

EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (AMENDMENTS RELATING TO ELECTRONIC COMMUNICATIONS AND INFORMATION) (ENGLAND AND WALES AND SCOTLAND) REGULATIONS 2022

2022 No. 503

1. Introduction

1.1 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 This instrument:

- (a) authorises and facilitates the option of electronic communications between the Child Maintenance Service (CMS)¹, customers² and third parties³ for the purposes of calculating, collecting and enforcing child support maintenance; and
- (b) adds trustees, managers or administrators of personal pension schemes, academy proprietors, the Motor Insurers' Bureau (or its officers) and persons engaged in investment management or share trading activities to the persons required to provide information, or evidence, at the request of CMS (for the purpose of their functions under the Child Support Act 1991).

3. Matters of special interest to Parliament

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is to England and Wales and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland. However, as academies only exist in England, the new requirements for academy proprietors will only apply to England.

4.3 It is anticipated that corresponding provisions will be made for Northern Ireland by the Northern Ireland Department for Communities.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Current legislation prescribes that in certain circumstances, Child Maintenance Service (CMS) must send customer notifications by post.

¹ The Child Maintenance Service is part of the Department for Work and Pensions and acts for Secretary of State for Work and Pensions.

² Customers of CMS are “persons with care”, “non-resident parents” and “child in Scotland”

³ Third parties of CMS would include for example: employers, banks and intermediaries.

- 6.2 This instrument amends four regulations in order to authorise and facilitate the option of electronic communication between CMS, customers and third parties for the purposes of calculating, collecting and enforcing child support maintenance. The regulations are:
- (a) The Child Support (Collection and Enforcement) Regulations 1992⁴;
 - (b) The Child Support Information Regulations 2008 (the 2008 Regulations)⁵;
 - (c) The Child Support (Management of Payment and Arrears Regulations) 2009⁶;
 - (d) The Child Support Maintenance Calculation Regulations 2012⁷.
- 6.3 The amendments are to provisions made under Child Support Act 1991⁸ powers, three of which attract the affirmative resolution procedure: sections 32C, 32J and 41E.
- 6.4 However, the powers under the Child Support Act 1991 are not specifically targeted to enabling electronic communications. Therefore, we have elected to use the more specific power in section 8 of the Electronic Communications Act 2000 (ECA 2000)⁹ to make these amendments. Section 9(3) and (4) of the ECA 2000 allows a choice between negative or affirmative procedure when exercising section 8 powers.
- 6.5 In making the decision both to use the section 8 ECA 2000 power and the negative procedure we have considered our aims and are satisfied it is appropriate to use this power and the procedure is commensurate to the weight and effect of the amendments for the reasons set out below.
- 6.6 We are acting within the scope of section 8 of the ECA 2000, which allows the appropriate Minister to amend existing legislation to authorise, and facilitate, the option of electronic communication for a range of purposes. We are proposing to use the section 8 power in precisely the way it appears to be intended for use, to amend a range of enactments in a coordinated manner
- 6.7 We are using the section 8 power and negative procedure in order to facilitate coordination and consistency and not to evade procedural burdens.
- 6.8 There are safeguards to the proposed use of electronic communications, including that the instrument requires any electronic communication as well as its form and the address to be agreed with the recipient. Customers will be able to challenge decisions sent by electronic means in accordance with the statutory system of revisions, supersessions and appeals, and these appeal rights are not affected by the amendments. For example, there are appeal rights to the First Tier Tribunal against decisions concerning maintenance calculations, and to the Magistrates Court against Deduction from Earnings Orders and Deduction Orders.

7. Policy background

- 7.1 Child maintenance legislation is based on the general principle that all parents take financial responsibility for all of their children. The main objective of child maintenance legislation is to maximise the number of effective maintenance arrangements for children who live apart from one or both of their parents. The Child

⁴ <https://www.legislation.gov.uk/uksi/1992/1989/contents/made>

⁵ <https://www.legislation.gov.uk/uksi/2008/2551/contents/made>

⁶ <https://www.legislation.gov.uk/uksi/2009/3151/contents>

⁷ <https://www.legislation.gov.uk/uksi/2012/2677/contents/made>

⁸ <https://www.legislation.gov.uk/ukpga/1991/48/contents>

⁹ <https://www.legislation.gov.uk/ukpga/2000/7/contents>

Maintenance Service (CMS) continuously strives to modernise and improve services to both parents and thus legislative amendments are being made to support this aspiration.

Child Maintenance notifications to be sent, received and accessed digitally

- 7.2 CMS has a multi-channel strategy to meet the evolving needs and growing digital expectations of users. Customers have better internet access and have a desire to self-serve using our on-line services.
- 7.3 CMS has three online services; Apply for Child Maintenance, My Child Maintenance Case and the Employer Portal. These services enable parents to apply for and manage their child maintenance case online and offer management functions for employers who make payments through salary deduction.
- 7.4 These amendments will authorise and facilitate notifications to be sent, received, and accessed digitally.
- 7.5 To reduce the burden on employers, this instrument authorises and enables the option of electronic communications with employers and intermediaries.
- 7.6 For some customers, the online service will not be a suitable channel in which to receive communication on their case. Our overall policy aim is to ensure that the right channel is used at the right time for our customers. As such, CMS will retain flexibility to meet the needs of vulnerable customers and their preferred method of communication such as postal or by telephone. A postal service will be retained for customers who choose to have their communications by post or for whom an online service is not appropriate. A customer can amend their contact preference at any point during the lifetime of the case. This can be done via My Child Maintenance Case¹⁰ or by contacting CMS
- 7.7 Customers will register for My Child Maintenance Case through Gov.uk. They will be required to indicate their preferred form of electronic communications and prompted to provide their choice of email address and a mobile telephone number.
- 7.8 The terms and conditions describe fully how the service will meet the needs of our customers. They explain how customers will receive digital prompts to updates on their account and how to select their choice of how they receive communications. The terms and conditions also explain that statutory notices delivered electronically, will have the same legal validity and implications as a statutory notice delivered via postal methods.
- 7.9 The official computer system, which facilitates the running of the child maintenance case, records and stores all notifications both inbound and outbound.
- 7.10 The integrity of the customer portal is constantly monitored for external cyber-attacks and performance to understand outages and what causes them.
- 7.11 Operational safeguards will be in place for the use of the My Child Maintenance Case portal: customers who select the portal as their preferred method of communication will be alerted via SMS or email when a new notification has been uploaded to the portal. We will also continue to send letters with serious consequences via a postal method alongside using electronic means; for example, a letter detailing our intention to remove a paying parent's passport would be made available digitally and be posted.

¹⁰ My Child Maintenance Case Online offers a service for parents to manage their case online

We will build in a period of review to monitor the outcome of the change to digital communications as an additional safeguard.

The Child Support Information Regulations 2008

- 7.12 The amendments to the 2008 Regulations will expand the list of organisations required to comply with requests from Child Maintenance Service (CMS), for information or evidence.
- 7.13 CMS powers to request information are used when gathering information for the purpose of: tracing the paying parent, calculating maintenance, maintaining the case; or enforcing child maintenance arrears.
- 7.14 Where an organisation is not listed in the 2008 Regulations, relevant information is requested from them on a voluntary basis. If information is not provided in the first instance, it will be necessary for an inspector to visit the premises, using powers of entry, where the information is held.
- 7.15 The following organisations will be added to the 2008 Regulations and will have a duty to provide information on request: the trustees, managers and administrators of personal pension schemes, academy proprietors, the Motor Insurers' Bureau (or its officers) and persons engaged in investment management or share trading activities.
- 7.16 In respect of academy proprietors, (known as academy trusts and relevant to England only), statutory responsibilities are generally applied through their Master Funding Agreement¹¹. There are information sharing duties between academy proprietors and local authorities under their funding agreements. Although there is already a duty on local authorities to supply information to the CMS under the 2008 Regulations, requiring academies to provide this information directly to CMS will allow CMS to obtain information more easily. This will enable CMS to reduce the time it takes to obtain information relevant to making child maintenance calculations and recovering child maintenance debt. This will help parents receive payments sooner.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 There are no plans currently to consolidate the legislation that is being amended by this instrument.

10. Consultation outcome

- 10.1 We carried out a public consultation, Child Maintenance: modernising and improving our service, on GOV.UK¹² between 18th June to 6th August 2021. The consultation invited comments to specific questions on our proposals to introduce electronic communications and expand the 2008 Regulations. 122 responses were received: 8 from organisations and 111 from private individuals, of which 29 identified themselves as paying parents and 40 as receiving parents.

¹¹ <https://www.gov.uk/government/publications/academy-and-free-school-funding-agreements>

¹² <https://www.gov.uk/government/consultations/child-maintenance-modernising-and-improving-our-service>

- 10.2 Respondents to the consultation were generally in favour of improving communication delivery through the use of digital methods, as long as they were appropriate and did not disadvantage any customer.
- 10.3 Some concerns were voiced in relation to the possible impact on customers going through difficult times, with portal issues causing access problems and occasionally language barriers. In these instances, communication via post would be preferable.
- 10.4 This instrument will only give Child Maintenance Service (CMS) the option to communicate with customers electronically where they consent to this, so we will retain other methods of communication such as postal and telephone for customers who still wish to use them.
- 10.5 Extending the 2008 Regulations to cover additional organisations was generally welcomed by respondents. Respondents felt this would prove an effective power but advocated exercising caution in the use and storage of the data in relation to data protection obligations.
- 10.6 Data collection and retention processes will comply with the UK General Data Protection Regulation (Retained Regulation EU 2016/679), and the Data Protection Act 2018.¹³

11. Guidance

- 11.1 The Department will ensure that its customers and stakeholders are fully informed of the changes arising from this instrument at our regular stakeholder meetings and a targeted customer awareness campaign.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies are detailed below.
- 12.2 Adding trustees, managers or administrators of personal pension schemes, academy proprietors, the Motor Insurers' Bureau (or its officers) and persons that engage in investment management or share trading activities to the 2008 Regulations will place a legal requirement on these organisations to give us information when we request it.
- 12.3 The changes to regulations will require these businesses to provide the information instead of needing a CMS agent to use powers of entry. The annual estimate of costs on private pension providers, academies, Motor Insurers' Bureau and companies that offer, promote or sell investment management services or facilitate share trading who will now be required in law to give us information when we request it, is around £7,000 per year with multiple visits required. The new legal obligation may reduce costs to businesses by enabling information to be provided on initial request.
- 12.4 The impact on the public sector is as follows.
- 12.5 The current process of sending physical letters costs £311,000 per month for clerical and system generated letters combined, giving an annual estimated cost of £3.7 million. Up to 10% of CMS letters will continue to be sent clerically. We anticipate that eventually, between 70% and 80 % of Child Maintenance Service (CMS) customers will opt to have their communications digitally, resulting in savings for the tax payer.

¹³ <https://www.legislation.gov.uk/eur/2016/679/data.pdf>

12.6 An Impact Assessment has not been prepared for this instrument due to the low impact per business.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is as follows. It will be easier for trustees, managers or administrators of personal pension schemes, academy proprietors, the Motor Insurers Bureau (or its officers) and persons that engage in investment management or share trading activities to provide us with information in writing or via secure email, without the need for a visit from an inspector.

14. Monitoring & review

14.1 Baroness Stedman-Scott OBE, has made the following statement in accordance with section 31(2) of the Small Business, Enterprise and Employment Act 2015:

“The instrument does not include a statutory review clause. Given the minimal impact to business, it would be disproportionate in these circumstances to make a statutory provision for a review. The impact of these measures is expected to be less than £5million (net annualised) on business and improve communications and engagement with the CMS in carrying out its business.”

14.2 This instrument will be carefully monitored. We will regularly engage with key stakeholders and will review these provisions if we receive feedback from our stakeholders or customers surrounding their effectiveness or operation

15. Contact

15.1 The Child Maintenance Policy Team at the Department for Work and Pensions. Email: childmaintenance.policyqueries@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 The Deputy Director for Child Maintenance Policy, Duncan Gilchrist, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Stedman-Scott OBE, Parliamentary Under Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.