

**EXPLANATORY MEMORANDUM TO  
THE CHILD SUPPORT (MISCELLANEOUS AND CONSEQUENTIAL  
AMENDMENTS) REGULATIONS 2015**

**2015 No. 338**

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 This is a package of miscellaneous and consequential amendments to various child support maintenance regulations. The amendments made include provision to enable the Secretary of State to correct accidental errors in child maintenance decisions and records of decisions and provision prescribing the information that the Secretary of State may disclose to credit reference agencies about a person against whom a liability order is in force.

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

3.1 None

4. **Legislative Context**

4.1 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 (the “non-resident parent”) pay as a contribution for the upkeep of those children. The child support scheme under the 1991 Act was substantially amended by the Child Support, Pensions and Social Security Act 2000, which introduced a second scheme of child support maintenance. The 1991 Act was further amended by the Child Maintenance and Other Payments Act 2008, effectively introducing a third scheme. The 2012 scheme was fully commenced for all new applicants in November 2013.

4.2 This instrument makes amendments to:

- the Child Support (Maintenance Assessment Procedure) Regulations 1992 (S.I. 1992/1813) (“the Maintenance Assessment Procedure Regulations”);
- the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (S.I. 1992/1815) (“the Maintenance Assessments and Special Cases Regulations”);
- the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992 (S.I. 1992/1816) (“the Arrears Regulations”);
- the Child Support (Collection and Enforcement) Regulations 1992 (S.I. 1992/1989) (“the Collections and Enforcement Regulations”);
- the Social Security and Child Support (Decision and Appeals) Regulations 1999 (S.I. 1999/991) (“the Decisions and Appeals Regulations”);
- the Child Support Information Regulations 2008 (S.I. 2008/2551) (“the Information Regulations”); and
- the Child Support Maintenance Calculation Regulations 2012 (S.I. 2012/2677) (“the Calculation Regulations”).

- 4.3 This instrument makes an amendment to the Maintenance Assessments and Special Cases Regulations that is consequential on the Childcare Payments Act 2014 and ensures that a top-up payment made under the Act will not be treated as income for the purposes of calculating child maintenance liability.

Section 49D of the Child Support Act 1991 enables the Secretary of State to prescribe the information that may be supplied to credit reference agencies in certain circumstances; this instrument prescribes the information that may be supplied. This instrument also makes provision for the correction of accidental errors in child support decisions by the Secretary of State and makes two other minor amendments that are detailed below.

## **5. Territorial Extent and Application**

- 5.1 This Instrument applies to Great Britain

## **6 European Convention on Human Rights**

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

## **7. Policy background**

### *Correction of accidental errors*

- 7.1 Amendments are made to the Maintenance Assessment Procedure Regulations, the Decisions and Appeals Regulations and the Calculation Regulations which relate, respectively, to the 1993 scheme of child support maintenance, the 2003 scheme and the 2012 scheme. The rules for each scheme are amended so that the Secretary of State may correct an accidental error in a decision and a record of a decision made by the Secretary of State in relation to a child maintenance calculation under the Child Support Act 1991. An “accidental error” is a simple administrative error, for example a case worker recording the number “48” instead of “84”.

- 7.2 This amendment means that, where a party to a decision asks the Secretary of State to correct an accidental error in a decision, the error can be corrected under the new procedure. If a party is unhappy with the corrected decision, they must apply for a revision of the decision before it can be appealed. Currently, in this scenario, the party could immediately appeal the corrected decision, without first having to request a revision. This change aligns the procedure for the correction of an accidental error reported by a party with the procedure where an accidental error is identified by the Secretary of State. This gives the opportunity for these errors to be dealt with simply and administratively without need of the party making an appeal.

### *Amendments to the prescribed form Liability Order*

- 7.3 A Liability Order is an order made against a parent liable to pay child support maintenance who has failed to make payments. The order provides legal recognition of a debt and allows the Secretary of State to take further enforcement measures against the liable person. The order must be made in the form prescribed in Schedule 1 to the Collection and Enforcement Regulations. These regulations make minor and technical amendments to this form.

### *Consequential amendment relating to child care payments*

- 7.4 The Childcare Payments Act 2014 received Royal Assent on 17 December 2014. This Act introduces a new scheme to provide financial support to help working families with the costs of childcare.
- 7.5 A consequential amendment is made to the Maintenance Assessments and Special Cases Regulations so that a top-up payment made under the Childcare Payments Act will be disregarded when determining a parent's income for the purposes of assessing child maintenance payable under the 1993 scheme. There are three schemes of child support maintenance and amendments are not needed in relation to the other two schemes due to the way maintenance is calculated under those schemes.

### *Reclaiming reimbursements from parents with care on income-related employment and support allowance*

- 7.6 Where an overpayment or voluntary payment of child maintenance is made by a person liable to pay child maintenance (the "liable person"), in certain circumstances the Secretary of State may reimburse the non-resident parent for some or all of the amount of the overpayment or voluntary payment. Where this occurs the Secretary of State may seek to recover the amount reimbursed from the parent with care. Where the parent with care is in receipt of a protected benefit when the reimbursement was made, or during the period of time in which the overpayment or voluntary payment was made, the Secretary of State may not seek to recover the reimbursed amount. An amendment is made so that income-related employment and support allowance is added to the list of protected benefits.

### *Disclosing information to credit reference agencies*

- 7.7 Section 49D of the Child Support Act 1991 enables the Secretary of State to share information about a liable person with credit reference agencies if the liable person consents or there is a liability order in force against the liable person. This instrument amends the Information Regulations to prescribe types of information that the Secretary of State can share with Credit Reference Agencies. This includes the person's name, address and date of birth and information about the liability order made against the person. The liable person will be notified in writing prior to the disclosure taking place, advising them that the Secretary of State intends to supply information to a credit reference agency. The intention of the power is to encourage compliance with child maintenance obligations. It is anticipated that this power will be particularly effective against self-employed persons who rely on credit being available to them. In the 2013/2014 financial year, over 12,000 liability orders were imposed in respect of child maintenance.

### *Consolidation*

- 7.8 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Child Support' (Orange Volumes) on the Department for Work and Pensions website at <http://lawvolumes.dwp.gov.uk/the-law-relating-to-child-support/> or the National Archive website [legislation.gov.uk](http://legislation.gov.uk) . An explanation as to which instruments are maintained on each site is available [here](#).

## **8. Consultation outcome**

- 8.1 A consultation on correcting accidental errors ran from 17 November 2014 to 29 December 2014. The consultation sought views on creating a new procedure for correcting accidental errors in a decision of the Secretary of State in relation to a child maintenance calculation.
- 8.2 The consultation received 1 response from a member of public and 1 response from a stakeholder organisation. The single response received from the stakeholder organisation was in support of the amendment to the process and the response from the member of public was unrelated to the consultation.
- 8.3 The response to the consultation can be found by accessing: <https://www.gov.uk/government/consultations/child-maintenance-correction-of-accidental-errors>
- 8.4 The power to disclose information to credit reference agencies was consulted on as part of the 2006 white paper “A New System of Child Maintenance”. The responses received were generally supportive of implementing this power. There is no flexibility regarding the information we will need to provide to credit reference agencies to affect a credit rating of a liable person with a liability order. Given this, a consultation would have had no scope for amending the way in which this power was exercised.
- 8.5 A consultation has not been carried out in relation to the other amendments because they are minor.

## **9. Guidance**

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

## **10. Impact**

- 10.1 There is no impact on business or civil society organisations.
- 10.2 The impact on the public sector is low and is limited to the Department of Work and Pensions.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

- 12.1 There is no fundamental change of policy so a formal review of these amended regulations will not be undertaken. However, the Agency and CMS monitor the accuracy of their decision making and actively engage with their stakeholders and will continue to do so to ensure that the policy intent is maintained.

### **13. Contact**

Kosru Uddin, Child Maintenance Policy, Tel: 020 7245 3801 or email: [kosru.uddin@dwp.gsi.gov.uk](mailto:kosru.uddin@dwp.gsi.gov.uk) can answer any queries regarding the instrument.