

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT MANAGEMENT OF PAYMENTS AND ARREARS
(AMENDMENT) REGULATIONS 2012

2012 No. 3002

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

2. Purpose of the Instrument

2.1 These regulations make provision concerning the use of powers enabling the Secretary of State to:

- accept part payment of arrears in full & final satisfaction (of a child maintenance debt); and
- write off arrears of child maintenance (in certain limited circumstances)

2.2 The regulations insert these new powers into the existing regulations detailing the management of payments and arrears of child maintenance: The Child Support (Management of Payments and Arrears) Regulations 2009.

2.3 The intent of these powers is to allow the Secretary of State to bring to a final resolution the minority of cases where the arrears are unlikely to ever be collected in full. This will enable its resources – and enforcement powers – to be concentrated on those cases where it is possible to recover full payment.

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

3.1 None.

4. Legislative Context

4.1 These regulations are made under sections 41D and 41E of the Child Support Act 1991 (“the 1991 Act”) as inserted by sections 32 and 33 of the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”).

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

4.3 There are currently two child support maintenance calculation schemes in, the 1993 scheme and the 2003 scheme (for applications made after the 3rd March 2003).

Both these schemes are to be gradually replaced by the new statutory child maintenance scheme, which is to be introduced from late 2012. These regulations will apply to cases under all three schemes.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Steve Webb MP, the Minister for Pensions, has made the following statement regarding human rights:

In my view the provisions of the Child Support Management of Payments and Arrears (Amendment) Regulations 2012 are compatible with the Convention rights.

7. Policy Background

What is being done and why

7.1 The 2008 Act gave the Secretary of State two new debt management powers to allow it to better manage the level of child maintenance arrears owed. These regulations set out the detail as to how these powers will work in practise. These powers are:

- Section 32 - The power to accept part payment of arrears in full & final satisfaction (of a child maintenance debt) which inserts a new section 41D into the 1991 Act; and
- Section 33 - The power to write off arrears of child maintenance (in certain limited circumstances) which inserts a new section 41E into the 1991 Act.

7.2 The use of these powers will not negate the Department's focus on pursuing arrears of child maintenance and ensuring that parents meet their financial responsibilities for their children. Arrears remain due and parents will not be relieved of their liability to pay (outside of the limited write off criteria prescribed here).

7.3 The new powers will achieve the policy intent stated in paragraph 2.3 when used by the Secretary of State in the following circumstances:

Power to accept part payment of arrears in full & final satisfaction

7.4 Where a non-resident parent has accrued significant child maintenance arrears over a period of time it can be difficult for the Department to recover these in full. This is often either because the non-resident parent's financial circumstances do not support them making a regular or lump sum payment to clear their arrears or because the Department has been unable to collect the arrears using the collection and enforcement powers afforded to the Secretary of State.

7.5 The power to accept part payment in full and final satisfaction will enable the Department to negotiate with both the non-resident parent and the parent with care in order to agree upon a lump sum payment that is less than the total child maintenance arrears owed, as full satisfaction of the debt, in cases where the Department is unable to collect the full amount owed.

7.6 The intention of the power is to enable money to flow to children, even where the non-resident parent is unable or unwilling to pay the full amount of arrears outstanding. It is anticipated that the Secretary of State's flexibility in brokering part payments will incentivise non-resident parents, who may not previously have been inclined to pay their arrears, to enter into sensible discussions with the Department in order to reach a mutually agreeable settlement.

7.7 It is intended that the power will be used where no suitable enforcement route is available or to enable a quick resolution in cases where the parent with care is willing to accept a lesser payment from the non-resident parent in lieu of the full amount. The regulations enable the Secretary of State to use the power both as a debt negotiation tool when talking to non-resident parents about their arrears and to consider an offer part payment made voluntarily by non-resident parents who wish to settle their arrears balances.

7.8 Under these regulations, where the arrears are owed to the parent with care (or a qualifying child over 12 years old in Scotland), the Department must obtain their consent, before accepting any offer of part payment.

Power to write off arrears

7.9 The write off powers contained in the 2008 Act are limited in nature as they can only be used in certain circumstances as outlined in the 2008 Act and prescribed in these regulations.

7.10 The Secretary of State has a general discretion to decide whether to collect child support maintenance. A decision not to pursue collection action currently results in the "suspension" of the arrears in question on its accounting records, but this does not extinguish the liability. In these circumstances, the arrears remain on the Department's records, even though there is little or no possibility of them ever being collected.

7.11 Currently, there is no formal provision to write off (or extinguish liability for) such arrears balances. The following circumstances are prescribed in these regulations as categories of cases where arrears of maintenance may be written off, where it would be "unfair or otherwise inappropriate" for the Department to pursue collection:

- the parent with care, or (in Scotland) the child, makes clear that they no longer require the arrears to be collected (and the arrears are owed to the parent with care rather than the Secretary of State);
- the parent with care, or (in Scotland) the child, has died;

- the non-resident parent has died and the arrears cannot be recovered from the estate;
- arrears accrued from an Interim Maintenance Assessment (IMA) which was calculated between 5th April 1993 and 18th April 1995 (and a legislative “gap” prevents recovery of those arrears); or
- the non-resident parent has been informed by the Department that no further action would ever be taken to recover those arrears. This may be, for example, because a case officer felt that there had been mal-administration on the case and assumed they had authorisation to act in this manner.

7.12 The regulations provide that where the Secretary of State is considering writing off arrears in any of the above circumstances, it will give notice to both parties advising them of this and provide them with a 30 day period to make representations, before any decision to write them off is made.

7.13 The proposed write off power is very limited and can only be used in the circumstances outlined above and where the Department, on behalf of the Secretary of State, considers that it would be unfair or inappropriate to enforce liability in respect of those arrears. The amount that will be written off in practice will depend on how the Department allocates its resources. The current focus is on maintaining the compliance of cases with an ongoing liability and the collection of child maintenance arrears where there continues to be a qualifying child. If this current focus continues, the Department will generally be in contact with older cases less often and this is the group where write off may be most appropriate (but only where the prescribed circumstances apply).

7.14 The law relating to child support is available on the internet at <http://www.dwp.gov.uk/advisers/docs/lawvols/orangvol/> and is generally updated twice- yearly.

Consolidation

7.15 The regulations are to be included alongside the existing provisions from the 2008 Act for the management of child maintenance payments and arrears, including offsetting and recovery from deceased’s estates. This was considered the most appropriate place for such provision to be included.

8. Consultation outcome

Public consultation on the primary powers in the 2008 Act

8.1 The high level principles of accepting part payment and writing off arrears were subject to a twelve week consultation on the White Paper “*a new system of child maintenance*” published in December 2006. A summary of responses to that consultation was published in May 2007.

8.2 The responses to the 2006 White Paper were largely in favour of the ability to accept part payment in full and final settlement; accepting that this was a practical approach to collecting arrears where both parents are in agreement.

8.3 On the power to write off arrears, the White Paper responses divided broadly into two groups. The first group of responses supported write off as a practical solution to manage those arrears that clearly could not or should not be collected. The second group of responses however, expressed concern that the write off power may be a strategic method to rid the Department of its more troublesome child maintenance cases. This latter group did not support the Department's case for introducing the write off power.

Public consultation on The Child Support Management of Payments and Arrears (Amendment) Regulations 2012

8.4 A consultation exercise on the Government's proposals on the implementation of the part payment and write off powers was conducted over the twelve weeks from 19 December 2011 to 13 March 2012. The consultation document was published on the Child Maintenance and Enforcement Commission's website and printed copies were available on request.

8.5 Responses (other than "no comment") were received from Gingerbread, Families Need Fathers, Resolution, National Association for Child Support Action, Public and Commercial Services Union and a number of individuals.

8.6 The responses received were generally in favour of the ability to accept part payment in full and final settlement and it was generally felt that the approach was a positive way of ensuring some money flowed to children, in cases where it was not possible to collect the full amount owed. The majority of respondents felt it would be appropriate to accept part payment by instalment, as well as by lump sum, in order to increase the effectiveness of the approach. In light of this, the Department intends to introduce further regulations, to enable part payment to be made by instalment in the future.

8.7 The responses received were also generally in favour of the ability to write off arrears, in the limited circumstances set out in the draft regulations. Respondents generally felt that the implementation of these powers would improve the Department's management of debt and provide a way over what is often considered the insurmountable obstacle of high debt.

8.8 The Government's response to the consultation on the detail of the regulations was published on 15 October 2012 and can be found at:
<http://www.dwp.gov.uk/consultations/2011/child-support-pyt-and-arrears-regs-2012.shtml>

9. Guidance

9.1 The Department is continuing work to ensure that its clients, employees and stakeholders are fully informed of the changes arising from the introduction of these powers. This activity includes discussions with key stakeholders, staff training, amending relevant leaflets, producing new client notifications and providing web-based guidance.

10. Impact

10.1 Neither of the provisions relating to the power to accept part payment in full and final satisfaction or the power to write off arrears have any impact on the private or voluntary sectors or small businesses. The impact on the public sector is negligible and will be managed as part of the normal operational business of the Department.

10.2 An Equality Analysis has been completed for these Regulations which found there to be only minor impacts in the areas of Age and Gender. Analysis of the Department's administrative data shows that the Age impact can be attributed to the fact that the majority of parents (both male and female) across the entire caseload are between the ages of 30-59. The gender impact is attributed to the fact that 96% of non-resident parents are male and 96% of parents with care are female.

10.3 The Equality Analysis has been published on the Department's website and can be found at <http://dwp.gov.uk/publications/impact-assessments/equality-impact-assessments/2012/>

11. Regulating Small Business

11.1 The legislation does not apply to small businesses.

12. Monitoring & Review

12.1 The Department will monitor the operation of both the power to accept part payment in full and final satisfaction and the power to write off arrears. The Department actively engages with its stakeholders, including representatives of the legal profession and parents' representative groups and will continue to do so to ensure that the policy intent of both these powers is maintained.

13. Contact

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