

EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (COLLECTION AND ENFORCEMENT AND MAINTENANCE CALCULATION) (AMENDMENT NO. 2) REGULATIONS 2021

2021 No. 763

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information relevant to the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument will make changes to child maintenance legislation. It will remove forms prescribed in legislation for the liability order (a type of court order) process and those prescribed forms relating to committals to prison and the disqualification from holding or obtaining a driving licence or United Kingdom passport. This instrument will also align child maintenance qualifying rules with Child Benefit payment criteria in certain circumstances, by amending the application of Child Benefit legislation. For child support purposes, the consequences of not satisfying two of the criteria for a qualifying young person are modified, with the effect that the person is not a “child” and therefore, the person is not the subject of child support. The calculation of the date a person ceases to be a qualifying young person is also modified, where they are entered for exams in England and Wales.
- 2.2 This instrument revokes and replaces the Child Support (Collection and Enforcement and Maintenance Calculation) (Amendment) Regulations 2021, following the discovery of errors after that instrument had been made. It is therefore being made available free of charge to all known recipients of those Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument revokes and replaces the Child Support (Collection and Enforcement and Maintenance Calculation) (Amendment) Regulations 2021 (S.I. 2021/738) which would otherwise come into force on the 12th July. Referencing errors in S.I. 2021/738 were noted after it had been made.
- 3.2 Regulations 1 and 2 of this instrument breach the 21 day rule as they come into force on the 11th July 2021. The 21 day rule is breached because of the urgent need to prevent the defective elements of S.I. 2021/738 coming into force on the 12th July 2021. If S.I. 2021/738 were to come into force, errors in the calculation of the period that a person can be the subject of child maintenance may occur. The errors could lead to legal uncertainty and have financial consequences for families with a child maintenance arrangement.
- 3.3 The substantive elements of this instrument observe the 21 day rule and come into effect on the 19th July 2021.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is to England and Wales and Scotland except for the amendments relating to a warrant of commitment, which extend to England and Wales only.
- 4.2 The territorial application of this instrument for the changes about the removal of the prescribed forms relating to liability orders, committals to prison, disqualification from holding or obtaining a driving licence or a United Kingdom passport, is England and Wales. This change will not apply in Scotland. Although child maintenance is not devolved in Scotland, the judicial system is, and the differences in their procedures and processes mean it is not possible to introduce this change in Scotland. The territorial application for the changes relating to qualifying young persons will be England and Wales and Scotland.
- 4.3 Corresponding provisions will be made for Northern Ireland by the Northern Ireland Department for Communities.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Child Support Act 1991 (the “1991 Act”)¹ provides the primary powers for the Secretary of State to define “child”, set a child maintenance assessment and where required collect child maintenance payments from parents to pay over to parents with care.
- 6.2 The application of these powers are provided within:
- The Child Support Maintenance Calculation Regulations 2012 (the “2012 Regulations”)² set out how maintenance will be calculated under the current statutory scheme.
 - The Child Support (Collection and Enforcement) Regulations 1992 (the “1992 Regulations”)³ enable further enforcement action to be taken
- 6.3 These Regulations have been made using the following powers:
- Section 55(1) of the 1991 Act makes the provisions for the definition of a “child”. Section 55(1)(b) of the 1991 Act enables conditions to be prescribed for a person who has reached the age of 16 and has not attained the age of 20 to come within the meaning of “child”.
 - Regulation 76 of the 2012 Regulations is made under section 55(1)(b) of the 1991 Act. The condition is that the person is a qualifying young person as

¹ <https://www.legislation.gov.uk/ukpga/1991/48/contents/enacted>

² <https://www.legislation.gov.uk/uksi/2012/2677/contents/made>

³ <https://www.legislation.gov.uk/uksi/1992/1989/contents/made>

defined in section 142(2) of the Social Security Contributions and Benefits Act 1992 (the “1992 Act”)⁴

- The Secretary of State relies on her power in section 55(1) of the 1991 Act to amend regulation 76 of the 2012 Regulations. For the purposes of child support, the amendments set out the circumstances in which a person is not a qualifying young person and therefore not eligible for child support:
 - Where a person is in paid work for 24 hours or more in a week or in expectation of payment;
 - Where a person is in receipt of specified benefits or tax credits in their own right.
- When a person leaves relevant education or approved training and is entered for exams, a further amendment will align the end of child maintenance liability and Child Benefit Payability.
- Section 34(1)(a) of the 1991 Act makes provisions for the Secretary of State to make regulations prescribing the procedure to be followed when making an application for a liability order.
- Section 34(1)(b) of the 1991 Act prescribes the form and contents of the liability order. These powers will be used to amend the 1992 Regulations to remove the form prescribed for liability order applications. Under regulation 29 of the 1992 Regulations, the Secretary of State has the power to grant a liability order to allow further enforcement to collect arrears. The form used to grant the liability order is prescribed in Schedule 1 to the 1992 Regulations. We are proposing to remove the form at Schedule 1 which will allow for bulk processing of liability orders by Magistrates’ Courts.
- Section 39F (a) of the 1991 Act makes provisions in relation to orders under section 39B (Disqualification from holding or obtaining travel authorisation). These powers will be used to amend the 1992 Regulations to remove the form prescribed that provides the outcomes of applications made to the Magistrates’ Court to disqualify a parent from holding or obtaining a passport.
- Section 40(11)(a) of 1991 Act makes provisions for the Secretary of State to prescribe the form of any warrant used following the outcome of an application made to the Magistrates’ Court to issue a warrant of commitment to prison. These powers will amend the 1992 Regulations to remove the form providing for a warrant of commitment to prison.
- Section 40B(11) of the 1991 Act makes provision in relation to orders to disqualify a parent from holding or obtaining a driving licence. These powers will amend the 1992 Regulations to remove the form that provides the outcomes of applications made to the Magistrates’ Court to disqualify a parent from holding or obtaining a driving licence.

6.4 The amendments this instrument will make are:

- The instrument makes amendments to regulation 76 of the 2012 Regulations which determines that a person aged between 16 and under 20 must satisfy the criteria for a “qualifying young person” specified in the 2006 Regulations.
- The amendment will insert provisions at 76(2)-(4) into the 2012 Regulations and provides that a person does not satisfy the condition of being a “qualifying

⁴ <https://www.legislation.gov.uk/ukpga/1992/4/contents/enacted>

young person” if they are in remunerative work in any week between leaving education and the applicable terminal date or are in receipt of other financial support in any week. A consequence of these provisions is that such a person will not be a “child” for the purposes of the 1991 Act and will not be eligible for child support.

- A further amendment provides that where a person leaves relevant education or approved training and is entered for exams, the calculation of the applicable terminal date takes account of the week in which the terminal date falls. This amendment will align the end of child maintenance liability and Child Benefit payability.
- Under regulations 33, 35, 35A of the 1992 Regulations the Secretary of State has the power to disqualify a liable person from holding or obtaining a United Kingdom passport or driving licence or commit a liable person to prison. The forms used to grant the disqualifications and committal are prescribed in the 1992 Regulations in Schedules 3, 4 and 5. These regulations will remove these forms from legislation. The courts will then use a standardised form to grant the order instead.

7. Policy background

7.1 Removing forms prescribed in legislation for liability orders

- The Child Maintenance Service (CMS) apply for liability orders when enforcement action is required to recover child maintenance arrears. Currently the liability order is prescribed in a form in legislation and each liability order is signed individually by the Magistrate. This makes the process administratively burdensome for Department for Work and Pensions (DWP) and Her Majesty’s Courts and Tribunals Service (HMCTS).
- By removing the prescribed form from legislation, liability order applications can be done on a bulk schedule and one signature can be provided for numerous orders. This will help Child Maintenance Service (CMS) operate more efficiently as more liability order cases can get to the courts more quickly and it will help the receiving parent receive maintenance arrears sooner.

7.2 De-prescribing sanctions forms

- Liability orders provide the gateway for CMS to use further enforcement powers. If CMS are unable to collect the arrears through a bailiff or other enforcement action once a liability order is granted, an application can be made to disqualify paying parents from: obtaining or holding a United Kingdom passport or driving licence, or a committal to prison. Forms to support these applications are prescribed in legislation.
- Where evidence is requested, the court can provide an extract of the court register. This doesn’t need to be a prescribed form. This information is stored on’ HMCTS IT systems and will be held there if it is needed in future. This is no change from the current process.
- The purpose of the change is to modernise the current system and align it with digital changes which are happening at a cross-departmental level. Having particular forms prescribed in legislation is outdated and involves lots of

administration for the courts resulting in delays to the processing of the disqualification or committal.

- Additionally, it limits the scope for change. Her Majesty's Courts and Tribunal Services (HMCTS) are currently modernising their processes by digitalising their system. This has resulted in changes to their forms and processes with the result that the regulations no longer accurately reflect the forms used. As a result, many forms used in the Magistrates' Court (for example arrest warrants or council tax liability orders) have been de-prescribed.

7.3 Qualifying young person changes

- The purpose of the instrument is to modify the application of two criteria for a person to be a "qualifying young person" for child maintenance purposes and to alter the calculation of the applicable terminal date where a qualifying young person is entered for exams. These amendments will correct minor anomalies in the application of regulation 7 and regulation 8 of the 2006 Regulations.
- The amendments will ensure that the qualifying young person and terminal date provisions better reflect longstanding policy intent. That is, payment of child maintenance should end in line with child benefit payability where young people enter remunerative work after leaving education but before the applicable terminal date or, receive other financial support in the form of specified benefits or tax credit. This provides for consistent treatment of persons to whom either of these criteria apply. The changes to this definition will also allow the Department to achieve greater administrative efficiency.
- As a result of the terminal dates amendment, for persons who are entered for exams, child maintenance liabilities will end on the same day as child benefit payability in the week of the applicable terminal date. This will resolve the current discrepancy between child benefit terminal dates applied by Her Majesty's Revenue and Customs (HMRC) and the dates maintenance liabilities end. The 2006 Regulations currently require that child maintenance liabilities stop on a date that can vary by up to six days depending on whether a "qualifying young person" is entered for exams or not after they leave relevant education or approved training.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation changes are being made as a result of this legislative package.

10. Consultation outcome

10.1 We have not consulted on the changes as they are small and technical changes.

10.2 We submitted the draft Regulations to the Social Security Advisory Committee (the "Committee") for their scrutiny as we were initially of the view that regulation 4 of the Regulations fell within the Committee's remit. The Committee decided that it did

not wish to take these Regulations on formal reference and that we may proceed with the Regulations accordingly. On closer scrutiny of the statutory powers, it was realised that the proposals for the Regulations did not fall within the Committee's remit under section 172 of the Social Security Administration Act 1992. We are nevertheless very grateful for the Committee's input.

11. Guidance

- 11.1 The Department is continuing to work to ensure that its clients and stakeholders are fully informed of the changes arising from the introduction of these powers. Information will be made available on GOV.UK explaining the changes and how they will impact clients on the 19th July

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because these are minor technical amendments to amend administrative processes.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is regular engagement with key stakeholders and we will review these provisions if we receive feedback from our stakeholders or customers surrounding their effectiveness or operation.
- 14.2 These regulations do not include a statutory review clause in line with the requirements of the Small Business, Enterprise and Employment Act.

15. Contact

- 15.1 The Child Maintenance Policy Team at the Department for Work and Pensions. Email: childmaintenance.policyqueries@dwp.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 The Deputy Director for Child Maintenance Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Stedman-Scott OBE, Parliamentary Under Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.