

EXPLANATORY MEMORANDUM TO
THE CHILD BENEFIT AND GUARDIAN'S ALLOWANCE
(ADMINISTRATION) (AMENDMENT) REGULATIONS 2012

2012 No. 1074

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

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

2. **Purpose of the instrument**

2.1 The purpose of this instrument is to amend the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 ("the Administration Regulations 2003") to allow for overpayments of Child Benefit or Guardian's Allowance to be recovered from an ongoing award of one or more of these benefits.

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

3.1 None

4. **Legislative Context**

4.1 This instrument amends the Administration Regulations 2003 in exercise of powers conferred on the Commissioners for Her Majesty's Revenue and Customs by amendments made to the Social Security Administration Act 1992 ("SSAA 1992") and the Social Security Administration (Northern Ireland) Act 1992 ("SSA(NI)A 1992") by section 107 of the Welfare Reform Act 2012.

4.2 Regulation 3 inserts a new regulation 42A into the Administration Regulations 2003. Sections 71(1) of the SSAA 1992, section 69(1) of the SSA(NI)A 1992 and regulations 35(1) and 42(5) of the Administration Regulations 2003 each set out circumstances where, inter alia, sums of child benefit and guardian's allowance are recoverable from a person. New regulation 42A will allow for such sums to be recovered by deductions from ongoing child benefit and guardian's allowance payments payable to a person who has been overpaid child benefit or guardian's allowance. New regulation 42A(2) provides that the recovery of such sums shall not be made from payments that have been suspended and are now to be made by regulation 21(1) of the Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 Where a person is overpaid certain benefits, sections 71(8) of the SSAA 1992 and 69(8) of the SSA(NI)A 1992 allow for certain overpayments to be recovered from other prescribed benefits. When the functionality of child benefit and guardian's allowance was transferred to the Treasury and HMRC by sections 49 and 50 of the Tax Credits Act 2002, sections 71(8) and 69(8) were amended and words added to those subsections so that overpayments of social security benefits administered by the Secretary of State could not be recovered from child benefit and guardian's allowance. However, this inadvertently also removed the ability for HMRC to recover overpayments of child benefit and guardian's allowance from ongoing awards of child benefit and guardian's allowance.

7.2 Section 107 of the Welfare Reform Act 2012 amends section 71(8) of the SSAA 1992 and section 69(8) of the SSA(NI)A 1992 so as to reverse this effect and allow for regulations to be made whereby overpayments of child benefit and guardian's allowances can be recovered from ongoing payments of these benefits. These regulations are made under that vires.

8. Consultation outcome

8.1 There is no statutory requirement to consult on these Regulations. However, the Social Security Advisory Committee (SSAC) has considered these regulatory changes under its Memorandum of Understanding with HMT and HMRC.

9. Guidance

9.1 The provisions of these amending Regulations will be reflected in the Child Benefit Technical Manual. This is available on the HMRC website at <http://www.hmrc.gov.uk/manuals/cbtmanual/index.htm>

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These changes are consequential and technical and do not require further review.

13. Contact

May Cantell at Her Majesty's Revenue and Customs (Tel: 020 7147 2475 or email: may.cantell@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.