

# CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Transfer of child support functions etc. to the Commission**

##### ***Section 13: Transfer of child support functions***

101. This section transfers most of the functions under the Child Support Act 1991 from the Secretary of State to the Commission, including functions relating to, for example, calculation, collection and enforcement. The exceptions to this (the functions that will either remain solely with the Secretary of State, or be exercisable both by the Secretary of State and the Commission) are listed at *subsection (2)*. These are:
- Functions under section 23A, 24 and 25 of the 1991 Act which enable the Secretary of State to appeal to the Child Support Commissioner. It is appropriate for the Secretary of State to retain the right to appeal as he is responsible for child support legislation. This is why *Schedule 2* to this Act ensures that this function is both given to the Commission and retained by the Secretary of State.
  - Functions under section 46 of the 1991 Act, under which the Secretary of State may apply a reduced benefit decision to those parents with care in receipt of a prescribed benefit who choose to opt out of the statutory scheme without good cause. The Secretary of State is to retain this function because it relates to decisions on the amount of benefit a person is to receive. This function will be repealed soon after the introduction of the Commission.
  - The function under section 50(7)(c) of the 1991 Act which enables the Secretary of State to authorise a ‘responsible person’ for the purposes of disclosure of information. This is necessary to enable the disclosure of information between the Secretary of State and the Commission. *Schedule 6* to this Act ensures that this function is exercisable by both the Commission and the Secretary of State.
  - Functions under section 58 of the 1991 Act which provides a power for the Secretary of State to commence the provisions of the 1991 Act and to make consequential amendments.
  - The function under paragraph 2A of Schedule 4 to the 1991 Act which enables the Secretary of State for Scotland to provide travel expenses for a person attending proceedings before a Child Support Commissioner in Scotland. As this function refers to the Secretary of State for Scotland it will not be transferred to the Commission.
  - Power for the Secretary of State to make regulations under any other provision of the Child Support Act 1991.

*These notes refer to the Child Maintenance and Other Payments  
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

102. *Subsection (3)* transfers any functions conferred on the Secretary of State by those provisions of secondary legislation listed in *Schedule 2* apart from those related to reduced benefit decisions under section 46 of the Child Support Act 1991.
103. *Subsection (4)* introduces *Schedule 3* which makes consequential amendments and transitional provision and savings.

***Section 14: Transfer of property, rights and liabilities***

104. This section enables the Secretary of State to make one or more schemes to transfer property, rights and liabilities which he is entitled or subject, in connection with the transferred functions, or under arrangements entered into in preparation for the coming into force of the Commission's functions under Part 1 of this Act.
105. *Subsection (2)* sets out that a scheme under *subsection (1)*, (a transfer scheme) may:
- provide for the transfer of property, rights and liabilities that it would not otherwise be possible to transfer, for example, a contract which does not contain a clause allowing it to be assigned;
  - create for the Secretary of State interests in or rights over property transferred by virtue of the scheme. For example, it enables any property that may transfer to the Commission to continue to be used by the Secretary of State;
  - create for the Commission, interests in or rights over property retained by the Secretary of State. Such a scheme could enable the Commission to make use of a property that the Secretary of State may own;
  - create rights and liabilities between the Secretary of State and the Commission, for example, if a contract were transferred to the Commission, the scheme could allow for the Commission to be indemnified by the Secretary of State in respect of previous breaches; and
  - make such supplementary, incidental, consequential or transitional provision or savings as the Secretary of State considers appropriate.
106. *Subsection (3)* provides that a transfer scheme shall come into force in accordance with the terms provided by the transfer scheme itself.
107. *Subsection (4)* provides that a certificate given by the Secretary of State will provide evidence that any property, rights or liabilities have been transferred
108. *Subsection (5)* defines 'transferred functions' as those functions transferred under section 13.