

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (ENDING LIABILITY IN EXISTING CASES AND
TRANSITION TO NEW CALCULATION RULES) REGULATIONS 2014

2014 No. [XXXX]

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

2.1 These regulations make provision concerning the use of powers enabling the Secretary of State to:

- End liability in cases on the 1993 and 2003 child maintenance schemes, which are currently managed by the Child Support Agency, and
- Specify the mechanism by which existing clients on the 1993 and 2003 schemes of child maintenance can exercise their choice to remain in the statutory scheme.

2.2 The intent of these powers is to allow the Secretary of State to close down the 1993 and 2003 child maintenance schemes, so that clients exercising their choice to remain on the statutory scheme will be handled on the new scheme (the 2012 scheme), which was fully introduced, for all new applicants, in November 2013. The powers are to be exercised in such a way that they minimise payment disruption to existing cases on the 1993 and 2003 schemes as far as this is possible.

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

3.1 These regulations will come into force on the day on which section 19 of the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”) comes into force for all purposes. Section 19 introduces Schedule 5 to the 2008 Act which, together with section 55(3) and (4) of the 2008 Act, provides the power to make these regulations. The intention is to bring section 19 and the relevant paragraphs in schedule 5 into force for the purpose of making regulations on the day these regulations are made. Section 19 will then be brought into force for all purposes at least one day later, to enable these regulations to come into force.

4. Legislative Context

4.1 These regulations are being made to enable both the 1993 and 2003 schemes to be gradually replaced by the new statutory child maintenance scheme.

4.2 These regulations are made under section 55(3) and (4) of, and paragraphs 2, 3, 5, 6 and 7 of Schedule 5 to the 2008 Act. This is the first use of the powers in

question. No previous undertakings have been made in Parliament in relation to the use of these powers; the regulations do not provide for the introduction of any subsequent statutory instruments; and do not implement European Union legislation.

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

4.4 There are currently three child support maintenance calculation schemes in place, the 1993 scheme and the 2003 scheme (for applications made after the 3rd March 2003), which are managed by the Child Support Agency, and the 2012 scheme, which was fully introduced, for all new applicants, in November 2013, and is managed by the Child Maintenance Service.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 The Minister of State for Pensions has made the following statement regarding Human Rights:

In my view the provisions of The Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014 are compatible with the Convention Rights.

7. Policy Background

What is being done and why

7.1 The 2008 Act gave the Secretary of State the power to require the interested parties (the non-resident parent and the parent with care, or where relevant the child in Scotland) in relation to an existing case on the 1993 or 2003 scheme to choose whether or not to stay in the statutory scheme, so far as accrual of child maintenance liability is concerned. These regulations set out the detail as to how this power will work in practice, including:

- The timing of when the power will be exercised;
- Principles regarding the order in which existing cases will have their child maintenance liability ended;
- The procedure to be followed in relation to the exercise of the power;

- The timing in which interested parties must exercise their choice to remain within the statutory scheme; and
- The form in which interested parties must exercise their choice

A further level of detail on exactly how the power will be exercised will be contained in a “scheme”, a draft of which has been prepared by the Department and approved by the Secretary of State. The draft scheme is available here www.gov.uk/government/publications/child-maintenance-ending-liability-for-1993-and-2003-scheme-cases. The 2008 Act does however require Regulations to be made to allow for this scheme to be made.

7.2 The use of this power will not negate the Department’s focus on pursuing arrears of child maintenance that have accrued under the 1993 and 2003 schemes, and ensuring that parents meet their financial responsibilities for their children. Arrears will remain due and parents will not be relieved of their liability to pay, unless those arrears meet the limited criteria for write off, for example where the parent with care no longer wants the arrears collected.

7.3 The new powers will achieve the policy intent stated in paragraph 2.2, specifically by making provisions for clients with an existing 1993 or 2003 scheme case to exercise their choice to remain in the statutory scheme; and setting out the factors which will inform the order in which cases will have their 1993 or 2003 liability ended. As detailed in the Impact Assessment (more detail is provided at paragraph 10.3) 900,000 existing cases will have their liability ended over a 3 to 4 year period. The policy has been consulted on and has attracted some level of public interest - the detail of which is set out at paragraphs 8.3 and 8.4.

Transition period

7.4 The period during which the power to end liability in existing 1993 and 2003 scheme cases will be known as the “transition period”. This is expected to run for approximately 3 to 4 years from the commencement of this power. The transition period is intended to begin at the end of March 2014, and is detailed in the scheme which accompanies these regulations.

Order in which cases on the 1993 and 2003 scheme will have their liability ended

7.5 From November 2013, all new applications for child maintenance are processed on the 2012 scheme. Where a new application is linked to an existing case on the 1993 or 2003 schemes, the new application will cause the liability to end on the existing case. This is because all linked cases must be handled according to the same scheme. An existing case will be linked to a new application where the non-resident parent in the new application is also a non-resident parent for a different case on the 1993 or 2003 scheme, and the person with care in the new application is not also the person with care in the existing case; or where the non-resident parent in the new application is the partner of a non-resident parent for a different case on the 1993 or 2003 scheme, and either or both of them are in receipt of a prescribed benefit.

7.6 Unless it is linked to an existing case (as explained in paragraph 7.5), liability will not be ended in cases where the last or only qualifying child will have reached the age of 20 before the end of the transition period. This is because these cases will come to a natural end on the 1993 or 2003 scheme, so there is no need to end the liability on the existing case and require the interested parties to make a choice about whether to remain in the statutory scheme.

7.7 Cases that do not fall into either of the exceptions described in paragraphs 7.5 and 7.6 will be selected in segments so that the liability can be ended. The order will depend on the characteristics of the case and is intended to minimise payment disruption to existing clients on the 1993 and 2003 schemes (cases that have been selected in a segment could then become linked to a new application on the 2012 scheme, as described in paragraph 7.5. If this happens the link to the new application will take precedence over the fact that the case has been selected in a segment).

7.8 It is intended that the first segment of cases that will be closed will be those where the maintenance liability has been assessed or calculated at the “nil rate”, i.e. non-resident parent in these cases are not liable to pay maintenance, and as a result there will be no payments to disrupt on these cases when the liability is ended.

7.9 The detail of the order in which cases will be selected is contained in the draft scheme which accompanies these regulations.

Exercise of the choice as to whether or not to stay in the statutory scheme

7.10 At the appropriate time in each case, the Secretary of State will give notice to the interested parties to inform them of the date that their liability will end, and what they need to do in order to stay within the statutory scheme.

7.11 In order to exercise the choice to remain within the statutory scheme, an application must be made to the 2012 scheme, following the standard application process (during which parents will be encouraged to consider alternatives to the statutory scheme where appropriate). This application must be made before the date that liability is due to end. This process is intended to ensure that all clients carefully consider whether they want to stay within the statutory scheme or make a family based arrangement. It also means that where they do exercise the choice to remain in the statutory scheme, they will not experience any break in the non-resident parent’s underlying liability to pay child maintenance.

7.12 Where a client exercises their choice to remain within the statutory scheme by way of a new application, as described in paragraph 7.11, the new maintenance calculation resulting from this application will be based on information available at the time the non-resident parent is notified of the application (although either party is able to report changes, such as a change of more than 25% in the non-resident parent’s income, and these will be taken into account). However, the calculation will not take effect until the day after liability ends on the 1993 or 2003 scheme.

Withdrawal of notice that liability will end

7.13 Where a case is selected for the liability to be ended, but it becomes apparent that the case was selected in error, the Secretary of State will have the power to withdraw the notice informing the interested parties of the date their liability is due to end. This will mean that the case will continue to be handled on the 1993 or 2003 scheme until further notice.

7.14 This power will only be used where the error comes to light more than 30 days before the liability is due to end. The Secretary of State will have discretion as to whether the power should be exercised in any given case. The intention is to only use this power in exceptional circumstances. The circumstances in which the power should be used are described in more detail in the draft scheme that accompanies these regulations.

End liability date

7.15 In cases which fall into the scenario covered in paragraph 7.5, the liability will end 30 days after the interested parties are notified as described in paragraph 7.10. This is to balance the interests of the parent with care on the new application and the parent with care in the existing case. The existing parent with care should be given enough time to consider their choice about whether to remain within the statutory scheme, but without causing significant delay in starting the liability on the new parent with care's case.

7.16 In all other cases, except those noted in paragraph 7.6, the liability will end between 180 and 272 days after the interested parties are notified as described in paragraph 7.10. This is to allow the interested parties plenty of time to consider whether they want to remain within the statutory scheme or not.

7.17 Where a case is selected in a segment so that liability can be ended, as per paragraph 7.7, but more than 30 days before the liability end date is reached it becomes linked to a new application as per paragraph 7.5, a new notice will be issued to amend the end liability date. The case will close 30 days from the second notice.

Continuity of method of payment

7.18 Where the non-resident parent's method of payment on the 1993 or 2003 scheme case was deduction from earnings order or regular deduction order (i.e. a deduction directly from their bank account), this method may continue to be used where an application is made to the 2012 scheme, if the Secretary of State is of the opinion that the non-resident parent is "unlikely to pay" the parent with care directly on the 2012 scheme. This is intended to minimise disruption to payments, as compliance on the 1993 or 2003 case may have been hard won. This does not guarantee that there will be no disruption to payments whatsoever, but it will minimise any break in payment that the parent with care experiences.

Treating outstanding applications on the 1993 and 2003 scheme as withdrawn

7.19 Where there is an outstanding application on the 1993 or 2003 scheme, but an assessment or calculation has not yet been made, the Secretary of State has the discretion to treat this application as “withdrawn”, if none of the interested parties exercise their choice to remain within the statutory maintenance scheme.

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

8. Consultation outcome

Public consultation on the primary powers in the 2008 Act

8.1 The high level principles of replacing the Child Support Agency with a new system for delivering child maintenance, and encouraging parents to consider whether the statutory child maintenance scheme is right for them were subject to a twelve week consultation on the White Paper “*a new system of child maintenance*” published in December 2006. A summary of responses to that consultation was published in May 2007.

8.2 The responses to the 2006 White Paper were largely in favour of the proposals. There was support for the proposal to create a new organisation to replace the Child Support Agency, and for the framework of objectives and principles that it would operate within. Stakeholders also supported the proposed principles for moving to the new arrangements, although they emphasised the importance of effective information and support being available in the run-up to and during the transition process.

Public consultation on the detail of how liability would be ended in existing 1993 and 2003 scheme cases

8.3 On 19 July 2012 the Government published “Supporting separated families; securing children’s futures” (Cm 8399), 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. The consultation was conducted over fourteen weeks, and closed on 26 October 2012. The consultation document is available here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220453/childrens-futures-consultation.pdf

8.4 The Government’s response to the consultation on the detail of the regulations was published on 5 November 2013 and can be found at:

<https://www.gov.uk/government/consultations/supporting-separated-families-securing-children-s-futures>. The detailed responses to the elements of the consultation relevant to these regulations can be found at pages 18 to 33, but in summary:

- Most respondents did not find our proposed 30 day notice period for cases where a new application to the 2012 scheme triggers the end of liability in

related cases on the 1993 and 2003 schemes to provide a reasonable balance between the interests of the existing parent with care and the new applicant. However, respondents were roughly evenly split on whether this period was too long or too short, with some respondents suggesting alternatives such as transitioning cases automatically into the new scheme and waiving all fees.

- The split response to this question reflects the difficult balance that we must strike between the interests of an existing parent with care and that of a new applicant to the statutory scheme. Furthermore, to transition these cases automatically into the 2012 scheme without requiring a new application to be made would lead to excessive complexity and confusion, and undermine the Government's fundamental commitment to offering a fresh choice to all parents including the possibility of a collaborative arrangement.
- Respondents saw a significant role for the voluntary and community sector in supporting parents through the process of ending liability on existing 1993 and 2003 scheme cases. We have already worked closely with the voluntary and community sector to ensure parents have accurate and up-to-date information on the new Child Maintenance Service. The briefings and training that we have provided will be a foundation for continuing, and expanding, cooperation to support parents through this period.
- Respondents were less concerned about the length of the 6 month notice period, than they were about what happens to payments when a case closes on the 1993 or 2003 schemes and the parent applies to the 2012 scheme. Respondents were concerned that, under the 'clean slate' approach proposed by the consultation document, some non-resident parents who are currently paying through enforced payment methods would opt for Direct Pay in the 2012 scheme and then fail to comply with that arrangement.
- We intend to tackle the risk of payment disruption through two significant changes in policy and design. First, we will introduce a positive test of compliance behaviour for non-resident parents on enforced methods of payment, or where there is ongoing enforcement action. This test will take place in the period after they are informed that their liability is due to be ended, and the date their liability actually ends. Non-resident parents who fail this test will be subject to the same enforced method of payment on the 2012 scheme as they had been on the 1993 or 2003 scheme.
- Secondly, we will also be changing the order in which we will end liability, so that cases are selected for their liability to be ended based on the characteristics of the case, rather than on the basis originally proposed in the consultation document which was centres around the age of the case. Cases where there is more likely to be disruption will be selected later in the order. Leaving these cases unaffected for as long as possible will allow compliance to be firmly established before they are closed and also mean

that more of these cases will reach their natural end on the legacy schemes without any risk of payment disruption.

9. Guidance

9.1 The Department is continuing work to ensure that its clients, employees and stakeholders are fully informed of the changes arising from the introduction of these powers. This activity includes discussions with key stakeholders, staff training, amending relevant leaflets, producing new client notifications and providing web-based guidance.

10. Impact

10.1 The impact on business is measured as an “out”, in that the benefits outweigh the costs. There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector is estimated to be a net benefit of £220million per annum.

10.3 An Impact Assessment, relating to the wider reforms of the statutory child maintenance system, but with specific reference to the effect of these regulations, can be found here.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220456/cm-case-closure-and-charging-regs-ia.pdf

11. Regulating Small Business

11.1 The legislation does not apply to small businesses.

12. Monitoring & Review

12.1 The Department will monitor the operation of the power to end liability in cases on the 1993 and 2003 child maintenance schemes. The Department actively engages with its stakeholders, including representatives of the legal profession and parents’ representative groups and will continue to do so to ensure that the policy intent of this power is maintained.

13. Contact

13.1 Katie Willson
Child Maintenance Group
Telephone: 0191 2166071
E-mail: katherine.willson@dwp.gsi.gov.uk