

**EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (CONSEQUENTIAL AND MISCELLANEOUS
AMENDMENTS) REGULATIONS 2014**

2014 No. 1386

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

2. Purpose of the instrument

2.1. This instrument makes amendments consequential on the introduction of fees for the statutory child maintenance scheme introduced in 2012 (“the 2012 scheme”) and miscellaneous amendments to various child support regulations.

2.2. The miscellaneous amendments include: changing the notice requirements in 2012 scheme cases where the Secretary of State intends to make arrangements to collect or enforce payments of child support maintenance; amendments to when the Secretary of State is required to issue a notice to a non-resident parent when an application is made to the 2012 scheme; and amendments in relation to how the initial effective date (the date from which child maintenance is payable) for an application is determined.

3. Matters of special interest

3.1. None.

Legislative Context

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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. The child support scheme under the 1991 Act was substantially amended by the Child Support, Pensions and Social Security Act 2000, which introduced a second scheme of child support maintenance. The 1991 Act was further amended by the Child Maintenance and Other Payments Act 2008, effectively introducing a third scheme. The 2012 scheme was fully commenced for all new applicants in November 2013.

4.2. Fees for those using the 2012 scheme, including collection fees (payable when the Secretary of State makes arrangement for collection) and enforcement fees (payable where the Secretary of State take enforcement action) are being introduced as part of the programme of child maintenance reform intended to provide for a more efficient and simplified system of statutory child support with an emphasis on parental collaboration wherever possible, following from Sir David Henshaw’s 2006 independent report on the future of the child maintenance system, ‘Recovering child support: routes to responsibility’ ([Cm6894](#)), and the Government’s response, ‘A fresh start: child support redesign’ ([Cm6895](#)).

4.3. This instrument makes amendments to child support regulations as a consequence of the introduction of fees set out in the Child Support Fees Regulations 2014 ([S.I. 2014/612](#)). The amendments consequential on the Fees Regulations are made under

powers in the [Child Support Act 1991](#). These powers are available as a result of regulation 13 of the Fees Regulations, which provides that the provisions of the 1991 Act with respect to collection and enforcement of child support maintenance apply to the collection and enforcement of fees payable under Part 3 (Collection fees) and 4 (Enforcement Fees) of the Fees Regulations, with certain exceptions.

4.4. This instrument makes miscellaneous amendments to child support legislation set out below, intended to support the operation of the 2012 scheme, and the process which will enable both the 1993 and 2003 schemes to be gradually replaced by the new statutory child maintenance scheme.

4.5. The Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014 ([S.I. 2014/614](#)) (“the Ending Liability Regulations”) make provision for the ending of liability in cases in existing child maintenance schemes. This instrument makes amendments to the liability end date, which is the date on which liability to pay maintenance stops accruing in an existing case.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy Background

- *What is being done and why*

7.1. Of 2.5 million separated families with children in Great Britain, no more than half have effective child maintenance arrangements. The Government is therefore undertaking a radical reshaping of the child maintenance system designed to encourage and support families to make their own collaborative arrangements and, for those who need a statutory scheme, to deliver a much more efficient and effective service, and include better co-ordinated support services and incentives for parents to make family-based arrangements.

Consequential Amendments enabling collection and enforcement of fees

7.2. Fees are being introduced for some services in the 2012 scheme to encourage collaboration on the part of parents to reach their own family-based arrangement (instead of using the statutory scheme) or to pay each other direct within the statutory scheme if they cannot reach their own family-based arrangement. This is because the Government believes that such collaboration between parents is in the best interest of children. Consequential amendments will need to be made to a number of provisions, this includes

- The Child Support (Collection and Enforcement) Regulations 1992 ([S.I. 1992/1989](#)) (“the Collection and Enforcement Regulations”),

- The Child Support (Management of Payment and Arrears) Regulations 2009 ([S.I. 2009/3151](#)) (“the 2009 Regulations”)
- The Child Support Maintenance Calculation Regulations 2012 ([S.I. 2012/2677](#)) (“the Calculation Regulations”).

- 7.3. This instrument amends child maintenance regulations to reflect that any collection fees which are due to be paid by the non-resident parent will be scheduled for payment at the same time as child maintenance and any unpaid fees will be enforced using the same methods of enforcement as are used in relation to child maintenance.
- 7.4. This instrument makes amendments to allow the Secretary of State to specify the method of payment of collection fees and so that the Secretary of State may direct a non-resident parent to take reasonable steps to open an account from which payments of child maintenance and collection fees can be made.
- 7.5. The Secretary of State may make a deduction from earnings order against the non-resident parent, instructing their employer to deduct amounts from their earnings and pay these to the Secretary of State. Child support regulations specify matters to be taken into account in determining whether there is a good reason not to use a deduction from earnings order as a method of payment. This instrument amends those regulations to specify that the fact that a third party would find out about the liable person’s obligation to pay a fee or the amount of that fee is not a relevant consideration when deciding to specify a deduction from earnings order as the method of payment, and that a liable person’s preference for an employer not to be informed of the liable person’s obligation to pay a fee or the amount of that fee is also not a relevant consideration.
- 7.6. This instrument makes amendments that allow the Secretary of State to schedule payments of collection fees in the same way that child maintenance is scheduled.
- 7.7. Child Support regulations specify that the Secretary of State is required to issue a notice to a non-resident parent as soon as reasonably practicable following the making of a maintenance calculation or where there is a change in the requirements set out in a previous notice. The notice must include the amount of child support maintenance payable, to whom payments are to be made, the method of payment, the day and interval by reference to which payments are to be made and the amount of any overdue child maintenance. This instrument amends these requirements, so the notification must also include the same information for collection fees (where payable).
- 7.8. Child Support regulations specify an enforcement fee is payable to the Secretary of State by a non-resident when the Secretary of State takes a specified method of enforcement. These are £300 for a Liability Order (where legal liability for a debt is established in court); £200 for a Lump Sum Deduction Order (where a lump sum is deducted from a person’s bank account); £50 for a Deduction from Earnings Order (where money is regularly deducted by the employer from a person’s pay); and £50 for a Regular Deduction Order (where money is regularly deducted from a person’s bank account).
- 7.9. This instrument makes provision so that when an enforcement fee is applied the Secretary of State must send notice to the non-resident parent as soon as reasonably

practicable stating the amount of the enforcement fee payable and the method of the enforcement action for which the fee has been applied.

7.10. This instrument amends the regulations to specify that the Secretary of State must review a deduction from earnings order when any arrears of child support maintenance, arrears of collection fees or an enforcement fee is paid off.

7.11. Child Support regulations include provision which enables the Secretary of State to recover arrears of child maintenance from a deceased person's estate. This instrument makes amendments to enable the Secretary of State to also recover collection fees from a deceased person's estate

Discharge of a deduction from earnings order

7.12. This instrument inserts a new circumstance in which a deduction from earnings order may be discharged in the 2012 scheme. A deduction from earnings order may be discharged when the Secretary of State has agreed with the non-resident parent an alternative method of payment of child maintenance and any fees and considers it is reasonable to discharge the order in the circumstances of the case. This is to allow the Secretary of State to discharge a deduction from earning order as part of the process of providing for a non-resident parent to move to Direct Pay which will be offered to non-resident parents when charging is introduced.

Child in care who is allowed to live with a parent and a minor technical amendment

7.13. This instrument makes technical amendments to relevant child support legislation which are consequential on an amendment made to the [Children Act 1989](#). The effect of the change is that children who are allowed to stay with their parent by a local authority under the amended section of the Children Act will be treated in the same way, for Child Support purposes, as those allowed to stay with their parent under the pre-existing Section of the Act.

7.14. This instrument makes a clarificatory amendment to the wording of Regulation 12 of the Child Support Departure Direction and Consequential Amendments Regulations 1996 ([S.I. 1996/2907](#)).

Amendments to the Child Support (Collection and Enforcement) Regulations 1992 ([S.I. 1992/1989](#))

7.15. This instrument makes amendments to the notification requirements for Direct Pay / Collection service cases for 2012 scheme cases, to enable the Secretary of State to take swift and effective collection or enforcement action against those non-resident parents who fail to pay child maintenance. Regulations oblige the Secretary of State to give written notice to a non-resident parent before taking enforcement action in cases where collection arrangements are in place. This instrument amends these regulations so that if there are arrangements for direct pay or collection (but not enforcement), and the non-resident parent fails to make a payment of child maintenance, the Secretary of State may make arrangements for collection or enforcement if a general notice advising the non-resident action that such action will be taken has been issued to the non-resident parent during the previous 12 months.

Amendments to the Child Support Maintenance Calculation Regulations 2012 (S.I. 2012/2677)

Amendments to when the notice of application must be sent

- 7.16. Regulations provide that the Secretary of State must give written notice to the non-resident parent as soon as reasonably practicable after an application for a maintenance calculation is made to the 2012 scheme. This instrument makes amendments so the obligation to send notice does not arise until the application has been made, any application fee is paid or waived and the non-resident parent's address is ascertained and verified. The notice must then be sent as soon as is reasonably practicable, unless the case is one affected by the Ending Liability Regulations. These amendments are explained in the Regulation 8 section below.

Initial Effective Dates and a new provision for revision.

- 7.17. This instrument makes amendments to the Calculation Regulations in relation to how the initial effective date (the date from a maintenance calculation takes effect) is set. The amendments require that the non-resident parent must be notified of the initial effective date either by letter at least two days prior to the initial effective date or by telephone on or before the initial effective date. The initial effective date is the date provided in that letter or provided by phone. These amendments ensure the non-resident parent is notified of the initial effective date on or before that date.
- 7.18. This instrument inserts provision into the Calculation Regulations so that a decision (e.g. Decision B) may be revised by the Secretary of State where having made one decision that is under appeal, and following the decision of the tribunal in respect of that decision, the Secretary of State determines they would have made decision B differently. Provision for this scenario was not originally included in the regulations.

Amendments to the Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014 (S.I. 2014/614)

Case closure amendments

- 7.19. The Ending Liability Regulations make provision for the Secretary of State to close down the 1993 and 2003 child maintenance schemes and allow existing clients on these schemes who exercise their choice to remain in the statutory scheme to be handled on the 2012 scheme. For these existing 1993 or 2003 clients who exercise this choice to apply to the 2012 scheme, provision is made for when the notice must be sent to reflect the intended process for these cases, which is to issue the letter when their existing scheme case is due to close
- 7.20. Once the Ending Liability Regulations are in force and process of ending liability in existing schemes is underway, where a new application to the 2012 scheme is linked to an existing case on the 1993 or 2003 schemes, the new application will cause the liability to end on the existing case. This is because all linked cases must be handled according to the same scheme. An existing case will be linked to a new application where the non-resident parent in the new application is also a non-resident parent for a different case on the 1993 or 2003 scheme, and the person with care in the new application is not also the person with care in the existing case; or where the non-resident parent in the new application is the partner of a non-

resident parent for a different case on the 1993 or 2003 scheme, and either or both of them are in receipt of a prescribed benefit.

7.21. Amendments are made to the Ending Liability Regulations so where a new application is linked to an existing case the Secretary of State will give at least (rather than exactly) 30 days notice to the interested parties to inform them of the date that their liability will end. This amendment allows for a degree of flexibility as to when notifications can be issued. This is still intended to balance the interests of the parent with care on the new application and the parent with care in the existing case. The existing parent with care should be given enough time to consider their choice about whether to remain within the statutory scheme, but without causing significant delay in starting the liability on the new parent with care's case.

7.22. For these cases this instrument makes amendments to the requirement that the Secretary of State must give written notice to the non-resident parent as soon as reasonably practicable after an application for a maintenance calculation is made to the 2012 scheme. Although it may be considered reasonably practicable to send the notice, regulation 7(7) provides that notice must be sent as soon as is reasonable once the day 39 days before the liability end date has passed. This is to ensure clients do not have cases on more than one scheme and to provide a better client experience.

7.23. A further technical amendment is also made to a definition in the Regulations.

- ***Consolidation***

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

8. Consultation outcome

8.1. The amendments consequential on the Fees Regulations have not themselves been consulted on, however the introduction of fees was consulted on in the Green Paper '*Strengthening families, promoting parental responsibility: the future of child maintenance*' ([Cm7990](#)) which ran for 12 weeks from January 2011. 482 responses were received from members of the public and 67 responses from stakeholder organisations. The Government response ([Cm8130](#)) acknowledged concerns raised by some respondents, who were in general opposed to charging for access to or use of the statutory child maintenance scheme, but reiterated the rationale behind charging, that fees are necessary to encourage collaboration and to enable parents to move towards family-based arrangements which the Government believes, will deliver better outcomes for children.

8.2. The Fees Regulations and the Ending Liability Regulations themselves were consulted on in the Command Paper '*Supporting separated families; securing children's futures*' ([Cm8399](#)), a public consultation on the draft Child Support Fees Regulations 2013 and the draft Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2013, which covered exactly how the levying of fees would work. This consultation ran from July 2012 to October 2012, receiving a total of 90 responses: 51 from individuals, 37 from organisations

and two from Department for Work and Pensions Staff. An [Impact Assessment](#) was also made available on the DWP website.

8.3. In response ([Cm8742](#)) the Government extended the list of reporting organisations for the declaration-based application fee waiver for victims of domestic violence, and recognised concerns raised by most respondents over the level of the parent with care collection fee by lowering this from the proposed seven percent to four percent.

8.4. No consultation has taken place with regard to the miscellaneous amendments as these are mostly consequential or remedy minor system issues; thereby not requiring liaison with external stakeholders.

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 changes. 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. There is no impact on business, or civil society organisations.

10.2. There is minimal impact limited to the Department for Work and Pensions on the public sector.

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

11. Regulating Small Business

11.1. The legislation does not apply to small businesses.

12. Monitoring & Review

12.1. Section 6(3A) to (3D) of the Child Maintenance and Other Payments Act 2008, as amended by the Welfare Reform Act 2012, commits the Secretary of State to reviewing the effect of charging 30 months after charging begins. The Secretary of State must publish a report following this review containing conclusions and a statement detailing what action will be taken in respect of these conclusions. The Secretary of State must lay this report before Parliament.

12.2. As part of an overall evaluation of child maintenance reforms, the department is compiling an evaluation strategy. This will be published later in 2014 detailing how the Child Maintenance Reforms will be evaluated in terms of the 30 month review and beyond.

13. Contact

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