

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (CONSEQUENTIAL PROVISIONS) REGULATIONS 2008

2008 No. 2543

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

2. Description

2.1 These Consequential Regulations remove references to section 6 and 46 of the Child Support Act 1991 (“the 1991 Act”) and all the related terminology from amended statutory instruments, following provisions made in the Child Maintenance and Other Payments Act 2008.

2.2 Section 6 required that parents with care in receipt of income-related benefits were compelled to claim child maintenance through the Child Support Agency (CSA), unless there was good cause not to do so. On the 27th of October 2008, section 6 will be fully repealed to allow parents with care in receipt of benefit, to make their own arrangements.

2.3 Previously parents with care who did not wish to be treated as applying for child support maintenance were required to demonstrate good cause: for example, that applying for maintenance could put them, or any child living with them, at risk of harm or undue distress. If they could not demonstrate good cause, section 46 of the 1991 Act enabled the Secretary of State to make a decision to reduce their benefit. Section 46 was repealed on 14 July 2008 at the same time that section 6 was repealed for all new applications for child maintenance made after that date.

2.3 These amendments apply to old and current scheme maintenance applications.

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

3.1 None

4. Legislative Background

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

4.2 The 2008 Act introduced provision to repeal section 6 and 46 of the 1991 Act. These Regulations are required to remove all references to section 6 and 46 from existing legislation to avoid these sections being used inadvertently.

4.3 Further amendments to child support legislation have been made by the 2008 Act. Only a limited number of provisions in the 2008 Act have as yet been commenced.

4.4 Statutory instruments entitled;

The Child Maintenance and Other Payments Act 2008 (Commencement No.3 and Transitional and Savings Provisions) Order 2008;

The Child Support, Pensions and Social Security Act 2000 (Commencement No.14) Order 2008;

The Child Support (Miscellaneous Amendments) (No. 2) Regulations 2008; and

The Child Support Information Regulations 2008 are also due to be published in October 2008.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

Policy

7.1 Child support legislation is focused around the general principle that all parents take financial responsibility for all of their children. Child maintenance is an amount of money that parents who do not normally live with the children concerned (these are called “qualifying children”) pay as a contribution to the upkeep of those children.

7.2 Under section 6 of the 1991 Act, parents with care who claimed income-related benefits were required to make an application for child maintenance through the CSA, unless there was good cause not to do so. A parent with care may fear that an application through the CSA could put themselves or their family at risk of harm or distress from the non resident parent and would be offered the opportunity for this to be considered before an application was made. Where good cause was considered, but not accepted, and where the parent with care continued to refuse to apply through the CSA, a sanction known as a reduced benefit direction could be made. Under section 46 of the 1991 Act the parent with care’s benefit would be reduced for a set period of time as a result.

7.3 The 2008 Act establishes the Child Maintenance and Enforcement Commission (“the Commission”), a Non Departmental Public Body, which will assume responsibility for the delivery of the child maintenance system, including the functions currently exercised by the CSA (in particular, calculating, collecting and enforcing child maintenance liabilities).

7.4 The main objective of the Commission is:

- To maximise the number of those children who live apart from one or both of their parents for whom effective maintenance arrangements are in place.

This main objective is supported by two subsidiary objectives:

- To encourage and support the making and keeping by parents of appropriate voluntary maintenance arrangements, and
- To support the making of statutory maintenance arrangements, which includes ensuring that parents comply with their responsibilities.

7.5 The Commission will be responsible for providing information and support to parents to help them decide the most effective type of arrangement for them. To facilitate this, the 2008 Act introduced provisions to remove the requirement for parents with care on income-related benefits to use the CSA to make a maintenance arrangement under section 6 of the 1991 Act. This allows parents freedom to make their own voluntary arrangements where possible. The sanction of a reduction in benefit under section 46 of the 1991 Act, where parents with care refused to make an application was removed on 14th July 2008 for all new applications made after this date.

7.6 The Commission will also be required to provide a more effective statutory maintenance service when parents choose for the Commission to assess, collect and enforce payments instead of making a voluntary maintenance arrangement.

Consultation

7.7 No consultation has been carried out on these particular amendments. However, a full consultation on the removal of section 6 and 46 was completed prior to and during the passage of the 2008 Act through Parliament.

Guidance

7.8 The CSA is developing a communication strategy to ensure that its clients are kept informed of the changes, which will include discussions with key stakeholders and amending relevant leaflets and web-based guidance when the changes are due to be brought into force.

Consolidation

7.9 The Law Relating to Child Support is available on the internet at <http://www.dwp.gov.uk/advisers/docs/lawvols/orangvol/> and is generally updated twice-yearly.

8. Impact

8.1 A full impact assessment has not been published for this instrument as it has no impact on the private or voluntary sectors.

8.2 The impact on the public sector will be negligible.

9. Contact

Jan Smith at the Child Support Agency, Caxton House (5th floor), Tothill Street, London, SW1H 9NA, telephone 020 7340 4265, or e-mail janet.smith1@dwpgsi.gov.uk can answer any queries regarding this instrument.