintenance Calculations and Special Cases Regulations”, “relevant other child”, “relevant person” and “Variations Regulations”.

(3) Omit regulations 3A, 5A, 6A, 6B, 7B, 7C, 15A, 15B, 15C, 23 and 24.

(4) In regulation 4 (late application for a revision)—

(a) in paragraph (1), omit “or 3A(1)(a)”;

(b) in paragraph (2), omit “the relevant person”;

(c) in sub-paragraph (c) of paragraph (4), omit “or 3A”; and

(d) in paragraph (5), omit “and regulations 3A(1)(a)”.

(10) Regulation 20(1) was substituted by S.I. 1995/1045 and amended by S.I. 2001/162.

(11) Regulation 25C was inserted by S.I. 2009/1815.

(12) S.I. 1992/2645; relevant amending instruments are S.I. 2001/161 and 2005/785.

(13) S.I. 2012/[].

(14) Regulation 8A was inserted by S.I. 2005/785.

(15) S.I. 1999/991; relevant amending instruments are S.I. 1999/2570, 2000/3185, 2001/158, 2008/2683, 2009/396 and 2011/1464.

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- (5) In the heading to regulation 30 (appeal against a decision which has been replaced or revised) omit “replaced or”.
- (6) In regulation 30 (appeal against a decision which has been revised)—
- (a) for paragraph (1) substitute—

“(1) An appeal against a decision of the Secretary of State or the Board or an officer of the Board shall not lapse where—

 - (a) the decision is revised under section 9 before the appeal is determined; and
 - (b) the decision as revised is not more advantageous to the appellant than the decision before it was revised.”;
 - (b) for paragraph (3) substitute—

“(3) Where a decision as revised under section 9 is not more advantageous to the appellant than the decision before it was revised, the appeal shall be treated as though it had been brought against the decision as revised.”; and
 - (c) in paragraphs (4) and (5), omit “replaced or”;
- (7) In regulation 33 (notice of appeal), omit paragraph (2)(d).
- (8) Omit Schedule 3D (effective dates for supersession of child support decisions).

Amendment of the Child Support (Voluntary Payments) Regulations 2000

- 7.**—(1) The Child Support (Voluntary Payments) Regulations 2000(**16**) are amended as follows.
- (2) In regulation 1(2) (interpretation)—
- (a) omit the definition of “the Maintenance Calculations and Special Cases Regulations”;
 - (b) in the definition of “the qualifying child’s home” omit the words from “and “home”” to the end; and
 - (c) in the definition of “relevant person”, in paragraph (c), for the words from “regulation 8” to the end substitute “regulation 50 of the Child Support Maintenance Calculation Regulations 2012(**17**)”; and
- (3) In regulation 2(1)(c) (voluntary payment) omit the words from “and for this purpose” to “2000”.

Amendment of the Child Support Information Regulations 2008

- 8.**—(1) The Child Support Information Regulations 2008(**18**) are amended as follows.
- (2) In regulation 2 (interpretation) —
- (a) in paragraph (1), for the definition of “Maintenance Calculation Procedure Regulations” substitute—

““the Maintenance Calculation Regulations” means the Child Support Maintenance Calculation Regulations 2012(**19**)”; and
 - (b) omit paragraphs (2) and (3).
- (3) In regulation 7 (duty of persons from whom information requested) omit paragraph (3).
- (4) After regulation 9 (duty to notify change of address) insert—

(16) S.I.2000/3177.

(17) S.I. 2012/[].

(18) S.I.2008/2551.

(19) 2012/[].

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“Duty to notify increase in current income

9A.—(1) In a case falling within paragraph (2), the Secretary of State may notify the non-resident parent that that parent is required to notify the Secretary of State of any relevant change of circumstances in relation to that income.

(2) A case falls within this paragraph if, in relation to a maintenance calculation in force, gross weekly income is determined by reference to the non-resident parent’s current income as an employee or officeholder (in accordance with regulation 38 of the Maintenance Calculation Regulations).

(3) A notification by the Secretary of State under paragraph (1) must be in writing.

(4) Where a relevant change of circumstances occurs after the non-resident parent has been notified of a requirement under paragraph (1) the non-resident parent must notify the Secretary of State of that change—

- (a) within fourteen days beginning with the day on which the change occurs; or
- (b) within such other period as the Secretary of State has specified in its notification.

(5) In a case falling within paragraph (2) but to which paragraph 5(b) of Schedule 1 to the 1991 Act (maintenance calculations – nil rate) does not apply, a relevant change of circumstances occurs where—

- (a) the non-resident parent—
 - (i) commences a new employment or office; or
 - (ii) in relation to an existing employment or office, commences a new rate of remuneration or a new working pattern,
and could reasonably be expected to know that would result in an increased liability under the maintenance calculation in force if reported to the Secretary of State; or
- (b) the non-resident parent receives from their employment or office the following number of consecutive payments, each of which (if it were taken as a weekly average) exceeds the gross weekly income taken into account in the maintenance calculation in force by 25% or more—
 - (i) five payments, in the case of a non-resident parent paid weekly;
 - (ii) three payments, in the case of a non-resident parent paid fortnightly;
 - (iii) two payments, in the case of a non-resident parent paid four weekly or monthly.

(6) The payments referred to in paragraph (5)(b) are the gross remuneration from the employment or office in question less any pension contributions deducted under net pay arrangements.

(7) In paragraph (6)—

“net pay arrangements” means arrangements for relief in respect of pension contributions under section 193 of the Finance Act 2004(20).

(8) In a case falling within paragraph (2) to which paragraph 5(b) of Schedule 1 to the 1991 Act applies immediately before the relevant change in circumstances, a relevant change of circumstances occurs where the non-resident parent’s income increases to a gross weekly income of £5 or more.

(9) For the purposes of paragraph (8)—

- (a) gross weekly income is to be calculated in accordance with regulation 45(2) of the Maintenance Calculation Regulations;

(20) 2004 c. 12.

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- (b) the non-resident parent must notify the Secretary of State within fourteen days beginning with the day on which the parent's income increases to a gross weekly income of £5 or more.”;
- (5) In regulation 13 (disclosure of information to other persons)—
 - (a) in paragraph (1)(d), for “regulation 23” to “Procedure Regulations” substitute “regulation 25 of the Maintenance Calculation Regulations (notification of a maintenance calculation)”;
 - (b) in paragraph (2)(c) for “regulation 34” to “Regulations 1999” substitute “paragraph 4 of the Schedule to the Maintenance Calculation Regulations”.

Amendment of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008

9.—(1) Schedule 1 to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008(**21**) is amended as follows.

- (2) In the second column of the first entry (cases other than those listed below)—
 - (a) for paragraph (c)(i), substitute—
 - “(i) regulation 14 of the Child Support Maintenance Calculation Regulations 2012(**22**)”; and
 - (b) in paragraph (c)(ii) omit “or 3A(1)”.

Revocations

- 10.** The following Regulations are revoked—
- (a) the Child Support (Maintenance Assessment Procedure) Regulations 1992(**23**);
 - (b) the Child Support (Maintenance Assessments and Special Cases) Regulations 1992(**24**);
 - (c) the Child Support (Maintenance Assessments and Special Cases) Amendment Regulations 1993(**25**);
 - (d) the Child Support Departure Direction and Consequential Amendments Regulations 1996(**26**);
 - (e) the Child Support (Maintenance Calculations and Special Cases) Regulations 2000(**27**);
 - (f) the Child Support (Variations) Regulations 2000(**28**); and
 - (g) the Child Support (Maintenance Calculation Procedure) Regulations 2000(**29**).

PART 4

Savings and Transitional Provision

Savings and transitional provision

11.—(1) Where, in any case, a deduction from earnings order was made before the date on which regulation 4(3) to (6) comes into force in relation to that case, this regulation shall apply in respect of that order.

(21) S.I.2008/2685 (L.13); relevant amending instrument is S.I. 2010/2653.

(22) S.I. 2012/ [].

(23) S.I. 1992/1813.

(24) S.I. 1992/1815.

(25) S.I. 1993/925.

(26) S.I. 1996/2907.

(27) S.I. 2001/155.

(28) S.I. 2001/156.

(29) S.I. 2001/157.

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(2) In this Regulation, “the Regulations” means the Child Support (Collection and Enforcement) Regulations 1992(30).

(3) Where the deduction from earnings order still has effect immediately before regulation 4(3) to (6) comes into force in relation to that case—

- (a) the order continues to take effect for the purposes of any deductions which are required to be made under the order until it is discharged or lapses;
- (b) the Regulations, as they were in force before the amendments made by regulation 4(3) to (6) came into force, continue to apply in relation to the order until it is discharged or lapses; and
- (c) the order is to be treated as discharged, if it has not otherwise lapsed or been discharged, on the date that the first deduction from earnings order made under the Regulations as amended by regulation 4(3) to (6) takes effect.

(4) This paragraph applies where, immediately before the coming into force of regulation 4(3) to (6)—

- (d) any appeal under regulation 22 of the Regulations was made but not decided; or
- (e) any time limit for making an appeal had not expired.

(5) Where paragraph (4) applies, the Regulations, as they were in force immediately before the amendments made by regulation 4(3) to (6) came into force, continue to apply for the purposes of any appeal outstanding before the time limit expires.

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

Date

Name
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain provisions consequential on, or connected with:

- the bringing into force of the changes to the meaning of “child” for the purposes of the Child Support Act 1991 provided for in section 42 of the Child Maintenance and Other Payments Act 2008 (the 2008 Act”); and
- the changes to the rules for the calculation of child support maintenance provided for in Schedule 4 to the 2008 Act and the Child Support Maintenance Calculation Regulations 2012.

Part 2 of the Regulations, dealing with the meaning of “child”, comes into force on the day on which section 42 of the 2008 Act comes into force. Part 3 of the Regulations comes into force in relation to a particular case on the day on which paragraph 2 of Schedule 4 to the Child Maintenance and Other Payments Act 2008 (c.6) (calculation by reference to gross weekly income) comes into force in relation to that type of case. In relation to an arrears-only case, regulation 4(3) to (6) comes into force on the day on which notification that these Regulations apply is given to the non-resident parent. Regulation 1(5) defines an “arrears-only case”.

(30) S.I. 1992/1989.

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Regulation 2 amends the Child Support (Maintenance Assessment Procedure) Regulations 1992 (S.I. 1992/1813) so as to prescribe conditions for the purposes of section 55(1)(b) of the 1991 Act (meaning of “child”). Regulation 3 does the same in relation to the Child Support (Maintenance Calculation Procedure) Regulations 2000 (S.I. 2000/157).

Regulation 4 amends the Child Support (Collection and Enforcement) Regulations 1992 (S.I. 1992/1989) (“the Collection and Enforcement Regulations”). Paragraph (2) substitutes a provision allowing payments of child support maintenance to be scheduled as equal instalments payable over an annual period.

Regulation 4(3) amends regulation 8 of the Collection and Enforcement Regulations changing the definition of “normal deduction rate”. This definition provides for the normal deduction rate to set out the amount to be deducted per month and the amount for a 1, 2 and 4 week equivalent of that amount.

Regulation 4(4) substitutes regulation 10 of the Collection and Enforcement Regulations to provide that the normal deduction rate is set by reference to the period by reference to which the liable person is paid where that payment period is monthly or 1, 2 or 4 weekly. It provides that the employer must select the normal deduction rate which applies depending on the period by reference to which the liable person is paid. Where the liable person is not paid by reference to a monthly, 1, 2 or 4 weekly period the deduction from earnings order must be discharged in accordance with regulation 20. Regulation 4(6) amends regulation 20 to allow for deduction from earnings orders to be discharged in these circumstances.

Regulation 4(5) substitutes regulation 11 of the Collection and Enforcement Regulations to provide that the protected earnings proportion must be 60% of net earnings at the liable person’s pay day for each deduction made under the order.

Regulation 4(7) makes an amendment to the maximum deduction rate for a regular deduction order.

Regulation 6 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I.1999/991) by removing provisions relating to child support maintenance.

Regulation 8 inserts new provision in the Child Support Information Regulations 2008 (S.I. 2008/2551) allowing the Secretary of State to require a non-resident parent whose income has been calculated by reference to current employment as an employee or officeholder, or to whom the nil rate applies, to report an increase in that income. Failure to comply with new provisions will be an offence under section 14A of the Child Support Act 1991. It also makes consequential amendments.

Regulations 5, 7 and 9 make consequential amendments to, respectively, the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992 (S.I. 1992/2645), Child Support (Voluntary Payments) Regulations 2000 (S.I. 2000/3177) and the procedure rules for the First-Tier Tribunal (Social Entitlement Chamber) (S.I. 2008/2685).

Regulation 10 revokes a number of sets of regulations which are replaced by the Child Support Maintenance Calculation Regulations 2012.

Regulation 11 makes savings and transitional provision. Where a deduction from earnings order made under the Collection and Enforcement Regulations, prior to the amendments in regulation 4(3) to (6) coming into force, has effect immediately before those provisions come into force in the case, the existing deduction from earnings order will continue to take effect until it lapses or is discharged. The existing order will be discharged, if it is still in effect, on the date on which the first order made under the Collection and Enforcement Regulations as amended by regulation 4(3) to (6) takes effect. Also, the Collection and Enforcement Regulations as in force prior to the amendments made by regulation 4(3) to (6) will continue to apply for the purpose of any appeal against an order made under those Regulations.

These Regulations reduce costs on the private sector and civil society organisations. An assessment of the impact has been made; a copy of the impact assessment is available in the

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libraries of both Houses of Parliament, and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies of the impact assessment may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

A full impact assessment of the effect that the Child Support Maintenance Calculation Regulations 2012 will have on the costs of business and the voluntary sector is also from the same address and is annexed to the Explanatory Memorandum to the those Regulations which is available alongside the instrument on www.legislation.gov.uk.