

**EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT MAINTENANCE CALCULATION REGULATIONS
2012**

**THE CHILD SUPPORT MAINTENANCE (CHANGES TO THE BASIC RATE
CALCULATION AND MINIMUM AMOUNT OF LIABILITY)
REGULATIONS 2012**

2012 No.

1 This explanatory memorandum has been prepared by the Child Maintenance and Enforcement Commission on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2 Purpose of the Instrument

2.1 These instruments are made under powers contained in the Child Support Act 1991 as amended by the Child Maintenance and Other Payments Act 2008 Act. They set out how maintenance will be calculated under the new scheme of child maintenance. They will apply to applications for child maintenance made under the new scheme after the amendments made by the 2008 Act come into force for a particular case.

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

3.1 None

4 Legislative Context

4.1 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 1991 scheme. Statutory schemes also operate within Northern Ireland which mirror those operating within Great Britain.

4.2 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 pay as a contribution to the upkeep of those children.

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 which provided the overarching legislation for a simplified and improved system of child support.

5 Territorial Extent and Application

- 5.1 These instruments apply to England, Wales and Scotland. Provision will be made in regulations for reciprocal arrangements with Northern Ireland Ministers, before the new scheme commences.

6 European Convention on Human Rights

Maria Miller MP, the Minister for Disabled People, has made the following statement regarding human rights:

In my view the provisions of the Child Support Maintenance Calculation Regulations 2012 and of the Child Support Maintenance (Changes to the Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012 are compatible with the Convention rights.

7 Policy Background

- *What is being done and why?*

- 7.1 Child maintenance legislation is based on the general principle that all parents take financial responsibility for all of their children. 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. This is supported by two further objectives:

1. To encourage parents to make and keep effective voluntary maintenance arrangements, to be known as family-based arrangements.
2. To support parents in making applications for statutory child maintenance.

- 7.2 The 2003 scheme of child support was introduced to provide a radically simpler system than the highly complex system of calculation in the 1993 scheme.

- 7.3 Once the 2003 scheme had been in operation for some time it became evident that although there had been improvements from the 1993 scheme, the gathering of income information to calculate child maintenance was cumbersome and time consuming and did not allow for a quick and effective method of getting money to the children who need it.

- 7.4 These instruments (together with the 2008 Act) make changes in order to simplify the statutory child support scheme, improve service to customers, reduce costs to the taxpayer and increase the flow of child maintenance payments to children.

- 7.4.1 The majority of maintenance calculations in the new scheme will be based on gross weekly income obtained from income information provided by HMRC. Using income information provided by HMRC via an automated system request will avoid many of the delays experienced currently as a result of relying on non-resident parents to provide net income information. Under the new scheme, taxable income of non-resident parents who are; auxiliary coastguards, part-time fire-fighters, part-time lifeboat crew members, reserve or territorial force members and local authority councillors will no longer be disregarded, as is currently the case. The definition of current income for self-employed people will be from taxable profits from trade over an accounting period, usually running for one year. Tax Credits awarded to a non-resident parent's second household will no longer be considered income for the purposes of calculating child maintenance as is currently the case.
- 7.4.2 A non-resident parent's gross weekly income will be reviewed on an annual basis using income figures supplied by HMRC. This means calculations will be more cost-effective with fewer manual in-year changes being required.
- 7.4.3 In order for either parent to request a change to the maintenance calculation, it is provided that the change must result in a 25 per cent increase or decrease in gross income in order to reduce the disruption to maintenance liabilities that can currently arise, where frequent and small changes of income have to be considered. Most incomes do not change greatly from year to year and it is envisaged that apart from major changes, such as the addition of another child or the loss of a job, the maintenance liability will remain largely stable throughout the year which offers greater certainty to parents in what they should expect to pay or receive.
- 7.4.4 Child maintenance legislation allows for additional financial factors to be taken into account which are not captured in the maintenance calculation; this is known as a variation to the maintenance calculation. The new statutory scheme will bring about changes to the types of variation that parents with care can claim. The intention is that grounds available to parents with care will focus on capturing a non-resident parent's actual unearned income, such as income from savings, property and or investments rather than establishing a notional income, which is the current method of calculating unearned income. Parents with care will no longer be required to provide evidence to support a variation, as they must do currently, as in most cases information will be available from HMRC.
- 7.4.5 Where parents have no agreement in place regarding shared care of their children or there is no identifiable pattern of shared care, the Commission can assume an amount of such care equivalent to one night a week. Any assumption of shared care will continue until the parents reach an agreement or an order is made by the court as a result of family proceedings. This will remove a difficult area of decision making which often resulted in cases remaining indefinitely paused while awaiting evidence from either party.
- 7.4.6 In equal shared care cases, a non-resident parent will be treated as such, if, and only if they provide day to day care to a lesser extent than the parent with care.

Where the parent with care is receiving child benefit in respect of a qualifying child they are assumed to be the main carer of the child in the absence of evidence to the contrary.

- 7.4.7 To encourage parents to make their own maintenance arrangements children supported outside of the statutory scheme, through a family-based arrangement, court order or under child maintenance schemes abroad, will be acknowledged in the same way as qualifying children within the maintenance calculation. Non-resident parents will be required to provide evidence of a formal or informal agreement.
- 7.4.8 Effective dates, which are the dates on which a liability or a change to the child maintenance liability takes effect, will be aligned with the date of the change or the date the change was reported. This will make the scheme simpler to administer and easier for customers to understand how a maintenance liability is calculated than is currently the case.
- 7.4.9 Allowances for children in the current household of a non-resident parent have been reduced from present levels to produce a more equal treatment of children in first and second families.
- 7.4.10 The flat rate of child maintenance payable by a non-resident parent whose gross weekly income is more than £5 per week and less than £100 per week or who is in receipt of certain prescribed benefits, will remain at £5 per week until such time as the new scheme is opened to all applicants.
- 7.4.11A default maintenance decision is imposed on a non-resident parent when there is insufficient information regarding their circumstances to make a full calculation. The current weekly amounts were set in 2000 and have not increased since. The new default maintenance rate will be £39 for one child, £51 for two children and £64 for three or more children. Default rates will be reviewed periodically. The increase in the default rate will further increase the amount of money flowing to children.
- 7.4.12 The Child Support Maintenance (Changes to the Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012 make changes to the way in which the basic rate of child maintenance is calculated, where a non-resident parent has relevant other children (children other than the children who are the subject of the maintenance calculation). By reducing the percentage by which a non-resident parent's gross income is reduced to take account of relevant other children, the Regulations ensure that income is shared in a fairer way between the children who are the subject of the calculation and the relevant other children. The Regulations also make a technical change to ensure that the flat rate of maintenance will be £5 when the amendments in the 2008 Act are first commenced. The Department intends to increase the flat rate to £10 once the 2008 amendments have been commenced for all cases.
- 7.5 Commencement date: The Child Support Maintenance Calculation Regulations 2012 and The Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012 will come

- **Consolidation**

- 7.6 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 three month consultation on the draft regulations ran from 1 December 2011 to 23 February 2012. A total of 36 responses were received from representatives of bodies and organisations with an interest in child maintenance, for example, Families Need Fathers and Gingerbread.
- 8.2 The consultation was based upon ten specific questions; respondents were generally supportive of the draft regulations.
- 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.
- 8.4 Concerns were raised about the removal of the Assets and Lifestyle Inconsistent with Declared Income grounds from the Variations scheme. The Government maintain the proposal to remove these grounds on the basis that they are difficult to administer, are complex for caseworkers and clients to understand and that actual income information obtained from HMRC will be more meaningful to parents.
- 8.5 A full analysis of consultation responses is available on the Department's website at: <http://www.childmaintenance.org>

9 Guidance

- 9.1 The Commission 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 Child Support Maintenance (Changes to the Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012 have no impact on business or civil society organisations, and only a negligible impact on the public sector.

- 10.2 The Child Support Maintenance Calculation Regulations 2012 will have an indirect impact on business by changing the level of interaction employers will have with the Commission at client new application, and deduction from earnings order (DEO), set up stages. The beneficial impact of the related proposed Child Support Collection and Enforcement (Amendment) Regulations, more than offset any costs to business; a net reduction in burden.
- 10.3 The Child Support Maintenance Calculation Regulations 2012 impact on the Ministry of Justice due to an increase in the number of appeals and on HMRC due to the introduction of annual reviews. The Commission will meet any rise in costs should this occur.
- 10.4 A full impact assessment is attached to this memorandum and will be published alongside it on: www.legislation.gov.uk.

11 Regulating Small Business

- 11.1 The legislation does not apply to small businesses. However, the Child Support Maintenance Calculation Regulations 2012 will have an indirect impact on small business as for all businesses (as above).

12 Monitoring & Review

- 12.1 The Commission will closely monitor the operation of these regulations following implementation. The new calculation regulations are part of a wider group of policy changes affecting child maintenance. There will be a benefits realisation evaluation for the entire change programme which will include checking that the activities in the new scheme are delivering the intended outcomes. In particular, the success of the new scheme in achieving intended improvements in service to clients and efficiencies for the public sector and employers will be monitored and evaluated. The evaluation process will include monitoring the time taken to process and maintain cases using management information as well as assessing client satisfaction through surveys. The first comprehensive evaluation will be published 30 months after the introduction of charging for the use of the new scheme.

13 Contact

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