

**EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2013**

2013 No. 1517

- 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 This instrument introduces a number of measures to improve the efficiency and effectiveness of the new 2012 child maintenance scheme, which will come into force when the new scheme comes into force for all new child maintenance applications.
 - 2.2 Firstly, this instrument allows current income information to be sought from a non-resident parent if historic income information cannot be requested or obtained from HM Revenue and Customs (“HMRC”) for the purposes of making a maintenance calculation.
 - 2.3 Secondly, this instrument allows a ‘nil’ historic income figure from HMRC to be used as the gross weekly income figure for a non-resident parent for the purposes of a maintenance calculation.
 - 2.4 Thirdly, this instrument allows previously agreed variations to child maintenance liability to be re-instated automatically in appropriate circumstances.
 - 2.5 This instrument also makes minor supplemental amendments which clarify that the Department will treat parents who elect to not receive Child Benefit payments as the same as those who continue to receive the payments. The instrument also makes minor consequential and technical amendments to other child maintenance legislation.

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

None.

4 Legislative Context

- 4.1 The Child Support Act 1991 makes provision for the calculation, collection and enforcement of child maintenance, which is an amount of money that parents who do not normally live with their children (the “non-resident parent”) pay as a contribution for the upkeep of those children.
- 4.2 A statutory child maintenance scheme has been in operation within Great Britain since 1993 and was established through the Child Support Act 1991. A second statutory scheme was introduced for all applications received after March 2003 and currently operates alongside the 1993 scheme.
- 4.3 Following Sir David Henshaw’s report to the Secretary of State for Work and Pensions; *Recovering child support: routes to responsibility (Cm 6894)*: <http://www.dwp.gov.uk/docs/henshaw-complete22-7.pdf>, in July 2006 and the Government’s response – *A fresh start: child support redesign (Cm 6895)*: <http://www.dwp.gov.uk/policy/child-maintenance/sir-david-henshaws-report/governments-response/> the Government brought forward the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”) which provided the overarching legislation for a simplified and improved system of child support. The 2008 Act introduced a new way of calculating child support maintenance, based on historic income, and introduced a number of other important changes to the statutory child maintenance scheme.
- 4.4 Subsequently, the 2012 child maintenance scheme (“the 2012 scheme”), which uses the new rules set out in the 2008 Act, was introduced on 10 December 2012 but is currently only open to cases that meet certain criteria (specifically, new applications made after that date which relate to at least 4 qualifying children with the same non-resident parent and parent with care and certain cases linked to those cases).
- 4.5 The 2012 scheme will open to a greater proportion of new applications for child maintenance on a gradual basis until all new applications are admitted to the new scheme. The 2012 scheme will then continue to run alongside the 1993 and 2003 schemes until all liabilities in the latter schemes are ended and only the 2012 scheme remains.
- 4.6 Statutory schemes also operate within Northern Ireland which currently mirrors those operating within Great Britain.

4.7 This instrument makes amendments to the Child Support Maintenance Calculation Regulations 2012 (“the 2012 Regulations”), which sets out rules for the 2012 scheme. These amendments enable the use of current income information as the basis of a maintenance calculation when HMRC information is not available, allow previously agreed variations to child maintenance liability to be re-instated automatically in appropriate circumstances and enable a ‘nil income’ figure from HMRC to be used to calculate child maintenance liability. The instrument also makes changes to all three child maintenance schemes, following changes to Child Benefit for higher income earners. Further, the instrument makes minor consequential and technical amendments to child maintenance legislation as detailed below.

5 Territorial Extent and Application

This instrument applies to England, Wales and Scotland. Similar provision will be made separately for the statutory child maintenance scheme for Northern Ireland.

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 The Policy objectives are to make a number of amendments to child support provisions, the details of which are set out below, to enable the more effective administration of child maintenance cases in the 2012 scheme in the light of experience of handling a small number of cases in the pathfinder. The changes are not judged politically or legally important and the level of public interest has been low. The amendments being made affect child maintenance schemes across Great Britain.

7.2 Child maintenance legislation is based on the general principle that all parents should take financial responsibility for all of their children. The main objective of child maintenance legislation is to maximise the number of effective maintenance arrangements in place for children who live apart from one or both of their parents.

- 7.3 The 2012 Regulations set out the regulatory basis for the 2012 scheme. The Child Maintenance and Other Payments Act 2008 (Commencement No.10 and Transitional Provisions) Order 2012 (“the Commencement Order”) brought the 2012 Regulations into force on 10 December 2012 for certain cases, namely for new applications made after that date which relate to at least 4 qualifying children with the same parents and certain cases linked to those cases.
- 7.4 This instrument makes changes to the 2012 Regulations in order to simplify the system, improve service to customers, reduce costs to the taxpayer and increase the flow of child maintenance payments to children.
- 7.4.1 Where a case is administered under the 2012 scheme, HMRC provides the Department with a non-resident parent’s historic income figure which is used as the non-resident parent’s “gross weekly income”, which forms the basis of the child maintenance calculation. Historic income is based on a self-assessment return or an employer’s Pay As You Earn return. Using HMRC income information supports our objectives of quicker and more transparent calculations.
- 7.4.2 The Commencement Order, which commenced the 2012 scheme for a small number of clients, includes transitional provision, which will end when the 2012 scheme is commenced for all purposes, i.e. when it is open to all new applicants. This provision allows a non-resident parent’s gross weekly income to be calculated on the basis of current income if HMRC is unable to provide historic income information.
- 7.4.3 This instrument includes amendments to the 2012 Regulations that will replace this transitional provision once the 2012 scheme is open to all new applicants. The amendment will allow the Secretary of State to base a non-resident parent’s gross weekly income on current income information from the non-resident parent where HMRC historic income cannot be requested or obtained. If this amendment were not made, the Department could not request current income information in these circumstances. Therefore, a Default Maintenance Decision would need to be made in these circumstances, which is based only on the number of children being supported, rather than the income of the non-resident parent. This amendment will enable child maintenance to be calculated and continue to flow to the parent with care and the child when HMRC information is not available once the 2012 scheme is opened to all new applicants.
- 7.4.4 Secondly, the 2012 Regulations currently provide that when a ‘nil income’ figure is provided by HMRC (that is where HMRC data is available but that data shows £0 earnings), the non-resident parent’s gross weekly income must be based on current income information. This instrument amends the 2012 Regulations so that a ‘nil income’ figure will be accepted as the gross weekly income figure and form the basis of the maintenance calculation. Therefore, a ‘nil income’ figure will no longer mean that gross weekly income is to be based on current income.

- 7.4.5 We are seeking to make this change so as to remove an anomaly whereby a return of £0 from HMRC would trigger a calculation based on current income whereas a return of 1p would not. It will remain open to either parent to challenge the historic income figure on the basis that the non-resident parent has current income. Where there is a nil historic income figure, *any* current income will mean that the maintenance calculation can be based on current income.
- 7.4.6 Thirdly, a variation may be made to a maintenance calculation where certain criteria are satisfied, for example where there is evidence that a non-resident parent has additional income. Where a non-resident parent experiences a change of circumstances, it is possible that a variation will cease to have effect; for example, where a non-resident parent or their partner receives certain benefits or when income reduces. Where a variation has ceased to have effect, it can be re-instated if the circumstances of a non-resident parent change in certain ways, for example the non-resident parent stops receiving certain benefits and the Secretary of State has verified this to be the case.
- 7.4.7 This instrument amends the 2012 Regulations to enable the Secretary of State to automatically re-instate the variation in these circumstances. The practical effect of this provision is that caseworkers will not have to contact the non-resident parent in question to verify if there has been a change in his/her circumstances before a variation can be re-instated. This fulfils the policy objective of providing a more efficient and simpler service, which places the onus on parents to report a change in their circumstances. Both parents can report any changes to circumstances that would affect the variation and the calculation can be revised, if appropriate.
- 7.4.8 A regular deduction order is an administrative tool which allows the Department to secure payment of child support maintenance via deductions from a non-resident parent's bank or building society account(s). This instrument makes minor and technical amendments to the Child Support (Collection and Enforcement) Regulations 1992 in relation to regular deduction orders in 2012 scheme cases. These changes are consequential on a change made by the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations 2012.
- 7.4.9 These consequential amendments will facilitate the effective use of regular deduction orders in the 2012 scheme by aligning the relevant legislation with its application to the 1993 and 2003 schemes. The amendments clarify that the amount deducted under a regular deduction order in any period must not exceed 40% of a non-resident parent's gross weekly income as used in the most recent calculation of child maintenance liability.

- 7.4.10 In cases where there is no ongoing liability (i.e. the order is collecting child maintenance arrears only), an amendment will be made in relation to the review of the regular deduction order. This will mean that where the non-resident parent's current income has changed following the most recent calculation of child maintenance liability, the non-resident parent or the deposit taker may apply to the Department to review the regular deduction order.
- 7.4.11 A further technical amendment is made to rectify a minor drafting error which was identified within regulation 1(6) of the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations 2012. This amendment clarifies the meaning of "arrears of child support maintenance". A supplementary revocation is also made to these Regulations.
- 7.4.12 Finally, this instrument clarifies the position in respect of parents who earn more than £50,000 a year and who elect for Child Benefit payments to not be made, making it clear that they will not be treated any differently to parents who continue to choose to receive Child Benefit payments. This change will apply to the 1993, 2003 and 2012 schemes.
- 7.4.13 Commencement date: Regulation 8(1) to (3) and (6), which relate to the use of nil historic income, requesting current income information where the HMRC interface is unavailable and automatically re-instating variations will come into force when the amendments made by the 2008 Act (introducing the 2012 scheme) are commenced for all purposes. All other regulations will come into force on 30 September 2013.

- **Consolidation**

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 A six week consultation on the draft regulations ran from 1 March 2013 to 12 April 2013. The consultation was published on the Department's website and invited comments from stakeholders, representative organisations, parents and members of the general public. One response was received from representatives of an organisation with an interest in child maintenance (Resolution) and officials also met with Gingerbread. Three responses were received from members of the public.
- 8.2 The consultation engaged stakeholders and respondents were generally supportive of the draft regulations. However, stakeholders did express concerns that, if the 'nil income' figure from HMRC is used, parents would not be able to contest this figure. The views raised were considered and it was

made clear in the Government's response that 'nil income' notifications will state that either parent can contact the Department to contest the figure used in the maintenance calculation.

- 8.3 A full analysis of consultation responses is available on the Department's website at: <https://www.gov.uk/government/publications> .

9 Guidance

The Department will ensure that clients, employers and stakeholders are kept informed of the changes. Staff will be trained in the new policies, relevant client notifications and leaflets will be prepared and web-based guidance will be available to support caseworkers.

10 Impact

- 10.1 The impact on business, charities or voluntary organisations is none.
- 10.2 The impact on the public sector is negligible and limited to the Department for Work and Pensions.
- 10.3 An impact assessment has not been prepared for this instrument.

11 Regulating Small Business

The legislation does not apply to small business.

12 Monitoring & Review

The regulations relating to accepting 'nil income' as the gross weekly income figure and automatically re-instating variations in certain circumstances will be monitored and evaluated alongside all the changes delivered by the 2012 child maintenance scheme. The Department will monitor the operation of the remaining regulations following implementation; however, as these amendments do not constitute a 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 policy intent is achieved.

13 Contact

Mamta Gadda at the Department for Work and Pensions, Child Maintenance Group . Telephone: 0207 245 3801 or E-mail: mamta.gadda@dpw.gsi.gov.uk can answer any queries regarding the instrument.