

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT FEES REGULATIONS 2014
2014 No. XXX

1. This explanatory memorandum has been prepared by the Department for Work and Pensions (the “Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

This instrument enables the Secretary of State for Work and Pensions to charge application, collection and enforcement fees in relation to the statutory child maintenance scheme introduced in 2012. It sets out the levels of those fees, who is liable to pay those fees, when those fees are payable and how collection and enforcement fees may be recovered. This instrument also makes provision for the waiver of an enforcement fee in certain circumstances and for the waiver of an application fee for victims of domestic violence or abuse and persons under 19.

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

None.

4. Legislative Context

- 4.1. Sir David Henshaw’s 2006 independent report on the future of the child maintenance system, *‘Recovering child support: routes to responsibility’* ([Cm6894](#)), and the Government’s response, *‘A fresh start: child support redesign’* ([Cm6895](#)), led to the Child Support Maintenance and Other Payments Act 2008 (the “2008 Act”), which provides the primary legislation for a more efficient and simplified system of statutory child support with an emphasis on parental collaboration wherever possible.
- 4.2. Section 6 of the 2008 Act provides regulation making powers to enable the Secretary of State to charge fees in relation to child support maintenance. This includes powers to stipulate when a fee may be charged, the level of fee to be charged and the circumstances in which a fee may be waived.
- 4.3. Section 6 of the 2008 Act was subsequently amended by sections 140 and 141 of the Welfare Reform Act 2012 (the “2012 Act”). The amendments made by section 140 clarify that the Secretary of State has the power to make provision for waiver and apportionment of fees and the matters to be taken into account in determining the waiver or apportionment of fees. The amendments made by section 141 require the Secretary of State to review the effect of the regulations about the charging of fees 30 months after the regulations come into force and set out what action must be taken by the Secretary of State following that review. Section 139 of the 2012 Act amended section 43 of the Child Support Act 1991 to give the Secretary of State regulation making powers to include the recovery of fees payable under Section 6 of the 2008 Act when making deductions of child maintenance from benefits.
- 4.4. These regulations are being made to enable the Secretary of State to charge collection, enforcement and application fees in relation to the 2012 scheme of child support maintenance. This will be the first use of the powers under section 6 of the 2008 Act. These regulations also make some consequential amendments to existing regulations to

enable the recovery of fees where provisions already exist to make deductions from specified benefits in relation to child support maintenance.

5. Territorial Extent and Application

This instrument applies to England, Scotland and Wales. Similar provision will be made in reciprocal arrangements with Northern Ireland prior to the commencement of this statutory instrument although Northern Ireland's arrangements will vary from those in Great Britain in so far as the Northern Ireland Executive has decided that there will be no application fee for Northern Ireland residents.

6. European Convention on Human Rights

Steve Webb MP, the Minister of State for Pensions, has made the following statement regarding Human Rights:

In my view the provisions of the Child Support Fees Regulations 2014 are compatible with the Convention rights.

7. Policy Background

- 7.1. The power to enable the Secretary of State to charge fees in relation to child support maintenance forms a small but important part of the Child Maintenance and Other Payments Act 2008. The 2008 Act was brought forward in order to implement a programme of child maintenance reform stemming from the 2006 Henshaw report that will replace the 2003 and 1993 systems with a more efficient service that is focused on supporting collaborative child maintenance arrangements and minimising conflict between separated parents.
- 7.2. Fees are being introduced for some services in the 2012 statutory child maintenance scheme. This is to encourage collaboration on the part of parents to reach their own family-based arrangement (instead of using the statutory scheme) or to pay each other direct within the statutory scheme if they cannot reach their own family-based arrangement. This is because the Government believes that such collaboration between parents is in the best interests of children.
- 7.3. The introduction of fees is politically significant. Child maintenance elements of the Welfare Reform Act 2012 had a difficult passage through the Upper House and charging persons with care, often single mothers of limited means, remains a controversial issue for stakeholder groups, service users and the wider public.
- 7.4. In January 2011 the Government published the Green Paper '*Strengthening families, promoting parental responsibility: the future of child maintenance*' ([Cm7990](#)) setting out its proposals for how the fee making primary powers in Section 6 of the 2008 Act would be used.
- 7.5. The Green Paper proposed: a flat rate application fee of £100 for applicants to the statutory scheme; collection fees based on a percentage of the amount of child maintenance that the non-resident parent is liable to pay and, for a person with care, a percentage of maintenance actually paid to the person with care (with a range of 15% to 20% and 7% to 12% respectively); and enforcement fees payable by the non-resident parent where the Secretary of State has taken specific action to enforce payments.

- 7.6. The Government's commitment to these proposals was reaffirmed in the Command Paper '*Supporting separated families; securing children's futures*' ([Cm8399](#)), published in July 2012.
- 7.7. This paper set out a reduced application fee of £20, specified a non-resident parent collection fee of 20% of the child maintenance which that parent is liable to pay and consulted on a proposed person with care collection fee of 7% of the child maintenance paid to that person with care. The paper also specified enforcement charges of: £300 for a Liability Order (where legal liability for a debt is established in court); £200 for a Lump Sum Deduction Order (where a lump sum is deducted from a person's bank account); £50 for a Deduction from Earnings Order (where money is regularly deducted by the employer from a person's pay); and £50 for a Regular Deduction Order (where money is regularly deducted from a person's bank account).
- 7.8. This paper also set out the detail on how victims of domestic violence would be exempted from application fees. It set out that the Home Office cross-government definition of domestic violence would be used and applicants would be required to make a simple declaration that they have reported an incident of domestic violence to one of a list of organisations.
- 7.9. In the subsequent Government response ([Cm 8742](#)), the Government agreed to reduce the proposed person with care collection fee to 4% and to expand the list of organisations to which domestic violence must have been reported for the purpose of the exemption. The Government's response was accompanied by a revised [Impact Assessment](#).
- 7.10. These regulations reflect these post-consultation changes as well as moving the definition of domestic violence or abuse out of the regulations and into administrative guidance. This decision was taken to retain flexibility and so that the definition of domestic violence or abuse can be amended if the Home Office definition changes without requiring amendments to the regulations. The associated list of persons to whom an applicant must have reported domestic violence has also been moved out of the regulations and into guidance as the intention is that the list is relatively wide in its scope whereas legislation would have to be more prescriptive.
- 7.11. These regulations prescribe circumstances in which the enforcement fee may be waived by the Secretary of State. One of these circumstances is where an enforcement fee becomes payable in circumstances where a deduction from earnings order, a regular deduction order, or a lump sum deduction order lapses or is discharged due to error or maladministration by the Secretary of State. Whether or not there has been maladministration will depend on the circumstances of each case. Maladministration covers a wide range of circumstances, including neglect, inattention, delay, bias, incompetence, inaptitude, perversity, turpitude and arbitrariness.

- **Consolidation**

- 7.12. Not applicable

8. Consultation outcome

- 8.1. Consultation on the Green Paper '*Strengthening families, promoting parental responsibility: the future of child maintenance*' ([Cm7990](#)) ran for 12 weeks from January 2011.

- 8.2. The Green Paper set out the Government's plan for the reform of statutory child maintenance including the introduction of charging. This received 482 responses from members of the public and 67 responses from stakeholder organisations.
- 8.3. The consultation sought views on whether parents were being asked to make a fair contribution to the costs of the system and whether the proposed distribution of charges was appropriate. Of the 67 respondent organisations a total of six organisations felt that the proposed balance in charges was appropriate. A clear majority of 36 respondents were either opposed to charging the applicant for access to, or use of, the statutory child maintenance scheme or felt that the proposed balance of charges was disproportionate.
- 8.4. The Government's response ([Cm8130](#)) acknowledged these views but reiterated the rationale behind charging. The response stated that these fees are necessary to create a point at which parents have to consider collaboration and that this will enable parents to move away from costly, adversarial, state-imposed solutions towards mutually agreed family-based arrangements which, the Government believes, will deliver better outcomes for children. The Government, therefore, decided to proceed with charging, including charging the person with care.
- 8.5. Consultation on the Command Paper '*Supporting separated families; securing children's futures*' ([Cm8399](#)), a public consultation on the draft Child Support Fees Regulations 2013 and the draft Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2013, ran from July 2012 to October 2012, receiving a total of 90 responses: 51 from individuals, 37 from organisations and two from Department for Work and Pensions Staff. An [Impact Assessment](#) was also made available on the DWP website.
- 8.6. The consultation included a question on the appropriateness of the Government's approach to domestic violence and three questions about fees. The first question about fees sought views on the appropriateness of the proposed 7% person with care collection fee. The second question sought views on the appropriateness of using enforcement charges primarily to cause non-resident parents to change their behaviour, rather than to recover the full cost of enforcement action. Finally, a third question sought views on the proposal to satisfy all outstanding maintenance and arrears before allocating funds against enforcement charges. The principle of charging was not part of the scope of the consultation as this had been consulted on in the Green Paper.
- 8.7. Respondents were supportive of the proposed low threshold, declaration based, approach to support victims of domestic violence. However, concerns were raised that the list of organisations to which an applicant must have self-reported domestic violence needed expanding and it was suggested that the waiver for victims of domestic violence should be extended to include a waiver from collection fees.
- 8.8. In response, the Government agreed to extend the list of organisations to include Local Authorities, legal professionals and specialist support organisations but explained that the declaration based approach would not be a sufficiently robust evidence base for waiving the collection fees and that alternative direct pay arrangements will be put in place to ensure that domestic violence victims are not placed at a disadvantage once in the statutory scheme.

- 8.9. In response to the question of the appropriateness of setting the person with care collection fee level at 7%, of the 37 stakeholder organisations that responded three felt that the level of 7% was appropriate. The other organisations that responded to the question had varying opinions on the level of the charging proposed, and whether charging a person with care was appropriate at all, but all opposed the charge being levied at 7%.
- 8.10. In response the level of this fee has been reduced from 7% to 4%, significantly below the 7% to 11% range proposed by the 2011 Green Paper. The Government believes that levying a collection charge against the person with care is an essential tool in attempting to engender co-operation between the parties by ensuring that both have a financial motivation to co-operate. The Government, however, recognises the strength of feeling in this area and has therefore reduced the fee to 4%.
- 8.11. When responding to the question of the approach to enforcement charging, the Government's approach was met with limited support from four of the stakeholder groups who responded. These groups broadly supported the intention behind enforcement charging but have expressed concerns about the implications of pushing already indebted clients further into arrears. The remaining responses were opposed in varying degrees to the principle of enforcement charging. Some echoed the concerns around clients being pushed into debt whilst others cited historic examples of Child Support Agency error or inappropriate use of enforcement powers and expressed concerns over the potential abuse or misuse of these powers.
- 8.12. In response, the Government accepted the concerns of stakeholders around this issue but maintained that, in order to achieve the stated aim of encouraging collaboration between parents, it is vital that strong measures be put in place to emphasise the effects of non-compliance. By introducing such enforcement fees this will act as a tangible financial incentive to a non-resident parent to keep up with their payments and remain compliant.
- 8.13. The paper also consulted on the question of what priority should be afforded to enforcement charges relative to ongoing maintenance and arrears. The vast majority of respondents agreed with the principle that enforcement charges should only be satisfied once all ongoing maintenance and arrears have been satisfied.
- 8.14. There was limited opposition to elements of this policy including the suggestion that all fees should only be collected once the person with care's liability has been satisfied.
- 8.15. In response the Government welcomed the broad support for the decision to place enforcement charges secondary to the payment of any ongoing maintenance or arrears. The Government did not agree, however, with the suggested approach to treat all fees in this way as the Government believes that a system where maintenance and fees are kept in proportion is the most effective way of ensuring an efficient system that ensures both the flow of ongoing maintenance whilst retaining an effective incentive for parents to consider collaboration.

9. Guidance

- 9.1. The Department has a communication strategy to ensure that clients, employees and stakeholders are kept informed of changes. This will include discussions with key

stakeholders, staff training, amending relevant leaflets, drafting new notifications and providing web-based guidance.

- 9.2. In particular, the Department has published two documents to provide guidance on the provision relating to the waiver of the application fee for a victim of domestic violence or abuse. The first provides guidance on the factors that the Secretary of State can be expected to take into account when determining whether or not an applicant is a victim of domestic violence or abuse. The guidance is based on the Home Office definition of domestic violence. The second provides a list of persons to whom domestic violence or abuse must have been reported and provides further detail on the list of persons set out in the consultation response ([Cm 8742](#)).

10. Impact

- 10.1. The impact on business is low and is limited to financial institutions, where the Department has worked with clearing banks to ensure that suitable bank accounts are available for parents who choose to pay each other directly. There is no direct impact on charities or voluntary bodies.
- 10.2. The impact on the public sector is low and is limited to the Department for Work and Pensions and HM Tribunals and Courts Service, who will hear appeals.
- 10.3. A full impact assessment is attached to this memorandum.

11. Regulating Small Business

These regulations have no direct regulatory impact on small business.

12. Monitoring & Review

Section 6(3A) to (3D) of the 2008 Act, as amended by the Welfare Reform Act 2012, commits the Secretary of State to reviewing the effect of these regulations within 30 months of the date that they come into force. The Secretary of State must publish a report following this review containing conclusions and a statement detailing what action will be taken in respect of these conclusions. The Secretary of State must lay this report before Parliament.

13. Contact

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