

**EXPLANATORY MEMORANDUM TO THE  
THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS) REGULATIONS  
2004**

**2004 No. 2415**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Description**

This is a package of miscellaneous amendments to various legislation relating to child support maintenance payments. Some amendments apply to the new child support scheme as introduced for cases with an effective date (as determined under specific provisions) on or after 3rd March 2003 and certain linked cases, and others amend regulations which relate to the old child support scheme. The detailed description of the policy background is set out at Annex A.

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

a. This is a set of affirmative Regulations made under powers in the Child Support Act 1991 (“the 1991 Act”) both prior to and following their amendment by the Child Support, Pensions and Social Security Act 2000 (“the 2000 Act”), and 29 of the 2000 Act.

b. Some of the amendments to the 1991 Act by the 2000 Act are fully in force, whilst others have so far been brought into force for the purposes of specified cases only. The relevant commencements are in article 2(1) and (2) of the Child Support, Pensions and Social Security Act 2000 (Commencement No.3) Order 2000 (S.I. 2000/2994 (C.94)), article 2 of the Child Support, Pensions and Social Security Act 2000 (Commencement No. 5) Order 2000 (S.I. 2000/3354 (C.112)) and the Child Support, Pensions and Social Security Act 2000 (Commencement No. 12) Order 2003 (S.I. 2003/192 (C.11)), as amended by the Child Support, Pensions and Social Security Act 2000 (Commencement No.13) Order 2003 (S.I. 2003/346 (C.21)).

c. In this Memorandum, 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 the amendments to the 1991 Act made by the 2000 Act is referred to as “the new scheme”.

### ***Commencement***

d. The new scheme has been brought into force in relation to applications for child support maintenance which have an “effective date” (as determined under specific provisions) on or after 3<sup>rd</sup> March 2003. When the new scheme is working well in relation to those cases, it will be brought into force on a later date in relation to maintenance assessments made under the 1991 Act before its amendment by the 2000 Act. The commencement arrangements for the remaining maintenance assessment cases in the old scheme will be provided for in future commencement orders. In the meantime, the old scheme remains in force in respect of such cases. Some such old scheme assessments will move into the new scheme before that date, where a case has a link to another case which falls into the new scheme (article 3(1)(b) and (c) of the Child Support, Pensions and Social Security Act 2000 (Commencement No.12) Order 2003 refers).

e. These Regulations amend various sets of Regulations, some of which relate to the old scheme and others which relate to the new scheme. The Child Support (Transitional Provisions) Regulations 2000 (S.I. 2000/3186) (“the Transitional Regulations”) relate to the conversion of cases from the old scheme to the new scheme.

f. Regulation 1(2)(a) provides that these Regulations come into force on the day after the date that they are made, except where the commencement provisions of regulation 1(2)(b) apply. Regulation 1(2)(b) applies in relation to regulations 2 and 3. Regulation 2 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) (“the Decisions and Appeals Regulations”), which are already in force. The provisions made in regulation 2 are amendments which relate to amendments made in the Child Support (Decisions and Appeals) (Amendment) Regulations 2000 (S.I. 2000/3185) to the Decisions and Appeals Regulations. The amendments made by those 2000 Regulations and by regulation 2 have come into force in relation to those cases described in paragraph (d) above and will otherwise take effect when those Regulations come into force for remaining cases, when relevant sections of the 2000 Act are brought into force by future commencement orders. Regulation 2 is therefore expressed to come into force when the section relevant to its subject matter is brought into force in relation to the type of case to which the particular case belongs (regulation 1(2)(b)). Regulation 3 amends the Child Support (Information, Evidence and Disclosure) Regulations 1992 (S.I. 1992/1812) (“the IED Regulations”), and the commencement described in relation to regulation 2 also applies to regulation 3.

g. Regulations 4 and 5 amend regulations which are already in force. All of these amendments come into force on the day after these Regulations are made. Regulations 6, 7, 8 and 9 amend Regulations which are only in force in relation to the cases described in paragraph (d) above. For the remaining cases these Regulations will take effect when those Regulations being amended come into force, which is when relevant sections of the 2000 Act are brought into force for remaining cases.

### ***Powers***

h. At Annex B to this Memorandum is a table indicating the powers exercised in making these Regulations. The powers which make this instrument subject to the affirmative resolution procedure are marked "\*" in the table. The final column of the table indicates whether powers in the 1991 Act are those prior to its amendment by the 2000 Act (which relate to the old scheme) or following its amendment by the 2000 Act (which relate to the new scheme).

### ***Use of affirmative procedure***

i. The use of the affirmative procedure is required by section 52(2) of the 1991 Act prior to its amendment by the 2000 Act and by section 52(2) of the 1991 Act as amended by section 25 of the 2000 Act. Regulations 5 and 9 make amendments which are subject to the affirmative resolution procedure. The remaining regulations in these Regulations are made using powers which, were they being used separately, would not attract the affirmative procedure. Section 52(2) of the 1991 Act allows provisions made under these powers to be used in an affirmative instrument.

### **Regulations of particular interest**

j. Regulation 7 amends the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (S.I. 2001/155) ("the MCSC Regulations"), which relate to the new scheme. The Schedule to the MCSC Regulations sets out the meaning of "net weekly income" by reference to the aggregate of the net weekly income of the non-resident parent provided for by that Schedule. Regulation 7(4) inserts a new paragraph into the Schedule of the MCSC Regulations to provide that payments made by way of benefits, pensions and allowances prescribed under paragraph 4(1) of part of Schedule 1 to the Child Support Act 1991 as amended by the 2000 Act, are net weekly income for the purposes of establishing whether the non-resident parent is a person to whom paragraph 5(b) of that Schedule applies.

k. Regulation 8 amends the Transitional Regulations. Regulation 3 of the Transitional Regulations provides for the supersession of a maintenance assessment or interim maintenance assessment for the purposes of making a conversion decision. Regulation 3(2) of those regulations provides that when a conversion decision is made, the information used to make the decision shall be that which is held by the Secretary of State on the calculation date. Regulation 8(3) amends regulation 3(2) of the Transitional Regulations to provide that the information referred to in that paragraph is not only that which the Secretary of State held on the calculation date but also, where regulation 5(b) of the Transitional Regulations applies and he is unable to make the decision required to be made under that regulation on the basis of the information referred to in regulation 3(2)(a) of those Regulations, the information used or considered to make the maintenance assessment he is superseding.

l. Regulation 8(7) inserts new regulations 8A and 8B into the Transitional Regulations. Regulation 8A(1) provides for an adjustment made in respect of a maintenance assessment, to apply to the new or the transitional amount (as the case may be) of child support maintenance payable under the conversion decision, in a case where

the overpayment of child support maintenance in respect of which the adjustment was made, remains on the case conversion date. Inserted regulation 8A(2) provides that where the conversion decision applies to more than one parent with care that adjustment will apply to the amount apportioned to the parent with care in respect of whom the adjustment was made. The new regulation 8B provides that where the Secretary of State has attributed payments in accordance with regulation 9 of the AIAMA Regulations in respect of payments made under a maintenance assessment, that attribution can be applied to a maintenance calculation.

m. Regulation 8(9) amends regulation 27 of the Transitional Regulations. The Transitional Regulations make provision for the amount to be payable when a “subsequent decision” is made during a period when a “transitional amount” is payable. Regulation 27(10) of the Transitional Regulations makes provision for the amount payable in cases where a subsequent decision is made which is a revision (or a supersession with the same effective date as the previous subsequent decision) of a previous subsequent decision. The amendment made to regulations 27(9) and (10) clarify that paragraphs (2) to (5) apply as if the subsequent decision being replaced had not been made and adds a new paragraph (11) to provide that paragraph (9) of regulation 27 shall not apply where on the application of paragraph (10) the decision in place before “decision A” was the decision which took effect from the case conversion date.

#### **4. Legislative Background**

In this instrument each amendment relates to assessment or calculation of child maintenance payments under The Child Support Act 1991.

The child support scheme was created on 5 April 1993 by the Child Support Act 1991 (“the 1991 Act”) “the old scheme”. The Child Support, Pensions and Social Security Act 2000 (“the 2000 Act”), which received Royal Assent in July 2000, made substantial amendments to the 1991 Act, and set out the principles for a new child support scheme (“the new scheme”).

The new scheme was introduced for new applications with an effective date (determined in accordance with specific provisions) on or after 3 March 2003. Old scheme cases will transfer to the new scheme when the new arrangements are seen to be working well. Some cases are converted early (and will continue to do so) where they are linked to a new scheme case.

Several sets of regulations were made in December 2000 and January 2001 to provide the detail of the new scheme. Subsequent miscellaneous amendments were made in April 2002, February 2003 and November 2003.

#### **5. Extent**

The Regulations apply to Great Britain.

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

It is considered that the provisions of these draft Regulations are compatible with rights under the European Convention on Human Rights.

## **7. Policy Background**

The amendments include;

- clarification of the Secretary of State's authority to disclose relevant information to the parties to an appeal;
- a clarification of the policy intent for tolerance for some supersession applications;
- provision for Statutory Adoption and Statutory Paternity Pay and for Educational Maintenance Allowance to be disregarded in determining child support liabilities, and
- various amendments to the Transitional Provisions, which allows for the conversion of cases from the old to the new scheme;

Additionally, this instrument allows for new provisions for maintenance calculation and maintenance assessment purposes, and clarifies the policy intent in particular areas.

## **8. Regulatory Impact**

A Regulatory Impact Assessment was carried out on the Child Support, Pensions and Social Security Act 2000. It concluded that the child support measures were unlikely to increase business costs. This set of amending Regulations have no financial effects.

## **9. Contact**

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## **Annex A**

### **POLICY OBJECTIVE**

The draft Child Support (Miscellaneous Amendments) Regulations 2004 make amendments to a number of the sets of regulations which cover child support. The provisions amend regulations governing both the new and old schemes, as well as amending the transitional provisions which provide for the conversion of cases from the old to the new scheme.

#### ***Regulation 2 – Amendment of the Decisions and Appeals Regulations***

A party to a maintenance calculation may apply to the Child Support Agency to have liability re-calculated if there has been a change in circumstance. If the reported change relates only to the non-resident parent's net income, the Agency will re-calculate liability only where the change in net income exceeds 5 per cent of the figure used in the original calculation. This is known as the "tolerance rule" and was carried forward, in an amended form, from the old to the new child support scheme. The tolerance rule prevents excessive small changes to the Maintenance Assessment or Maintenance Calculation and ensures a greater degree of certainty for both Persons with Care and Non Resident Parents.

Regulation 6B of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999/991) ("the D&A Regulations") makes provision for the tolerance rule in the new child support scheme. Regulation 2 of these Regulations makes two clarifying changes to Regulation 6B. Regulation 2(2)(a) substitutes a new paragraph (3) in D&A Regulation 6B. The new paragraph makes clear the policy intent in cases where a change in circumstances is notified on more than one ground, for example an income change and a change to the number of children (a non-income change). In such cases the Secretary of State would consider first the non-income change to see if that would lead to a supersession of the maintenance calculation. If so, a superseding decision would be made which takes into account the non-income change and the income change, irrespective of whether or not the income change would, on its own, breach the tolerance rule. If the non-income change would not, of itself, lead to a re-calculation of liability, the Secretary of State would apply the tolerance rule to the income change in the normal way.

Regulation 2(2)(b) of these Regulations adds a new paragraph (5) to D & A Regulation 6B to make clear the policy intent in cases where there has been an earlier application for supersession, to which paragraph (1) of regulation 6B applied (in other words, a change in net income which does not breach the tolerance rule), and there is a later application for supersession on a ground other than that relating to the net income of the non-resident parent. In these cases a superseding decision may be made on the basis that the earlier application was made at the same time as the later application.

### ***Regulation 3 – Amendment of the Information Evidence and Disclosure Regulations***

This is a general clarifying amendment. Regulation 3 makes an amendment to regulation 8(1) of the Child Support (Information, Evidence and Disclosure) Regulations 1992 which clarifies that the Secretary of State may disclose relevant information from one party to the appeal to all the other parties, as well as to the appeal tribunal. This regulation applies to the old and the new scheme.

### ***Regulation 4 – Amendment of the Maintenance Assessment Procedure Regulations***

The policy intention has always been that decision makers should be able to revise and lapse an appeal against a child support decision at any time between receipt and determination at a tribunal. If a decision is revised in the appellant's favour prior to a determination by an appeal tribunal, the appeal will lapse<sup>1</sup> and so does not go on to the tribunal. Instead, the appellant is given a new decision with new appeals rights. Regulation 3(4A) was added to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 991), to support this policy in social security benefits. A mirroring provision was added for new scheme child support cases - D&A reg 3A(1)(cc). However, a corresponding amendment was not made for old scheme child support cases. This amendment rectifies that situation.

### ***Regulation 5 – Amendment of the Maintenance Assessments and Special Cases Regulations***

Regulation 5(2) reflects the introduction of statutory adoption and statutory paternity pay in April 2003. The regulation adds these to the list of "earnings" set out in the Maintenance Assessments and Special Cases (MASC) regulations.

Regulation 5(3) reflects the national rollout of an Educational Maintenance Allowance (EMA) by the Department for Education and Skills. This has been piloted since September 1999 and the MASC regulations allow these payments to be disregarded as income. The EMA scheme is to be rolled out nationally from September 2004 under different legislation to the pilots. Regulation 5(3) amends the MASC regulations to reflect this change and ensure EMA payments continue to be disregarded for Child Support purposes.

Schedule 3B to the MASC Regulations, allows for travel to work costs to be taken into account in a maintenance assessment. The amount allowed is 10p per mile for mileage in excess of 150 miles per week. In order to ensure compatibility with European Union directives regulation 5(4)(a) and (b) will convert this provision to metric measurements, and will provide for a comparable allowance of 6p per kilometre for distance travelled in excess of 240 kilometres per week (being the most workable option with the lowest costs implications). In forms and leaflets used by the Child Support Agency the equivalent imperial measurements will be included alongside the metric ones.

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<sup>1</sup> See section 16(6) of the Child Support Act 1991.

Regulation 5(4)(c) makes a minor clarifying amendment to MASC schedule 3B paragraph 8 which deals with the calculation of an allowance for travel to work costs in cases where a person has more than one place of work with an employer.

### ***Regulation 6 – Amendment to the Maintenance Calculation Procedure Regulations***

In the child support scheme, the date from which a non-resident parent's liability first begins is known as the initial effective date. Cases where there is a non-resident parent and two or more parents with care in relation to that non-resident parent are known as multiple parent with care cases. Legislation already provides for an initial effective date for these cases. However, the provisions assume that the first calculation continues to be in force at the point when a calculation in respect of the second parent with care is made. This is not always the case. There will be times when the first maintenance calculation has ceased to have effect, for example, where the qualifying child in the first calculation reaches age 19, after the second application is made. The existing effective date provisions would be inadequate in such cases. This amendment seeks to remedy that situation. It provides that the initial effective date in such cases would be either:

- the day after that on which the first maintenance calculation ceased if the non-resident parent was contacted by the Agency in relation to the second application before the maintenance calculation ceased; or
- if the non-resident parent has not been contacted by the time that the first maintenance calculation has ceased, the date he or she is contacted in respect of the second parent with care's application.

### ***Regulation 7 – Amendment of the Maintenance Calculations and Special Cases Regulations***

Regulation 7(3) adds statutory adoption and statutory paternity pay to the list of "earnings" set out in the Maintenance Calculations and Special Cases (MCSC) Regulations. It therefore mirrors the amendment in Regulation 5(2)(a).

Where a specified benefit is paid to or on behalf of a non-resident parent, the policy intention is that their child support liability should be at the flat-rate, usually £5 a week. But if the non-resident parent's total net weekly income, including benefit income, is less than £5 a week, or if they are in a specified category (such as a student), their liability should be nil. (These measures are contained in paragraphs 4 and 5 of part 1 Schedule 1 to the Child Support Act 1991 and MCSC Regulations 4 and 5). The amendment in Regulation 7(4) ensures that the policy intention is achieved by including specified benefits in the list set out in the Schedule to the MCSC Regulations. A further effect of Regulation 7(4) is to make MCSC Regulation 5(i) redundant – therefore Regulation 7(2) provides for it to be omitted.

### ***Regulation 8 – Amendment of the Transitional Provisions Regulations***



The Child Support (Transitional Provisions) Regulations 2000 (“the Transitional Regulations”) set out the process for converting an old scheme maintenance assessment to a new scheme maintenance calculation. They stipulate that the conversion decision should be based on the information held by the Secretary of State at the calculation date. If the Secretary of State is unable to make a final decision on an outstanding departure direction, revision or supersession, regulation 5(b) of the Transitional Regulations requires the Secretary of State to make a conversion decision in accordance with regulation 3 which under paragraph (2) of that regulation would be based on the information held by him. Where for example, there is only partial information on a departure direction, revision or supersession but this is insufficient to make a conversion decision, regulation 3 [as currently drafted] has been amended because paragraph 2 requires that the partial information must be used. An example may be where the Secretary of State is aware that a non-resident parent is no longer claiming income-based Jobseeker's Allowance but has no information about that parent's income. These cases cannot be converted as the Secretary of State is obliged to use information available which is incomplete. Regulation 8 amends regulations 3 and 16 of the Transitional Regulations to enable these cases to be converted using the information used or considered to make the maintenance assessment which was in force immediately before the application for the departure direction, revision or supersession was made or before the Secretary of State identified the need to make a departure direction, revision or supersession on his own initiative.

If there is an overpayment of a maintenance calculation or maintenance assessment for any reason including the retrospective effect of a new or fresh calculation/assessment, Regulation 10 of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) (AIAMA) Regulations (1992) allows the Secretary of State to adjust the amount of future payments. However, current provisions do not allow for an adjustment between the old and new schemes i.e. a maintenance calculation cannot be adjusted to reflect an overpayment of a maintenance assessment. Regulation 8 adds new regulation 4A to the Transitional Regulations. This allows the Secretary of State to adjust a maintenance calculation to reflect an adjustment of the amounts payable under a maintenance assessment on a revision or supersession. New Regulation 8A makes provision for adjustments to be moved from the old to the new scheme and to be apportioned accordingly.

Regulation 9 of the Child Support AIAMA Regulations (1992) allows the Secretary of State to attribute payments made under a maintenance assessment to maintenance assessment arrears and payments made under a maintenance calculation to maintenance calculation arrears as he thinks fit. Regulation 8(7) adds a new regulation 8B to the Transitional Regulations which allows the Secretary of State to attribute payments made under a maintenance calculation to arrears accrued under an earlier maintenance assessment in a case where he has made attributions in respect of that assessment, should he see fit to do so.

Regulation 27 of the transitional provisions sets out the rules for determining the amount of child support payable where there is a change of circumstance which results in a

"subsequent decision' during the period that the non-resident parent is paying a phased liability. The rules are necessarily complicated and a subsequent decision may result in an increase or decrease of the phased liability or bring an end to phasing altogether. Regulation 27(9) sets out how the rules are to be applied where there is more than one 'subsequent decision' during the phasing period. Regulation 27(10) applies where a subsequent decision is made which is a revision of an 'earlier subsequent decision' or a supersession which has the same effective date as an 'earlier subsequent decision'. The amendments made to regulations 27(9) and (10) are intended to clarify that where regulation 27(10) applies, the amount payable by the non-resident parent is to be calculated as if the 'earlier subsequent decision' had not been made'. The new paragraph (11) of that regulation ensures that regulation 27(9) does not apply where the resulting previous decision to be considered after the application of regulation 27(10) is the decision which took effect from the case conversion date rather than a subsequent decision.

### ***Regulation 9 – Amendment to the Variations Regulations***

Currently the term “partner” in the Variations Regulations is only defined for the purposes of regulation 7(5)(b). Regulation 9(2) and (3) removes that definition, and inserts a generic definition for all occurrences of that term within the Variations Regulations.

Regulation 9(4) amends Regulation 27(5) of the Variations Regulations which provides that deductions from liability for child support maintenance where there is shared care and a variation has been allowed, or where a variation has been allowed in respect of property or capital transfers, cannot reduce that liability below the flat rate of maintenance. This amendment clarifies that the rate referred to is that set by paragraph 4(1) of schedule 1 to the Act.

### **POWERS**

The powers exercised to make these Regulations are set out in the table at Annex A. These Regulations are subject to approval by affirmative resolution.

**ANNEX B - Table of powers exercised in the making of the Child Support  
(Miscellaneous Amendments) Regulations 2004**

<b>Regulation</b>	<b>Regulations amended</b>	<b>Power <sup>23</sup></b>	<b>Power: pre- amendment or post-amendment <sup>4</sup></b>
2	Decisions and Appeals Regulations 1999 (SI 1999/991)	Section 17(3) of the Child Support Act 1991	Post-amendment
3	Information, Evidence and Disclosure Regulations 1992 (SI 1992/1812)	Sections 14(3), 51(1) and 54 of the Child Support Act 1991.	Pre and post-amendment
4	Maintenance Assessment Procedure Regulations 1992 (SI 1992/1813)	Section 16(1)(a) of the Child Support Act 1991	Pre-amendment
5	Maintenance Assessments and Special Cases Regulations 1992 (SI 1992/1815)	Paragraphs 5(1) and (2) and 6(2), (4), (6) and 9(d) of schedule 1 to the Child Support Act 1991*	Pre-amendment
6	Maintenance Calculation Procedure Regulations 2000 (SI 2001/157)	Paragraph 11 of Schedule 1 to the Child Support Act 1991	Post-amendment
7	Maintenance Calculations and Special Cases Regulations 2000 (SI 2001/155)	Paragraph 10(1) of Schedule 1 to the Child Support Act 1991	Post-amendment
8	Transitional Provisions Regulations 2000 (SI 2000/3186)	Section 16 and 17 of the Child Support Act 1991 Section 29 of the Child Support, Pensions and Social Security Act 2000	Post-amendment  N/A
9	Variations Regulations 2000 (SI 2000/156)	Section 28B(2)(c). Paragraphs 1 and 2(a) of Schedule 4A and Paragraphs 5(1) and 6 of schedule 4B to 1991 Act.*	Post-amendment

<sup>2</sup> The draft Regulations also cite sections sections 52 (Regulations and Orders) and 54 (Interpretation) of the Child Support Act 1991.

<sup>3</sup> Powers marked \* are subject to the affirmative resolution procedure

<sup>4</sup> Some provisions are to be made using powers in the Child Support Act 1991 before amendment by the Child Support, Pensions and Social Security Act 2000, and some using powers in the 1991 Act after amendment by the 2000 Act.