

**EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (MEANING OF CHILD AND NEW CALCULATION
RULES) (CONSEQUENTIAL AND MISCELLANEOUS AMENDMENT)
REGULATIONS 2012**

2012 No. 2785

1 This explanatory memorandum has been prepared by the Department for Work and Pensions (“the Department”) and is laid before Parliament by the Command of Her Majesty.

2 Purpose of the Instrument

2.1 This instrument is made under powers contained in the Child Support Act 1991 (“the 1991 Act”) as amended by the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”) and the Welfare Reform Act 2009. It contains provisions consequential on, or connected with, changes to the meaning of ‘child’, the rules for the calculation of child support and the administration of deduction from earnings orders.

2.2 The Department currently operates two separate child maintenance schemes; the “1993 scheme” for applications made prior to 3 March 2003, and the “2003 scheme” for applications made after that date. The 2008 Act provided for a new child maintenance scheme, which will be introduced gradually from late 2012 to replace the existing 1993 and 2003 schemes.

2.3 Part 3 of this instrument applies to applications for child maintenance made under the new child maintenance scheme. The main focus of the new scheme is to produce a more efficient, accurate and transparent process for assessing child maintenance payments. In addition to new scheme cases, the amendments relating to deduction from earnings orders (regulation 4(3) to (6)) will apply to a number of arrears only cases under the existing child maintenance schemes. Details are contained within paragraph 7.12.

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

None.

4 Legislative Context

4.1 The 1991 Act makes provision for the calculation, collection and enforcement of child maintenance. Child maintenance is an amount of money that parents who do not normally live with the children concerned (the “non-resident parent”) pay as a contribution to the upkeep of their children (the “qualifying children”). Child maintenance legislation is focused around the general principle that parents should take financial responsibility for their children, whether they are living together or not.

4.2 There are currently two child support schemes in place under the 1991 Act, the 1993 scheme and the 2003 scheme. These two schemes are to be gradually replaced by a new scheme from late 2012. The majority of the amendments in these Regulations are relevant to the new scheme, which is provided for by the 2008 Act. The criteria for those types of cases to which the new scheme will apply will be set out in the commencement orders which commence paragraph 2 of Schedule 4 to the 2008 Act for those cases.

4.3 The new scheme will largely use gross income information sourced directly from HM Revenue and Customs to calculate the child maintenance liability, as opposed to non-resident parent or employer provided information, which is used on the existing schemes. The detail of the new scheme is provided for in the Child Support Maintenance Calculation Regulations 2012.

5 Territorial Extent and Application

This instrument applies to all of Great Britain.

6 European Convention on Human Rights

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

7 Policy Background

7.1 The main objective of child maintenance legislation is to maximise the number of effective maintenance arrangements for children who live apart from one or both of their parents. The 2003 scheme was introduced to provide a radically simpler system than the highly complex system of calculation in the 1993 scheme.

7.2 The statutory child maintenance system operates around the principle that parents are responsible for supporting their children and since 1993 the upper age limit for a child has been 19 years of age. The same age limit also applied in Child Benefit until 2006, when rules were changed to allow Child Benefit to be paid in some cases up until the 20th birthday. The Child Maintenance and Other Payments Act 2008 includes a change which means the upper age limit of the 20th birthday will also apply for child maintenance purposes.

7.3 Children under 16 are automatically within the scope of statutory child maintenance. Children who have attained the age of 16 but not the age of 20 may also be, but it depends on their circumstances. Regulations 2 and 3 amend existing Regulations to provide the circumstances in which children aged 16-19 are qualifying children under the 1993 and 2003 schemes, respectively. The circumstances are the same for both schemes. The main situations are where a person is a person in respect of whom child benefit is payable or where the person is in full-time non-advanced education. The provision specifying the relevant conditions a person who has attained the age of 16, but not yet 20, must meet to be considered a qualifying child for the purposes of the new scheme are set out in the Child Support Maintenance Calculation Regulations 2012.

7.4 Regulation 4(2) allows the Department to schedule payments equally over twelve monthly instalments and will mean it is easier for parents to set up equal monthly payments.

7.5 A deduction from earnings order is an administrative order that requires an employer to make deductions from an employee's earnings and pay them to the Department to satisfy the employee's child maintenance liability. The use of gross income to calculate child maintenance on the new scheme means changes are required to deduction from earnings orders as they currently rely on the Secretary of State knowing the non-resident parent's net earnings. This means that the way the amount to be deducted (normal deduction rate) is set out in the orders and how provision for "protected earnings" is made need to be amended.

7.6 In the new scheme the Department will not know a non-resident parent's pay frequency, meaning it cannot align the normal deduction rate to it. To resolve this, the Department will provide employers with multiple payment frequency options from which they will be required to select and apply the appropriate frequency (either weekly, two weekly, four weekly or monthly) for their employee.

7.7 The purpose of protected earnings is to ensure non-resident parents retain a specified proportion, 60%, of their net earnings after deductions for child maintenance have been made. On the two existing schemes, the Department calculates the amount of protected earnings and provides employers with this amount. As the Department will not know the non-resident parent's net earnings in the new scheme, the amendments transfer to employers the responsibility for the calculation of the protected earnings. Employers will be required to calculate 60% of a non-resident parent's net earnings and ensure that amount is protected when deductions in respect of child maintenance are made.

7.8 The amendments relating to deduction from earnings orders will apply to those cases to which the new scheme rules apply. They will also apply to arrears only cases once notification has been given to the non-resident parent by the Secretary of State that the amendments apply.

7.9 Regulation 8 introduces a duty for non-resident parents on the new scheme whose maintenance liabilities are based on current income to notify the Secretary of State where they have an increase in that income of at least 25% and a duty on those non-resident parents whose liability is assessed as nil as a result of current income to notify an increase in gross weekly income to £5 or more. This duty will only apply in cases where the Secretary of State has notified the individual that they are required to report such a change. Any change must be notified within 14 days from the date the change occurred, unless another period is specified in the notification from the Secretary of State. This is to ensure that where there are significant changes to a non-resident parent's income, action is taken to update the maintenance liability.

7.10 There are further minor amendments to regulations, revocation of six sets of Child Support Regulations and the commencement of other provisions which apply to those cases to which the new child maintenance scheme applies.

7.11 Regulations 2 and 3 of the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations 2012 come into force on the day on which section 42 of the 2008 Act comes into force. Regulations 4 to 10 and 12 come into force in relation to a particular case on the day on which paragraph 2 of Schedule 4 to the 2008 Act comes into force in relation to that type of case. The commencement order will set out the detail.

7.12 For arrears only cases from the 1993 and 2003 schemes, the deduction from earnings order related amendments (regulations 4(3) to (6) and 12) will come into force on 10th December 2012. However, the saving in regulation 11, which also comes into force on 10th December, will apply. The deduction from earnings order related amendments will only apply in each case following notification in writing from the Secretary of State being given to the non-resident parent. Arrears only cases are those that have been closed for the purposes of on-going maintenance, but have arrears outstanding. Notification will happen as a result of the case being moved onto the new IT system. Until notification is sent to the non-resident parent by the Secretary of State, the current regulations in respect of deduction from earnings orders will continue to apply.

Consolidation

7.13 The law relating to child support is available on the internet site and is generally updated twice-yearly. This can be accessed via the link below: <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-child-support/>

8 Consultation outcome

8.1 The consultations relating to these regulations were undertaken as two separate exercises, before the regulations were merged into one package.

8.2 The Government consulted on the Child Support Maintenance Calculation Regulations 2012 and elements of the Child Support (New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations 2012 between 1 December 2011 and 23 February 2012. A total of 36 responses were received from representatives of bodies/organisations with an interest in child maintenance. The respondents generally supported the proposals.

8.3 Some stakeholders expressed concerns on the period within which non-resident parents must advise of upward changes in their income. The views raised were considered and as a consequence the regulations have been amended to increase the period from seven days to fourteen days. The Government's response to the consultation on the Maintenance Calculation Regulations was published on 2 July 2012 and can be accessed on the Department for Work and Pensions website at: <http://www.dwp.gov.uk/consultations/2011/cmec-regs-tech-consultation.shtml>

8.4 The public consultation on the Child Support (Collection and Enforcement) (Amendment) Regulations 2012 ran from 24 April 2012 to 4 June 2012. Responses were received from eight stakeholders who welcomed elements of the proposals and overall, raised no specific objections to the proposals. Some stakeholders felt the

amendments would simplify the process, however others highlighted the additional costs that will be incurred by employers. These costs have been outlined within the Impact Assessment and no specific information was received from stakeholders during the public consultation which could be used to update or change the costs and benefits. No changes were therefore required to the approach proposed within the consultation. The Government's response to the consultation was published on 8 November 2012 and can be accessed on the Department for Work and Pensions website at:

<http://www.dwp.gov.uk/consultations/2012/child-support-new-calc-regs.shtml>

9 Guidance

9.1 The Department has developed a communication strategy to ensure that employers, clients and stakeholders affected by these amendments are informed of the changes.

9.2 This strategy includes; discussions with key stakeholders, staff training, amending relevant leaflets, drafting new notifications, providing web-based guidance and providing a specific help line to aid employers in the administration of deduction from earnings orders. This support and guidance will be available when the new child maintenance scheme is introduced gradually for cases meeting the application criteria in late 2012.

10 Impact

10.1 These Consequential Regulations, when brought together with the Calculation Regulations, reduce costs on business and civil society organisations. There are costs associated with employers upgrading their payroll software (and the potentially linked training costs), but these are outweighed by the benefits of avoiding the need for the Department to contact employers each time a new scheme deduction from earnings order is issued, which would be required if the current legislative provisions were to remain in use for new scheme cases.

10.2 The impact on the public sector is low. Government IT systems will not need to be changed and no additional training will be needed, over and above that already required for the new child maintenance scheme. The Department will be able to reduce costs associated with contacting employers to obtain net earnings and pay frequency information.

10.3 A full impact assessment is attached to this memorandum and will be published alongside it at www.legislation.gov.uk

11 Regulating Small Business

11.1 The legislation applies to small businesses but is beneficial as for all employers, when combined with the Calculation Regulations.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the Department has provided an employer helpline, a self-service facility,

communication strategies and leaflets which provide full information and guidance to support businesses in implementing these changes.

11.3 The basis for the final decision on what action to take to assist small business is that the amendments are beneficial to both small and large employers. During the development of these amendments, the Department engaged with stakeholders, including the Federation of Small Businesses and the Chartered Institute of Payroll Professionals, to ensure that any costs were minimised.

11.4 During the public consultation no concerns were raised relating to the impact on small businesses. Small employers (as mentioned in paragraph 11.2) will be supported in the administration of new scheme deduction from earnings orders through various services.

12 Monitoring & Review

The Department will closely monitor the operation of the new statutory scheme of child maintenance, however as the changes contained within these Consequential Regulations bring no significant departure from the current process, no formal review of them will be undertaken. The Department actively engages with its stakeholders, including employers and parents' representative groups, and will continue to do so to ensure that the policy intent is achieved.

13 Contact

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