

2009 No. 2909

FAMILY LAW

CHILD SUPPORT

**The Child Support (Miscellaneous Amendments) (No. 2)
Regulations 2009**

<i>Made</i>	- - - -	<i>2nd November 2009</i>
<i>Laid before Parliament</i>		<i>9th November 2009</i>
<i>Coming into force</i>		
<i>for the purpose of regulations 1, 3(1) and (4), 4 and 5</i>		<i>10th November 2009</i>
<i>for the purpose of regulations 2 and 3(2) and (3)</i>		<i>4th December 2009</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 17(3) and (5), 51(1) and (2)(b), 52(4), 54 and 55(1)(c)(ii), (3), (6) and (7) of the Child Support Act 1991(a), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Miscellaneous Amendments) (No. 2) Regulations 2009.

(2) Subject to paragraph (3), these Regulations shall come into force on the day after the day on which they were laid before Parliament.

(3) Regulations 2 and 3(2) and (3) shall come into force on 4th December 2009.

(4) In these Regulations—

“the Act” means the Child Support Act 1991;

“the Maintenance Arrangements and Jurisdiction Regulations” means the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992(b);

“the Maintenance Assessment Procedure Regulations” means the Child Support (Maintenance Assessment Procedure) Regulations 1992(c);

“the Maintenance Calculation Procedure Regulations” means the Child Support (Maintenance Calculation Procedure) Regulations 2000(d).

(a) 1991 c. 48. Section 17(3) and (5) was substituted by section 41 of the Social Security Act 1998 (c. 14) (“the 1998 Act”). Section 51(2)(b) was amended by section 86(1) of, and paragraph 46(b) of Schedule 7 to, the 1998 Act. Section 54 is cited for the meaning given to the word “prescribed”.

(b) S.I. 1992/2645.

(c) S.I. 1992/1813, which is revoked with savings, by S.I. 2001/157.

(d) S.I. 2001/157.

Amendment of the Maintenance Arrangements and Jurisdiction Regulations

2. Omit regulation 7 of the Maintenance Arrangements and Jurisdiction Regulations (cancellation of a maintenance assessment on grounds of lack of jurisdiction)(a).

Amendment of the Maintenance Assessment Procedure Regulations

3.—(1) The Maintenance Assessment Procedure Regulations are amended as follows.

(2) After paragraph (3) of regulation 20 (supersession of decisions)(b), insert—

“(3A) For the purposes of paragraph 2 of Schedule 4C to the Act(c), the circumstances in which a decision may be superseded under paragraph (2) or (3) include where the material change of circumstances causes the maintenance assessment to cease by virtue of paragraph 16(1) of Schedule 1 to the Act or where the Commission no longer has jurisdiction by virtue of section 44 of the Act (jurisdiction)(d).”.

(3) After paragraph (21) of regulation 23 (date from which a decision is superseded)(e), insert—

“(21A) Where a superseding decision is made in a case to which regulation 20(3A) applies and the material circumstance is—

- (a) a qualifying child dies or ceases to be a qualifying child;
- (b) the person with care ceases to be a person with care in relation to a qualifying child; or
- (c) the person with care, the absent parent or a qualifying child ceases to be habitually resident in the United Kingdom,

the decision takes effect from the first day of the maintenance period in which the change occurred.”.

(4) In Schedule 1 (meaning of “child” for the purposes of the Act)(f)—

(a) for paragraph 1 (persons of 16 or 17 years of age who are not in full-time non-advanced education), substitute—

“1. The conditions which must be satisfied for a person to be a child within section 55(1)(c) of the Act are that the person—

- (a) is registered for training with a qualifying body; and
- (b) is a person in respect of whom child benefit is payable.

Period for which a person is to be treated as continuing to fall within section 55(1) of the Act

1A. Where a person (“P”) has ceased to fall within section 55(1) of the Act, P is to be treated as continuing to fall within that subsection for any period during which P is a person in respect of whom child benefit is payable.”;

-
- (a) Regulation 7 was amended by S.I. 1993/913 and 1999/1510 and was revoked with savings by S.I. 2001/161.
 - (b) Regulation 20 was substituted by S.I. 1999/1047 and revoked with savings by S.I. 2001/157 (as amended by S.I. 2003/328, 2003/347 and 2004/2415) and S.I. 2000/3186 (as amended by S.I. 2004/2415). Relevant amending instruments are S.I. 2000/1596 and 2005/785.
 - (c) Schedule 4C was inserted by section 86(1) of, and paragraph 54 of Schedule 7 to, the 1998 Act.
 - (d) Some of the words in section 44 were substituted by section 86(1) of, and paragraph 41 of Schedule 7 to, the 1998 Act and section 13(4) of, and paragraphs (1) and (46) of Schedule 3 to, the Child Maintenance and Other Payments Act 2008 (c. 6). Some words in section 44(1) and subsection (2A) were inserted by section 22(1) to (3) of the Child Support, Pensions and Social Security Act 2000 (c. 19) and some of the words in section 44(2A)(c) were substituted by S.I. 2009/1941. There are other substitutions none of which are relevant to these Regulations.
 - (e) Regulation 23 was substituted by S.I. 1999/1047 and revoked with savings by S.I. 2001/157 (as amended by S.I. 2003/328, 2003/347 and 2004/2415) and S.I. 2000/3186 (as amended by S.I. 2004/2415). There are other amendments none of which are relevant to these Regulations.
 - (f) Schedule 1 was revoked with savings by S.I. 2001/157 (as amended by S.I. 2003/328, 2003/347 and 2004/2415) and S.I. 2000/3186 (as amended by S.I. 2004/2415). Relevant amending instruments are S.I. 1993/913, 1999/977, 1999/1047 and 2009/396.

- (b) for paragraph 2 (meaning of “advanced education” for the purposes of section 55 of the Act), substitute—

“2. For the purposes of section 55 of the Act “advanced education” means education for the purposes of—

- (a) a course in preparation for a degree, a diploma of higher education, a higher national diploma or a teaching qualification; or
 - (b) any other course which is of a standard above ordinary national diploma, a national diploma or national certificate of Edexcel, a general certificate of education (advanced level) or Scottish national qualifications at higher or advanced higher level.”;
- (c) for sub-paragraph (2) of paragraph 4 (interruption of full-time education), substitute—
- “(2) The provisions of sub-paragraph (1) do not apply to any period of interruption of a person’s full-time education which is followed immediately by a period during which child benefit ceases to be payable in respect of that person.”;
- (d) omit paragraph 5 (circumstances in which a person who has ceased to receive full-time education is to be treated as continuing to fall within section 55(1) of the Act);
- (e) for paragraph 6 (interpretation), substitute—

“6. In this Schedule “qualifying body” has the same meaning as in regulation 5(4) of the Child Benefit (General) Regulations 2006 (extension period: 16 and 17 year olds)(a).”.

Amendment of the Maintenance Calculation Procedure Regulations

4.—(1) Schedule 1 to the Maintenance Calculation Procedure Regulations (meaning of “child” for the purposes of the Act)(b) is amended as follows.

(2) For paragraph 1 (persons of 16 or 17 years of age who are not in full-time non-advanced education), substitute—

“1. The conditions which must be satisfied for a person to be a child within section 55(1)(c) of the Act are that the person—

- (a) is registered for training with a qualifying body; and
- (b) is a person in respect of whom child benefit is payable.

Period for which a person is to be treated as continuing to fall within section 55(1) of the Act

1A. Where a person (“P”) has ceased to fall within section 55(1) of the Act, P is to be treated as continuing to fall within that subsection for any period during which P is a person in respect of whom child benefit is payable.”.

(3) For paragraph 2 (meaning of “advanced education” for the purposes of section 55 of the Act), substitute—

“2. For the purposes of section 55 of the Act “advanced education” means education for the purposes of—

- (a) a course in preparation for a degree, a diploma of higher education, a higher national diploma or a teaching qualification; or
- (b) any other course which is of a standard above ordinary national diploma, a national diploma or national certificate of Edexcel, a general certificate of education (advanced level) or Scottish national qualifications at higher or advanced higher level.”.

(a) S.I. 2006/223.

(b) Schedule 1 was amended by S.I. 2008/1554.

(4) For sub-paragraph (2) of paragraph 4 (interruption of full-time education), substitute—

“(2) The provisions of sub-paragraph (1) do not apply to any period of interruption of a person’s full-time education which is followed immediately by a period during which child benefit ceases to be payable in respect of that person.”.

(5) Omit paragraph 5 (circumstances in which a person who has ceased to receive full-time education is to be treated as continuing to fall within section 55(1) of the Act).

(6) For paragraph 6 (interpretation), substitute—

“6. In this Schedule “qualifying body” has the same meaning as in regulation 5(4) of the Child Benefit (General) Regulations 2006 (extension period: 16 and 17 year olds)(a).”.

Transitional provisions – qualifying child

5.—(1) Where the circumstances in paragraph (2) apply the effective date of—

- (a) a maintenance assessment or maintenance calculation made following an application under section 4 or 7 of the Act; or
- (b) a supersession decision made under section 17 of the Act where the relevant change of circumstances is that a person has become a qualifying child by virtue of these Regulations,

is the day on which this regulation comes into force.

(2) The circumstances are—

- (a) before these Regulations came into force there was a maintenance assessment or maintenance calculation in force in relation to the qualifying child to whom the application or supersession relates;
- (b) a person (“C”) who was a qualifying child to whom that maintenance assessment or maintenance calculation relates, ceased to be a qualifying child on or after 10th April 2006 by virtue of no longer falling within the provisions of—
 - (i) Schedule 1 to the Maintenance Assessment Procedure Regulations (meaning of “child” for the purposes of the Act); or, as the case may be,
 - (ii) Schedule 1 to the Maintenance Calculation Procedure Regulations (meaning of “child” for the purposes of the Act); and
- (c) child benefit was payable in respect of C on the day C ceased to be a qualifying child and is payable in respect of C on the day on which this regulation comes into force.

(3) Where an application under section 4 or 7 of the Act is made in a case to which the circumstances in paragraph (2) apply in respect of a maintenance assessment, the definition of “the relevant period” in regulation 28(3) of the Child Support (Transitional Provisions) Regulations 2000 (linking provisions)(b), is modified as follows—

“(3) For the purposes of paragraph (1) “the relevant period” means the period starting on the day immediately before the day the maintenance assessment ceased to have effect under paragraph 16(1) of Schedule 1 to the Act, to the day that the application referred to in paragraph (1) is made, in a case where the circumstances of regulation 5(2) of the Child Support (Miscellaneous Amendments) (No. 2) Regulations 2009 (transitional provisions – qualifying child)(c) apply.”.

Signed by the authority of the Secretary of State for Work and Pensions.

Helen Goodman
Parliamentary Under-Secretary of State,
Department for Work and Pensions

2nd November 2009

(a) S.I. 2006/223.

(b) S.I. 2000/3186, relevant amending instruments are S.I. 2002/1204 and 2008/2543.

(c) S.I. 2009/2909.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992, the Child Support (Maintenance Assessment Procedure) Regulations 1992 (“the 1992 Regulations”) and the Child Support (Maintenance Calculation Procedure) Regulations 2000 (“the 2000 Regulations”). They also make transitional provisions.

Regulation 2 amends the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992. Regulation 7 of those Regulations is omitted in consequence of the changes made by regulations 3(2) and (3).

Regulation 3 amends the 1992 Regulations:

- paragraph (2) inserts a new paragraph (3A) into regulation 20 of the 1992 Regulations to provide a ground for superseding a decision where a maintenance assessment has ceased by virtue of paragraph 16(1) of Schedule 1 to the Child Support Act 1991 (c. 48) (“the Act”) or where the Commission has no jurisdiction by virtue of section 44 of the Act;
- paragraph (3) inserts a new paragraph (21A) into regulation 23 of the 1992 Regulations to provide that the day on which a decision made on the ground in new regulation 20(3A) of the 1992 Regulations takes effect, is the first day of the maintenance period in which the specified material change of circumstances occurred;
- paragraph (4)(a) substitutes paragraph 1 of Schedule 1 to the 1992 Regulations. The new paragraph 1 of that Schedule provides the prescribed conditions for the purposes of section 55(1)(c) of the Act and inserts a new paragraph 1A into that Schedule to provide that, where a person ceases to fall within section 55(1) of the Act, a person is to be treated as continuing to fall within that subsection for any period during which that person is a person in respect of whom child benefit is payable, this is subject to the absolute bar in section 55(8) of the Act;
- paragraph (4)(b) substitutes paragraph 2 of that Schedule prescribing the meaning of “advanced education” for the purposes of section 55 of the Act, the substituted paragraph mirrors the definition in regulation 1(3) of the Child Benefit (General) Regulations 2006;
- paragraph 4(c) substitutes paragraph 4(2) of that Schedule to provide that paragraph 4(1) of that Schedule (circumstances in which interruptions in full-time education are not taken into account) does not apply where a period of interruption to a person’s full-time education is followed immediately by a period during which child benefit ceases to be payable in respect of that person;
- paragraph 4(d) omits paragraph 5 of that Schedule. The provisions are otiose as a result of the amendments made by these Regulations inserting paragraph 1A into that Schedule as equivalent provision is made in respect of child benefit by regulation 7 of the Child Benefit (General) Regulations 2006;
- paragraph 4(e) substitutes the interpretation provision at paragraph 6 of that Schedule to reflect the amendments made by these Regulations.

Regulation 4 makes amendments to Schedule 1 to the 2000 Regulations. These amendments have the same effect as those made by regulation 3(4) amending Schedule 1 to the 1992 Regulations.

Regulation 5 makes transitional provision. Paragraphs (1) and (2) provide that the day on which certain maintenance assessments or maintenance calculations made on an application under section 4 or 7 of the Act or on a supersession decision made under section 17 of that Act are to take effect is the day on which regulation 5 comes into force, in specified circumstances. Paragraph (3) modifies regulation 28(3) of the Child Support (Transitional Provisions) Regulations 2000 (linking provisions) where an application made under section 4 or 7 of the Act in a case to which the circumstances in regulation 5(2) of these Regulations apply, to change the meaning of “the relevant period” for the purposes of regulation 28(1) of those Regulations.

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

© Crown copyright 2009

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2009 No. 2909

FAMILY LAW

CHILD SUPPORT

The Child Support (Miscellaneous Amendments) (No. 2)
Regulations 2009

£5.50