

**EXPLANATORY MEMORANDUM TO  
THE CHILD SUPPORT (MANAGEMENT OF PAYMENTS AND ARREARS)  
REGULATIONS 2009**

**2009 No. 3151**

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. Purpose of the Instrument**

2.1 These regulations introduce new provisions enabling the Child Maintenance and Enforcement Commission (the Commission) to:

- offset parents' liabilities to pay each other child maintenance;
- offset prescribed payments against a person's liability to pay child maintenance;
- recover arrears of child support maintenance from a deceased person's estate.

2.2 The regulations also consolidate existing provisions for managing arrears, voluntary payments and overpayments of child maintenance.

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

None.

**4. Legislative Context**

4.1 These regulations will be the first use of new powers inserted into the Child Support Act 1991 ("the 1991 Act") by the Child Maintenance and Other Payments Act 2008.

4.2 The 1991 Act 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 the children concerned (the "non-resident parent") pay as a 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.

4.3 The child support scheme in the 1991 Act was substantially amended by the Child Support, Pensions and Social Security Act 2000. Some of the amendments are fully in force, whilst others have so far been brought into force for the purposes of specified cases only. This means there are effectively two schemes.

4.4 The child support scheme in force prior to the amendments to the 1991 Act made by the 2000 Act is referred to as "the old scheme" and the child support scheme in force following those amendments is referred to as "the current scheme". These Regulations affect both the old and the current schemes.

## 5. Territorial Extent and Application

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

- *What is being done and why*

### *Set off parent's liabilities/prescribed payments*

7.1 During their upbringing, where parents are no longer living together, a child may move from the care of one parent to the other. At present, the Commission is unable to offset any outstanding arrears from the previous arrangement against the new liability. Consequently the new non-resident parent may find that he or she is faced with paying child maintenance to the parent who owes him or her arrears. It is not surprising that parents find this illogical and are reluctant to pay.

7.2 Similarly, a separated couple who have more than one child together may each have at least one child living with them. In such cases, either or both parents may accrue arrears of child maintenance and at present the Commission is left to pursue both sets of arrears.

7.3 Parents may also sometimes agree between themselves that a payment may be made to or on behalf of the parent with care separately from the normal child maintenance payments to the Commission. This may happen for example, when the non-resident parent agrees to pay an urgent utility bill on behalf of the parent with care. At present, as there is no provision to offset such payments, a non-resident parent may effectively be expected to pay twice over.

7.4 The regulations enable the Commission to set off arrears of child maintenance owed by each parent to the other and to set off a parent's liability to pay current child maintenance against arrears of maintenance owed to them by the other parent.

7.5 They also enable payments made for prescribed purposes related to maintaining a home for the qualifying children to be set off against a non-resident parent's liability for child maintenance. Such payments can only be set off if the parent with care agreed to the payment being made. The Commission expects to exercise this power only in relation to occasional payments of this nature. If parents agree to child maintenance being paid in this way as a matter of course they will be invited to do so under a voluntary maintenance agreement outside the statutory child maintenance scheme.

7.6 The introduction of 'set off' in these circumstances responds to parents' wishes that the Commission should be able to make sensible decisions reflecting the realities of life. Responses to consultation have shown support for the principle of setting off payments against a child support liability.

7.7 The Commission estimates that there are currently some 25,000 potential instances of set off, where the parents' circumstances are as outlined in paragraphs 7.1 and 7.2 above. The debt involved in these cases amounts to some £30 million. There is currently no record of the number of cases to which paragraph 7.3 applies.

#### *Recovery from estates*

7.8 At present when a non-resident parent has died owing arrears of child maintenance those arrears are not pursued. The Government consider it to be in the interests of children that those arrears should be recoverable from the estate of the deceased non-resident parent. The regulations provide that arrears outstanding immediately before death are a debt payable to the Commission out of the deceased's estate. This will allow the Commission to contact the administrator or executor of a deceased's estate requesting payment of any arrears due from that estate and enable administrators or executors to pay the debt due from the estate in accordance with their duties and the law on the administration of estates.

7.9 The Commission estimates that each year some 3,000 non-resident parents die owing a total of around £14 million child maintenance, of which it is estimated that between £2.5m and £3m may be recoverable for the benefit of the children concerned. Again, responses to consultation generally agree that arrears should be pursued in this way.

- ***Consolidation***

7.10 The regulations group the new provisions with existing measures dealing with arrears and the treatment of overpayments and voluntary payments. The existing provisions, contained in the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992 (S.I. 1992/1816) are revoked and replaced with very similar provisions, subject to some minor changes. The provisions being revoked are regulations 2, 5 and 9 to 17.

7.11 The changes are:

- That in appropriate circumstances an ongoing payment of child maintenance may be reduced to nil in order to recover either outstanding child maintenance arrears (in a role reversal case) or overpayments and voluntary payments of child maintenance. Currently, the amount payable cannot be adjusted below the flat rate of child maintenance (£5). However, in some cases it is appropriate and administratively much simpler to reduce the amount payable to nil until the overpayment or voluntary payment has been accounted for.
- That there will be no right of appeal against a decision to adjust the amount of child maintenance payable to take account of an overpayment or voluntary payment. This simplifies the appeal system by removing from it decisions which are not about the maintenance calculation or the underlying liability to pay child maintenance. Decisions made prior to the date the regulations come into force will retain the right of appeal already accrued.

7.12 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

8.1 Under the government Code of Practice on Consultation the consultation period should normally be 12 weeks. In this instance, ministers decided that a shorter period was appropriate because the principles of offsetting child maintenance liabilities and recovering arrears from the estate of a deceased non-resident parent have already been the subject of a 12 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. No responses at all were received on offsetting, and very few on recovery from estates. Neither measure proved controversial during the passage of the primary legislation and both impact on only a small proportion of the Commission’s cases.

8.2 An additional consultation exercise on these proposed new measures was conducted over the six weeks from 29th June to 9th August 2009. The consultation document was published on the Commission’s website as well as [www.netmums.com](http://www.netmums.com) and [www.wikivorce.com](http://www.wikivorce.com); and printed copies were available on request. The document was drawn specifically to the attention of some 50 stakeholder groups who were encouraged to respond. Those groups represented families, children, parents with care, non-resident parents, the legal profession and others with an interest in child maintenance.

8.3 Responses (other than “no comment”) were received from Families Need Fathers (FNF), Jewish Unity for Multiple Parenting (JUMP), National Association for Child Support Action (NACSA), The Law Society of England and Wales, Women’s Aid, the Justices’ Clerks’ Society, Resolution, and the Independent Case Examiner (ICE).

8.4 All the responses received, supported the Commission’s proposal to introduce offsetting debt, with comments ranging from “a positive step towards a speedier more efficient system” (NACSA) to “a pragmatic solution to what would otherwise be a cumbersome process” (Resolution). The need for careful monitoring of offsetting arrangements was raised by several of the respondent organisations.

8.5 The Commission’s proposal to introduce recovery from deceased’s estates received a more mixed response. Whilst all respondent organisations understood the rationale for introducing this power, some highlighted the importance of the Commission using its discretion to take account of the circumstances of all relevant children affected by the death of a non resident parent, and not just those qualifying for child maintenance.

8.6 A full analysis of consultation responses is available on the Commission’s website at: [www.childmaintenance.org/publications](http://www.childmaintenance.org/publications)

## **9. Guidance**

The Commission is developing a communication strategy to ensure that clients, employees and stakeholders are kept informed of the changes. This which will include discussions with key stakeholders, staff training, amending relevant leaflets, drafting new notifications and providing web-based guidance.

## **10. Impact**

An initial impact assessment was carried out on both the provisions relating to offsetting and those relating to recovery from estates. The findings from this showed that in both cases, the impact on the private and voluntary sectors is nil; and the impact on the public sector is negligible. A full impact assessment has therefore not been prepared for this instrument.

## **11. Regulating Small Business**

The legislation does not apply to small businesses.

## **12. Monitoring & Review**

The Commission will closely monitor the operation of offsetting and recovery from deceased's estates throughout the first year of implementation. The Commission 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 is maintained.

## **13. Contact**

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