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STATUTORY INSTRUMENTS

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**2009 No. 3151**

**FAMILY LAW**

**CHILD SUPPORT**

**The Child Support (Management of  
Payments and Arrears) Regulations 2009**

*Made* - - - - *30th November 2009*  
*Laid before Parliament* *4th December 2009*  
*Coming into force* - - *25th January 2010*

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 14(3), 28J(3), 41C(1), 43A, 51(1) and (2)(d), (e) and (f), 52(4) and 54 of the Child Support Act 1991 <sup>M1</sup>, makes the following Regulations:<sup>F1</sup>

**Textual Amendments**

- F1** Part 4A - 4B inserted (8.10.2012 for specified purposes by virtue of 2008 c. 6, ss. 32, 33 being brought into force for specified purposes on that date by S.I. 2012/2523, art. 2(2)(d)) by [The Child Support Management of Payments and Arrears \(Amendment\) Regulations 2012 \(S.I. 2012/3002\)](#), regs. 1, **2(3)**

**Marginal Citations**

- M1** 1991 c. 48. Section 14(3) was amended by section 86(1) of, and Schedule 7 to, the [Social Security Act 1998 \(c. 14\)](#) and section 13(4) of, and Schedule 3 to, the [Child Maintenance and Other Payments Act 2008 \(c. 6\)](#) (“the 2008 Act”). Section 28J was inserted by section 20(1) of the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#) (“the 2000 Act”). Section 41C was inserted by section 31 of the 2008 Act. Section 43A was inserted by section 38 of the 2008 Act. Section 51 was amended by section 1(2) of the 2000 Act. Section 54 is cited for the definition of “prescribed”.

## PART 1

### General

#### Citation and commencement

1. These Regulations may be cited as the Child Support (Management of Payments and Arrears) Regulations 2009 and come into force on 25th January 2010.

#### Interpretation

2.—<sup>F2</sup>(1) In these Regulations—

“the 1991 Act” means the Child Support Act 1991;

“a 1993 scheme case” means a case in respect of which the provisions of the Child Support, Pensions and Social Security Act 2000 <sup>M2</sup> have not been brought into force in accordance with article 3 of the Child Support, Pensions and Social Security Act 2000 (Commencement No. 12) Order 2003 <sup>M3</sup>;

<sup>F3</sup>“a 2003 scheme case” means a case in respect of which the provisions of the Child Support, Pensions and Social Security Act 2000 have been brought into force in accordance with article 3 of the Child Support, Pensions and Social Security Act 2000 (Commencement No.12) Order 2003;

“a 2012 scheme case” means a case in respect of which the provisions of the Child Maintenance and Other Payments Act 2008 have been brought into force in accordance with article 2 of the Child Maintenance and Other Payments Act 2008 (Commencement No.10 and Transitional Provisions) Order 2012, article 2 of the Child Maintenance and Other Payments Act 2008 (Commencement No.11 and Transitional Provisions) Order 2013 or article 2 of the Child Maintenance and Other Payments Act 2008 (Commencement No.12 and Savings Provisions) and the Welfare Reform Act 2012 (Commencement No.15) Order 2013;]

<sup>F2</sup>“child in Scotland” means a child who has made an application for a maintenance calculation under section 7 of the 1991 Act;]

<sup>F4</sup>“Child Maintenance Service system” means the computer system used by the Child Maintenance Service which administers a 2012 scheme case or arrears from a 1993 or 2003 scheme case;

“Child Support Agency system” means the computer system used by the Child Support Agency which administers a 1993 or 2003 scheme case;]

“the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999 <sup>M4</sup>;

“non-resident parent” includes a person treated as a non-resident parent by virtue of regulations made under section 42 of the 1991 Act;

“relevant person” means—

- (a) a person with care;
- (b) a non-resident parent;
- (c) where the application for a maintenance calculation is made by a child under section 7 of the 1991 Act, that child,

in respect of whom a maintenance calculation is or has been in force.

(2) In the application of these Regulations to a 1993 scheme case, any reference to expressions in the 1991 Act (including “non-resident parent” and “maintenance calculation”) or to regulations made under that Act are to be read with the necessary modifications.

#### Textual Amendments

- F2** Words in reg. 2(1) inserted (8.10.2012, 10.12.2012 otherwise by virtue of the provisions of the 2008 Act being brought wholly into force on that date by S.I. 2012/3042, art. 4(a)) by [The Child Support Management of Payments and Arrears \(Amendment\) Regulations 2012 \(S.I. 2012/3002\)](#), regs. 1, **2(2)**
- F3** Words in reg. 2(1) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(2)(a)**
- F4** Words in reg. 2(1) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(2)(b)**

#### Modifications etc. (not altering text)

- C1** Reg. 2 modified (30.6.2014) by [The Child Support \(Consequential and Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/1386\)](#), regs. 1(2), **6(2)** (as amended (24.6.2014) by [S.I. 2014/1621](#), reg. 3)

#### Marginal Citations

- M2** 2000 c. 19.
- M3** S.I. 2003/192 (C. 11).
- M4** S.I. 1999/991.

#### Arrears notices

3.—(1) This regulation applies to a case where—

[<sup>F5</sup>(a) include the amount of all outstanding arrears of child support maintenance due and not paid;]

(b) the non-resident parent has failed to make one or more payments of child support maintenance due.

(2) Where the [<sup>F6</sup>Secretary of State] is considering taking action with regard to a case falling within paragraph (1) [<sup>F6</sup>the Secretary of State] must serve a notice on the non-resident parent.

(3) The notice must—

(a) itemize the payments of child support maintenance due and not paid;

(b) set out in general terms the provisions as to arrears contained in this regulation and regulation 8 of the AIMA Regulations<sup>M5</sup>; and

(c) request the non-resident parent make payment of all outstanding arrears.

(4) Where a notice has been served under paragraph (2), no duty to serve a further notice under that paragraph arises in relation to further arrears unless those further arrears have arisen after an intervening continuous period of not less than 12 weeks during the course of which all payments of child support maintenance due from the non-resident parent have been paid on time in accordance with regulations made under section 29 of the 1991 Act.

#### Textual Amendments

- F5** Reg. 3(3)(a) substituted (30.4.2012) by [The Child Support \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/712\)](#), regs. 1(1), **3**

*Status: Point in time view as at 04/07/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Child Support (Management of Payments and Arrears) Regulations 2009. (See end of Document for details)*

**F6** Words in reg. 3(2) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(2)(b)**

#### **Modifications etc. (not altering text)**

**C2** Reg. 3 modified (30.6.2014) by [The Child Support \(Consequential and Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/1386\)](#), regs. 1(2), **6(3)** (as amended (24.6.2014) by [S.I. 2014/1621](#), reg. 3)

#### **Marginal Citations**

**M5** Regulation 8 was substituted by [S.I. 1995/3261](#) and amended by [S.I. 1996/1345](#) and 2001/162. References to the Secretary of State in that regulation are treated as references to the Commission by virtue of paragraph 55(3) of Schedule 3 to the 2008 Act, as the function of the Secretary of State was transferred to the Commission by section 13 of that Act.

### **[<sup>F7</sup>Notice of consequences of failure to pay child support maintenance due**

**3A.—(1)** This paragraph applies to a case where—

(a) either—

(i) there are arrangements for direct pay, or

(ii) the Secretary of State is arranging for the collection of child support maintenance under section 29 of the 1991 Act but there are no arrangements for enforcement under the 1991 Act; and

(b) the non-resident parent has failed to make one or more payments of child support maintenance due.

(2) Where paragraph (1) applies to a case, the Secretary of State may only start making arrangements for collection under section 29 of the 1991 Act or arrangements for enforcement under the 1991 Act (or both) where the non-resident parent has been given a notice, within the preceding 12 month period, setting out that the Secretary of State will consider making such arrangements where there is a failure to make one or more payments of child support maintenance due.]

#### **Textual Amendments**

**F7** [Reg. 3A](#) inserted (30.6.2014 for specified purposes) by [The Child Support \(Consequential and Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/1386\)](#), regs. 1(2), **6(4)** (as amended (24.6.2014) by [S.I. 2014/1621](#), reg. 3)

### **Attribution of payments**

**4.** Where a maintenance calculation is or has been in force and there are arrears of child support maintenance, the [<sup>F8</sup>Secretary of State] may attribute any payment of child support maintenance made by a non-resident parent to child support maintenance due as [<sup>F8</sup>the Secretary of State] thinks fit.

#### **Textual Amendments**

**F8** Words in reg. 4 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(3)**

## PART 2

### Set Off

#### Set off of liabilities to pay child support maintenance

5.—(1) The circumstances prescribed for the purposes of section 41C(1)(a) of the 1991 Act, in which the [<sup>F9</sup>Secretary of State] may set off liabilities to pay child support maintenance, are set out in paragraph (2).

(2) The [<sup>F9</sup>Secretary of State] may set off the liability to pay child support maintenance of one person (“A”) against the liability to pay child support maintenance of another person (“B”) where—

- (a) A is liable to pay child support maintenance under a maintenance calculation, whether that calculation is current or no longer in force, in relation to which B is the person with care; and
- (b) B is liable to pay child support maintenance under a maintenance calculation, whether that calculation is current or no longer in force, in relation to which A is the person with care.

(3) There shall be no set off in relation to any amount which if paid could be retained under section 41 of the 1991 Act.

#### Textual Amendments

- F9** Words in reg. 5(1)(2) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), [Sch. para. 121\(4\)](#)

#### Set off of payments against child support maintenance liability

6.—(1) The circumstances prescribed for the purposes of section 41C(1)(b) of the 1991 Act, in which the [<sup>F10</sup>Secretary of State] may set off a payment against a person's liability to pay child support maintenance, are set out in paragraph (2).

(2) The [<sup>F10</sup>Secretary of State] may set off a payment against a non-resident parent's liability to pay child support maintenance where—

- (a) the payment falls within paragraph (3); and
- (b) the person with care agreed to the making of the payment.

(3) A payment is of a prescribed description for the purposes of section 41C(1)(b) of the 1991 Act if it was made by the non-resident parent in respect of—

- (a) a mortgage or loan taken out on the security of the property which is the qualifying child's home where that mortgage or loan was taken out to facilitate the purchase of, or to pay for essential repairs or improvements to, that property;
- (b) rent on the property which is the qualifying child's home;
- (c) mains-supplied gas, water or electricity charges at the qualifying child's home;
- (d) council tax payable by the person with care in relation to the qualifying child's home;
- (e) essential repairs to the heating system in the qualifying child's home; or
- (f) repairs which are essential to maintain the fabric of the qualifying child's home.

*Status: Point in time view as at 04/07/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Child Support (Management of Payments and Arrears) Regulations 2009. (See end of Document for details)*

#### Textual Amendments

- F10** Words in reg. 6(1)(2) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(5)**

#### Application of set off

7.—(1) In setting off a person's liability for child support maintenance under this Part, the [<sup>F11</sup>Secretary of State] may apply the amount to be set off to reduce any arrears of child support maintenance due under any current maintenance calculation, or any previous maintenance calculation made in respect of the same relevant persons.

(2) Where there are no arrears of child support maintenance due, or an amount remains to be set off after the application of paragraph (1), the [<sup>F12</sup>Secretary of State] may adjust the amount payable in relation to the current maintenance calculation by such amount as [<sup>F12</sup>the Secretary of State] considers appropriate in all the circumstances of the case, having regard in particular to—

- (a) the circumstances of the relevant persons; and
- (b) the amount to be set off and the period over which it would be reasonable to adjust the amount payable to set off that amount.

(3) An adjustment of the amount payable in relation to the current maintenance calculation under paragraph (2) may reduce the amount payable to nil.

#### Textual Amendments

- F11** Words in reg. 7(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(6)(a)**
- F12** Words in reg. 7(2) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(6)(b)**

## PART 3

### Overpayments and Voluntary Payments

#### Application of overpayments

8.—(1) Where for any reason, including the retrospective effect of a maintenance calculation, there has been an overpayment of child support maintenance, the [<sup>F13</sup>Secretary of State] may apply the amount overpaid to reduce any arrears of child support maintenance due under any previous maintenance calculation in respect of the same relevant persons.

(2) Where there is no previous maintenance calculation, or an amount of the overpayment remains after the application of paragraph (1), the [<sup>F14</sup>Secretary of State] may adjust the amount payable in relation to the current maintenance calculation by such amount as [<sup>F14</sup>the Secretary of State] considers appropriate in all the circumstances of the case, having regard in particular to—

- (a) the circumstances of the relevant persons; and

- (b) the amount of the overpayment and the period over which it would be reasonable to adjust the amount payable for the overpayment to be rectified.
- (3) An adjustment of the amount payable in relation to the current maintenance calculation under paragraph (2) may reduce the amount payable to nil.

#### Textual Amendments

- F13** Words in reg. 8(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(7)(a)**
- F14** Words in reg. 8(2) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(7)(b)**

#### Application of voluntary payments

9.—(1) Where there has been a voluntary payment<sup>M6</sup> the [F15Secretary of State] may apply the amount of the voluntary payment to reduce any arrears of child support maintenance due under any previous maintenance calculation in respect of the same relevant persons.

(2) Where there is no previous maintenance calculation, or an amount of the voluntary payment remains after the application of paragraph (1), the [F16Secretary of State] may adjust the amount payable in relation to the current maintenance calculation by such amount as [F16the Secretary of State] considers appropriate in all the circumstances of the case, having regard in particular to—

- (a) the circumstances of the relevant persons; and
- (b) the amount of the voluntary payment and the period over which it would be reasonable to adjust the amount payable for the voluntary payment to be taken into account.

(3) An adjustment of the amount payable in relation to the current maintenance calculation under paragraph (2) may reduce the amount payable to nil.

#### Textual Amendments

- F15** Words in reg. 9(1) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(8)(a)**
- F16** Words in reg. 9(2) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(8)(b)**

#### Marginal Citations

- M6** “Voluntary payment” is defined in section 54 of the 1991 Act, by reference to section 28J of that Act. The definition was inserted by section 26 of, and Schedule 3 to, the 2000 Act.

*Status: Point in time view as at 04/07/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Child Support (Management of Payments and Arrears) Regulations 2009. (See end of Document for details)*

## PART 4

### Recovery from Estates

#### Application and interpretation

**10.**—(1) This Part applies in relation to the estate of a person who dies on or after the day on which these Regulations come into force.

(2) In this Part, “child support maintenance” means child support maintenance for the collection of which the [<sup>F17</sup>Secretary of State] is authorised to make arrangements.

#### Textual Amendments

**F17** Words in reg. 10(2) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(9)**

#### Recovery of arrears from a deceased person's estate

**11.** Arrears of child support maintenance [<sup>F18</sup>and collection fees (payable under regulation 7 (the collection fee) of the Child Support Fees Regulations 2014)] for which a deceased person was liable immediately before death are a debt payable by the deceased's executor or administrator out of the deceased's estate to the [<sup>F19</sup>Secretary of State].

#### Textual Amendments

**F18** Words in [reg. 11](#) inserted (6.6.2014) by [The Child Support \(Consequential and Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/1386\)](#), **reg. 6(5)** (as amended (24.6.2014) by [S.I. 2014/1621](#), reg. 3)

**F19** Words in reg. 11 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(10)**

#### Modifications etc. (not altering text)

**C3** [Reg. 11](#) modified (11.8.2014) by [The Child Support \(Consequential and Miscellaneous Amendments\) \(No 2\) Regulations 2014 \(S.I. 2014/1621\)](#), regs. 1(3), **2(2)**

#### Appeals and other proceedings

**12.**—(1) The deceased's executor or administrator has the same rights, subject to the same procedures and time limits, as the deceased person had immediately before death to institute, continue or withdraw any proceedings under the 1991 Act, whether by appeal or otherwise.

(2) <sup>F20</sup>...

#### Textual Amendments

**F20** [Reg. 12\(2\)](#) omitted (28.10.2013) by virtue of [The Social Security, Child Support, Vaccine Damage and Other Payments \(Decisions and Appeals\) \(Amendment\) Regulations 2013 \(S.I. 2013/2380\)](#), regs. 1(2), **7(4)** (with [reg. 8\(1\)](#))

## Disclosure of information

**13.**—(1) The [F21Secretary of State] may disclose information held for the purposes of the 1991 Act to the deceased's executor or administrator where, in the opinion of the [F21Secretary of State], such information is essential to enable the executor or administrator to administer the deceased's estate, including, where necessary, to institute, continue or withdraw proceedings under the 1991 Act.

(2) Any application for information under this regulation shall be made to the [F21Secretary of State] in writing setting out the reasons for the application.

(3) Except where a person gives written permission to the [F21Secretary of State] that the information mentioned in sub-paragraphs (a) and (b) in relation to that person may be disclosed to other persons, any information disclosed under paragraph (1) must not contain—

- (a) the address of any person, except that of the recipient of the information in question and the office of the officer concerned who is exercising functions of the [F21Secretary of State] under the 1991 Act, or any other information the use of which could reasonably be expected to lead to any such person being located;
- (b) any other information the use of which could reasonably be expected to lead to any person, other than a party to the maintenance calculation, being identified.

### Textual Amendments

- F21** Words in reg. 13 substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 121(12)**

## [F1 PART 4A

### Part Payment of Arrears in Full and Final Satisfaction

#### Interpretation of this Part

**13A.** In this Part—

“appropriate person” means the person from whom the appropriate consent is required under section 41D(5) or (6) of the 1991 Act.

#### Amounts owed to different persons to be treated separately

**13B.** Where the arrears of child support maintenance for which a person is liable comprise amounts that have accrued in respect of—

- (a) separate applications for a maintenance calculation; or
- (b) one application but would, if recovered, be payable to different persons,

those amounts are to be treated as separate amounts of arrears for the purpose of exercising the power under section 41D(1) of the 1991 Act.

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*Status: Point in time view as at 04/07/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Child Support (Management of Payments and Arrears) Regulations 2009. (See end of Document for details)*

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### **Appropriate consent**

**13C.**—(1) The Secretary of State may not exercise the power under section 41D(1) of the 1991 Act without the appropriate consent (as provided for in subsections (5) to (7) of section 41D), unless one of the following conditions applies—

- (a) that the Secretary of State would be entitled to retain the whole of the arrears under section 41(2) of the 1991 Act if it recovered them; or
- (b) that the Secretary of State would be entitled to retain part of the arrears under section 41(2) of that Act if it recovered them, and the part of the arrears that the Secretary of State would not be entitled to retain is equal to or less than the payment accepted under section 41D(1) of that Act.

(2) Where the consent of any appropriate person is required, the Secretary of State must make available such information and guidance as the Secretary of State thinks appropriate for the purpose of helping that person decide whether to give that consent.

### **Agreement**

**13D.**—(1) Where the Secretary of State proposes to exercise the power under section 41D(1) of the 1991 Act, the Secretary of State must prepare a written agreement.

(2) The agreement must—

- (a) name the non-resident parent, and where the consent of any appropriate person is required, the name of that person;
- (b) specify the amount of arrears to which the agreement relates and the period of liability to which those arrears relate;
- (c) state the amount that is agreed will be paid in satisfaction of those arrears;
- (d) state the method of payment and to whom payment will be made; and
- (e) state the day by which payment is to be made.

(3) The Secretary of State must send the non-resident parent and, where applicable, the appropriate person, a copy of the agreement.

(4) The agreement does not take effect until—

- (a) the non-resident parent has agreed in writing to its terms; and
- (b) where applicable, the appropriate person has given to the Secretary of State their consent in writing.

### **Where payment is received**

**13E.**—(1) Unless the non-resident parent fails to comply with the terms of the agreement, the Secretary of State must not take action to recover any of the arrears to which the agreement relates.

(2) Where the non-resident parent has made full payment in accordance with the agreement all remaining liability in respect of the arrears of child support maintenance to which the agreement relates is extinguished.

(3) Where the non-resident parent fails to make any payment or only makes part payment or otherwise fails to adhere to the terms of the agreement, the non-resident parent remains liable to pay the full amount of any outstanding arrears to which the agreement relates and the Secretary of State may arrange to recover any of those outstanding arrears in accordance with the 1991 Act.

(4) Nothing in these Regulations prevents the Secretary of State from entering into a new agreement with the non-resident parent in respect of any of the arrears to which the previous

agreement relates provided that the new agreement complies with the requirements set out in regulation 13D.

(5) Where the Secretary of State enters into a new agreement with the non-resident parent in respect of any of the arrears to which a previous agreement related, the previous agreement ceases to have effect on the coming into effect of that new agreement.]

## [<sup>F1</sup>PART 4B

### Write Off of Arrears

#### Amounts owed to different persons to be treated separately

**13F.** Where the arrears of child support maintenance for which a person is liable comprise amounts that have accrued in respect of—

- (a) separate applications for a maintenance calculation; or
- (b) one application, but would, if recovered, be payable to different persons,

those amounts are to be treated as separate amounts of arrears for the purpose of exercising the power under section 41E(1) of the 1991 Act.

#### Circumstances in which the Secretary of State may exercise the power in section 41E of the 1991 Act

**13G.** The circumstances of the case specified for the purposes of section 41E(1)(a) of the 1991 Act are that—

- (a) the person with care has requested under section 4(5) of that Act that the Secretary of State ceases to act in respect of the arrears;
- (b) a child in Scotland has requested under section 7(6) of that Act that the Secretary of State ceases to act in respect of the arrears;
- (c) the person with care, or (in Scotland) the child, has died;
- (d) the non-resident parent died before 25 January 2010 or there is no further action that can be taken with regard to recovery of the arrears from the non-resident parent's estate under Part 4;
- (e) the arrears relate to liability for child support maintenance for any period in respect of which an interim maintenance assessment was in force between 5 April 1993 and 18 April 1995; <sup>F22</sup> ...
- (f) the non-resident parent has been informed by the Secretary of State that no further action would ever be taken to recover those arrears.

[ the arrears relate to liability for child support maintenance accrued under a 1993 or 2003 <sup>F23</sup>(g) scheme case and the non-resident parent has failed to make any payments of child support maintenance within the 3 month period which precedes the date of the written notice sent by the Secretary of State under regulation 13H(1), or, where the arrears fall within regulations 13K(1)(a), (b) or (d), within the 3 month period which precedes the date of the decision of the Secretary of State under section 41E(1) of the 1991 Act;

- (h) the arrears relate to liability for child support maintenance accrued under a 1993 or 2003 scheme case which has transferred from the Child Support Agency system to the Child Maintenance Service system and the non-resident parent has failed to make any payments of child support maintenance within the 3 month period which precedes the date of the written notice sent by the Secretary of State under regulation 13H(1), or, where the arrears

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fall within regulations 13K(2)(a) or (b), within the 3 month period which precedes the date of the decision of the Secretary of State under section 41E(1) of the 1991 Act;<sup>F24</sup> ...

- (i) the arrears relate to sequestrated debt in Scotland for a 1993, 2003 or 2012 scheme case once the trustee administering the sequestration has confirmed that the period of sequestration has ended; [<sup>F25</sup>or]
- [<sup>F26</sup>(j) the non-resident parent has been discharged under section 184 of the Bankruptcy (Scotland) Act 2016 (protected trust deed: discharge of debtor) from liability for the arrears.]

#### Textual Amendments

- F22** Word in reg. 13G omitted (13.12.2018) by virtue of [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(3)(a)**
- F23** Reg. 13G(g)-(i) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(3)(b)**
- F24** Word in reg. 13G(h) omitted (4.7.2019) by virtue of [The Child Support \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/1084\)](#), regs. 1(3), **9(2)(a)**
- F25** Word in reg. 13G(i) inserted (4.7.2019) by [The Child Support \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/1084\)](#), regs. 1(3), **9(2)(b)**
- F26** Reg. 13G(j) inserted (4.7.2019) by [The Child Support \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/1084\)](#), regs. 1(3), **9(2)(c)**

#### Secretary of State required to give notice

**13H.**—(1) Where the Secretary of State is considering exercising the powers under section 41E(1) of the 1991 Act, the Secretary of State must send written notice to the person with care or, where relevant, a child in Scotland and the non-resident parent.

[<sup>F27</sup>(1A) Where the arrears fall within regulation 13(K)(1)(c) or (e) or (2)(c) the requirement under paragraph (1) to send written notice to the non-resident parent only applies where the Secretary of State receives written representations within the period of 60 days beginning with the date the notice is received by the person with care or, where relevant, a child in Scotland.]

(2) The requirement in paragraph (1) does not apply where the person in question cannot be traced or has died [<sup>F28</sup>or the arrears fall within regulations 13G(i) [<sup>F29</sup>, 13G(j)], 13K(1)(a), 13K(1)(b), 13K(1)(d), 13K(2)(a) or 13K(2)(b)].

(3) The notice must—

- (a) specify the person with care or, where relevant, a child in Scotland, in respect of whom liability in respect of arrears of child support maintenance has accrued;
- (b) specify the amount of the arrears [<sup>F30</sup>except where the arrears fall within regulation 13K(1)(c)] and the period of liability to which the arrears relate [<sup>F31</sup>except where the arrears fall within regulation 13K(1)(c) or (e) or (2)(c)];
- (c) state why it appears to the Secretary of State that it would be unfair or inappropriate to enforce liability in respect of the arrears;
- (d) [<sup>F32</sup>subject to paragraph 3(da)] advise the person that they may make representations, within 30 days of receiving the notice, to the Secretary of State as to whether the liability in respect of the arrears should be extinguished;<sup>F33</sup> ...

[ where the arrears fall within regulation 13K(1)(c) or (e) or (2)(c)—  
<sup>F34</sup>(da)

- (i) advise the person with care or, where relevant, a child in Scotland that they may make written representations as to whether the liability in respect of the arrears should be extinguished, and that any such representations must be sent by post to the Secretary of State within the period of 60 days beginning with the date the notice is received;
  - (ii) where a notice is sent to the non-resident parent in accordance with paragraph (1A), advise the non-resident parent that they may make written representations which must be sent by post to the Secretary of State within the period of 21 days beginning with the date the notice is received; and]
- (e) explain the effect of any decision to extinguish liability in respect of any arrears of child support maintenance under section 41E(1) of the 1991 Act.
- (4) <sup>F35</sup>Subject to paragraph 4A, if] no representations are received by the Secretary of State within 30 days of the notice being received by the person with care or, where relevant, a child in Scotland and the non-resident parent, the Secretary of State may make the decision to extinguish the arrears.

[  
<sup>F36</sup>(4a) Where any of the conditions of write off mentioned in regulation 13K(1)(c) or (e) or (2)(c) apply, if no written representations are received by the Secretary of State within the period of 60 days beginning with the date the notice is received by the person with care or, where relevant, a child in Scotland, the Secretary of State may make the decision to extinguish the arrears.]

(5) For the purposes of this regulation, where the Secretary of State sends any written notice by post to a person's last known or notified address that document is treated as having been received by that person on the second day following the day on which it is posted.

#### Textual Amendments

- F27** Reg. 13H(1A) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(4)(a)**
- F28** Words in reg. 13H(2) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(4)(b)**
- F29** Word in reg. 13H(2) inserted (4.7.2019) by [The Child Support \(Miscellaneous Amendments\) Regulations 2019 \(S.I. 2019/1084\)](#), regs. 1(3), **9(3)**
- F30** Words in reg. 13H(3)(b) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(4)(c)(i)**
- F31** Words in reg. 13H(3)(b) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(4)(c)(ii)**
- F32** Words in reg. 13H(3)(d) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(4)(d)**
- F33** Word in reg. 13H(3)(d) omitted (13.12.2018) by virtue of [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(4)(d)**
- F34** Reg. 13H(3)(da) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(4)(e)**
- F35** Words in reg. 13H(4) substituted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(4)(f)**
- F36** Reg. 13H(4a) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(4)(g)**

#### Secretary of State to take account of the parties' views

**13I.** Where the Secretary of State receives representations within the 30 day period referred to in regulation 13H(3)(d) [<sup>F37</sup>or within the 60 day period referred to in regulation 13H(3)(da)(i) or within

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*Changes to legislation: There are currently no known outstanding effects for the The Child Support (Management of Payments and Arrears) Regulations 2009. (See end of Document for details)*

the 21 day period referred to in regulation 13H(3)(da)(ii)], the Secretary of State must take account of those representations in making a decision under section 41E(1) of the 1991 Act.

#### Textual Amendments

**F37** Words in reg. 13I inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(5)**

#### Notification of decision to write off

**13J.**—(1) On making a decision under section 41E(1) of the 1991 Act, the Secretary of State must send written notification to the non-resident parent and the person with care or, where relevant, a child in Scotland, of that decision.

(2) The requirement in paragraph (1) does not apply where the person in question cannot be traced or has died [<sup>F38</sup>or where the arrears fall within regulation 13K(1)(a) or (2)(a) or where the arrears fall within regulation 13K(1)(c) or (e) or (2)(c) and the Secretary of State has not received written representations by post from the person with care or, where relevant, a child in Scotland, within the 60 day period referred to in regulation 13H(3)(da)] .

#### Textual Amendments

**F38** Words in reg. 13J(2) inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(6)**

#### [<sup>F39</sup>Conditions of write off

**13K.**—(1) The arrears mentioned above are—

- (a) the arrears are less than £65;
- (b) the effective date of the maintenance assessment or maintenance calculation was on or before 1st November 2008 and the arrears are £1,000 or less;
- (c) the effective date of the maintenance assessment or maintenance calculation was on or before 1st November 2008 and the arrears are over £1,000;
- (d) the effective date of the maintenance calculation was after 1st November 2008 and the arrears are £500 or less; or
- (e) the effective date of the maintenance calculation was after 1st November 2008 and the arrears are over £500.

(2) The arrears mentioned above are—

- (a) the arrears are less than £65; or
- (b) the arrears are £500 or less; or
- (c) the arrears are over £500.]]

#### Textual Amendments

**F39** Reg. 13K inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), **4(7)**

## PART 5

### Revocations and Savings

#### Revocations

14. The Regulations specified in the Schedule are revoked to the extent specified.

#### Savings

15.—(1) Where before these Regulations come into force, an adjustment has been made under regulation 10(1) of the AIMA Regulations in a 1993 scheme case, regulations 10(2) and (3) and 11 to 17<sup>M7</sup> of those Regulations continue to apply to that case for the purposes of—

- (a) making and determining any appeal against the adjustment;
- (b) making and determining any application for a revision of the adjustment;
- (c) determining any application for a supersession made before these regulations come into force.

(2) Where before these Regulations come into force, an adjustment has been made under regulation 10(1) or (3A)<sup>M8</sup> of the AIMA Regulations in a case other than a 1993 scheme case, regulation 30A<sup>M9</sup> of the Decisions and Appeals Regulations continues to apply to that case for the purposes of making and determining any appeal against the adjustment.

#### Marginal Citations

- M7** Regulation 10(1) was substituted by [S.I. 1995/1045](#) and amended by [S.I. 1999/1510](#). Regulation 10(2) and (3) was amended by [S.I. 1999/1510](#). Regulation 11 was substituted by [S.I. 1995/1045](#) and amended by [S.I. 1999/1510](#). Regulations 12 to 17 were substituted by [S.I. 1999/1510](#) and regulation 14 was amended by [S.I. 2008/2683](#).
- M8** Regulation 10(1) was substituted by [S.I. 1995/1045](#) and amended by [S.I. 1999/1510](#) and 2001/162, in relation to cases other than 1993 scheme cases. Regulation 10(3A) was inserted by [S.I. 2001/162](#).
- M9** Regulation 30A was inserted by [S.I. 2000/3185](#) and amended by [S.I. 2008/2683](#) and [S.I. 2009/396](#).

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

Department for Work and Pensions

*Helen Goodman*  
Parliamentary Under-Secretary of State,

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## SCHEDULE

Regulation 14

## Revocations

<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992	S.I. 1992/1816	Regulations 2 to 7, 9, 10 and 11 to 17 M10
Child Support (Miscellaneous Amendments) Regulations 1993	S.I. 1993/913	Regulations 35 to 40.
Child Support and Income Support (Amendment) Regulations 1995	S.I. 1995/1045	Regulations 7 to 11.
Social Security and Child Support (Decisions and Appeals) Regulations 1999	S.I. 1999/991	Regulation 30A.
Child Support (Decisions and Appeals) (Amendment) Regulations 2000	S.I. 2000/3185	Regulation 10, insofar as it inserts regulation 15D in S.I. 1999/991 <sup>M11</sup> . Regulation 12.
Child Support (Collection and Enforcement and Miscellaneous Amendments) Regulations 2000	S.I. 2001/162	Regulation 5(3)(b), (c) and (e) and (4)(d).
Child Support (Miscellaneous Amendments) Regulations 2009	S.I. 2009/396	Regulations 3 and 4(15).

**Marginal Citations**

**M10** Regulations 10(2) and (3) and 11 to 17 were revoked by regulation 14 of S.I. 2000/3185, but it has not come into force in relation to 1993 scheme cases as sections 16, 17 and 20 of the 1991 Act, as amended by the 2000 Act, have not come into force in relation to those cases (see regulation 1(1) of S.I. 2000/3185). Regulations 3, 4, 6 and 7 were omitted by regulation 5(3)(e) of S.I. 2001/162, but it has not come into force in relation to 1993 scheme cases as relevant provisions of the 2000 Act have not come into force in relation to those cases (see regulation 1(3) of S.I. 2001/162).

**M11** Regulation 10 inserts regulation 15D into S.I. 1999/991, but it has not yet come into force in relation to 1993 scheme cases as sections 16, 17 and 20 of the 1991 Act, as amended by the 2000 Act, have not come into force in relation to those cases (see regulation 1(1) of S.I. 2000/3185). S.I. 2009/396 omits regulation 15D of the Decisions and Appeals Regulations in relation to those cases in relation to which that regulation has already come into force.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under powers in the Child Support Act 1991 (c.19) (“the 1991 Act”) and come into force on 25th January 2010. They are, in part, consolidating regulations which revoke and re-enact some provisions of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992 (S.I. 1992/1816) (“the AIMA Regulations”), with some changes.

Regulations 3 and 4 re-enact regulations 2 and 9 of the AIMA Regulations. Regulation 3 requires the Commission to serve a notice on a non-resident parent where it is considering taking action in relation to arrears of child support maintenance due. Regulation 4 allows the Commission to attribute any payment of child support maintenance made by the non-resident parent to child support maintenance due as it thinks fit.

Regulations 5 and 6 set out the circumstances in which the Commission may set off an amount against a person's liability to pay child support maintenance. There are 2 situations in which set off may occur. Regulation 5 provides that where the parent with care and the non-resident parent each owes child support maintenance to the other, the Commission may set off one person's liability against the other person's liability. Regulation 6 allows prescribed payments made by a non-resident parent to be set off against their liability. Regulation 7 makes provision as to how any amount should be set off against that liability.

Regulations 8 and 9 provide for the adjustment of arrears and amounts of child support maintenance payable to take account of overpayments and voluntary payments. They re-enact regulation 10 of the AIMA regulations, with a change which allows the amount payable to be reduced to nil.

Regulation 10 limits the application of Part 4 to those cases where the Commission is authorised to collect child support maintenance and the person dies on or after the date these Regulations come into force.

Regulation 11 provides that arrears of child support maintenance owed by a deceased person immediately before death are a debt payable by the deceased's executor or administrator out of the deceased's estate.

Regulation 12(1) provides for the executor or administrator of the estate to have the same rights as the deceased person prior to death to institute, continue or withdraw proceedings under the 1991 Act, whether by way of appeal or otherwise. Regulation 12(2) modifies regulation 34 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) (“the Decisions and Appeals Regulations”) so that the Commission must appoint a deceased non-resident parent's executor or administrator to proceed with any appeal, unless there is no such person in which case the Commission may appoint such person as it thinks fit.

Regulation 13 makes provision for the disclosure of information to the deceased's executor or administrator where it is essential, in the Commission's opinion, for the proper administration of the estate, including the bringing, continuing or withdrawing of proceedings under the 1991 Act. Regulation 14, and the Schedule, revokes various provisions in the AIMA Regulations and related provisions in the Decisions and Appeal Regulations, some of which deal with the appeal of decisions to adjust the amount payable to take account of an overpayment or voluntary payment. Regulation 15 saves the relevant provisions for specified purposes where the decision to adjust the amount payable was made before the coming into force of these Regulations.

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

**Status:**

Point in time view as at 04/07/2019.

**Changes to legislation:**

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