

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2012

2012 No. 712

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 This is a package of miscellaneous amendments to various pieces of legislation relating to child support maintenance. The provisions will introduce minor and technical amendments to existing regulations governing how the Child Support Agency, on behalf of the Child Maintenance and Enforcement Commission (the Commission), carries out its statutory functions.
 - 2.2 These regulations will amend existing regulations relating to:
 - arrears notices - to provide that where the Commission is considering taking collection/enforcement action against the non-resident parent, it will issue an arrears notice which contains full details of payments due and made, and the cumulative balance of child maintenance arrears that is due as a result;
 - estimate parents income by making reference to statistical data and assuming that they earn the average wage for a given job and area;
 - amend the current rules concerning transmission of payments by direct credit transfer to a parent with care's bank or building society account;
 - remove a restriction on the Agency's ability to take account of foreign earnings (i.e. where income is earned outside of the country but taxable here) for the 2003 scheme; and
 - clarify the appropriate effective date of a change of circumstances in the 1993 scheme where any child who lives as a member of the non-resident parent's family, but is not also the biological or adoptive child of the non-resident parent (usually the child of a partner) ceases to be considered in the child maintenance calculation.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None

4. Legislative Context

4.1 Operational experience of the Child Support Agency has led to a number of minor and technical issues being highlighted that require an amendment to secondary legislation in order to resolve them. This instrument will introduce these minor and technical amendments. The Commission cannot quantify the number of cases where these technical amendments to regulations will have an effect, but the new measures will only apply in specific instances and will help to improve the accuracy of decisions made under child support legislation.

4.2 The child support maintenance scheme in the Child Support Act 1991 (the 1991 Act) was substantially amended by the Child Support, Pensions and Social Security Act 2000 (“the 2000 Act”). In this memorandum, the child support maintenance scheme in force prior to the amendments to the 1991 Act made by the 2000 Act is referred to as “the 1993 scheme” and the child support maintenance scheme in force following those amendments is referred to as “the 2003 scheme”.

5. Territorial Extent and Application

This instrument applies to Great Britain.

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 A number of minor and technical issues have been highlighted by the Child Support Agency that require an amendment to secondary legislation in order to resolve them. These instruments will make minor changes to several sets of regulations, governing both the 1993 and 2003 child maintenance schemes relating to the calculation, collection and enforcement of child support maintenance.

7.2 Child support maintenance is an amount of money (based on earnings) that parents living apart from their children pay to the person with day to day care of them as a contribution to their children’s upkeep.

Regulation 2 – Amendment of Regulation 5 of the Child Support (Collection and Enforcement) Regulations 1992 (S.I. 1992/1989)

Transmission of payments

7.3 The Commission has a proportion of parents with care who are still receiving their child maintenance payments via giro cheque (i.e. cheque which

can be cashed either at a bank or at the post office) and other non-direct payment methods as allowed by existing Regulations. This is an expensive method of payment which is vulnerable to fraud. The use of giro cheques as a method of payment has largely been phased out across government. The Government is planning to withdraw use of cheques as a method of payment from January 2013 and activity is in progress to support this.

7.4 At present though, the Commission has no legal power to insist that parents with care have their child maintenance paid directly into a secure bank or building society account. This means that the Commission is still administering payment of child maintenance by giro cheque which is inefficient and costly especially when considering the fact that the majority of parents with care also receive child benefit which is paid electronically into their bank account.

7.5 The Commission is keen to improve the efficiency of its payments system by introducing a prescribed method of payment for parents with care of direct credit transfer into a bank or building society account. Where it is not possible for the parent with care to open such an account the Commission will still have discretion to make payments through other methods. This mirrors the payment options available for child benefit.

7.6 This instrument amends existing regulations to make direct credit transfer to a parent with care's bank or building society account the preferred method of payment. It will still allow the Commission to make payments to the parent with care by other methods in the event that the parent is not able to open an account. The change will achieve time and resource savings. For example, the Commission is presently participating in a cross-government Method of Payment Reform Programme to deliver the new method of payment, Simple Payment, which will be used in those exceptional circumstances whereby direct credit or Post Office card account is not an option for our clients. Since the start of this programme in September 2010, the method of payment for over 39,189 old and current schemes and clerical cases has been successfully converted from cheque to a direct credit into a bank, building society or existing Post Office card account. So far it is estimated that the conversion of cases will save the Commission around £975,347 by the end of March 2012. Similar benefits are anticipated following the introduction of this instrument.

Regulation 3 – Amendment of Regulation 3 of the Child Support (Management of Payments and Arrears) Regulations 2009

Arrears notices

7.7 When issuing an arrears notice to a non-resident parent who has missed one or more payments, it has not been the normal practice of the Child Support Agency to include a full list of payments of child support maintenance that have been missed. The Commission's current computer systems do not have the functional to do this.

7.8 With the planned introduction of a new child support statutory scheme and computer system in late 2012, it is not financially viable in the current economic climate for the Commission to undertake the expensive technical upgrade that would be needed in order to make the Child Support Agency's electronic arrears notices compatible with the legal requirement to provide an itemised list of payments of child maintenance that have been missed.

7.9 This instrument amends existing legislation to allow the Child Support Agency's caseworkers issue an arrears notice including the amount of all arrears due and not paid

Regulation 4 – Amendment of Regulation 23 of the Child Support (Maintenance Assessment Procedure) Regulations 1992 (S.I. 1992/1813)

Child of the family of the absent parent

7.10 The 1993 scheme rules make a provision for any child who lives as a member of the non-resident parent's family, but is not also the biological or adoptive child of the non-resident parent (in most cases this will be the child of a partner). These children are taken into account when assessing the parent's protected income within the 1993 scheme formula. At the moment, when such a child ceases to fulfil the prescribed criteria to be considered a child for Child Support purposes, the Commission can only adjust the maintenance assessment in relation to the date when this is notified (even if that is some time after the change occurred).

7.11 This instrument will amend the 1993 scheme legislation so that the effective date of these changes of circumstance will be from the first day of the maintenance period when they occurred. This change will ensure that assessments are accurate and that non-resident parents' protected income levels will not be higher than they should be because of a failure to inform the Child Support Agency that such a change occurred and is in line with other similar changes of circumstance. This instrument will align the treatment of step-children across the two child maintenance schemes.

Regulation 5 – Amendment of Schedule 1 to the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (S.I. 1992/1815)

Estimate of earnings of a person where insufficient information is available

7.12 The Child Support Agency caseworkers currently have access to the Annual Survey of Hours and Earnings (ASHE) database, which can be used as a tool to estimate a person's earnings if their occupation and location are known, and in cases where they are unwilling to provide evidence of their income. The ASHE database is compiled by the Office for National Statistics and provides information on levels, distribution and make-up of earnings and hours paid for employees within industries, occupations and regions. The use of ASHE has been a key factor in improving the Child Support Agency's performance over recent years.

7.13 This instrument amends the 1993 schemes legislation to explicitly provide for the estimation of income for either an employee or a self-employed person by reference to statistical data in cases where no income information is available. The amendment will clarify any ambiguity and confirm that where no evidence is available (or the evidence available is unreliable) the Commission may assume that a person's income is the average for their occupation in the area in which they live.

Regulation 6 – Amendments to the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (S.I. 2001/155)

Foreign Earnings

7.14 In a 2003 scheme case where the non-resident parent is habitually resident in the UK but works for an employer based overseas, the Commission has jurisdiction, i.e. legal authority, to make a maintenance calculation for the qualifying child, but it cannot take the earnings of the non-resident parent into account. This is because he/she does not meet the definition in secondary legislation of an 'employed earner' (in particular the requirement that they be 'gainfully employed' in Great Britain or Northern Ireland). Additionally, 2003 scheme legislation does not allow the Commission to use income not subject to UK tax in order to put a calculation in place. The maintenance liability of the non-resident parent in this case would therefore be calculated as nil.

7.15 Similarly it is not possible for the earnings of self-employed non-resident parents that are habitually resident in the UK but undertake work abroad to be taken into account in the child maintenance calculation because they would not meet the current legislative definition of a "self-employed earner" for their income to be taken into account for child support maintenance purposes under the current scheme regulations (again, there is a requirement to be 'gainfully employed' in either Great Britain or Northern Ireland, which is not fulfilled).

7.16 This situation prevents any money flowing from the non-resident parent to the parent with care, leaving the qualifying child disadvantaged. This anomaly only relates to the 2003 scheme legislation. The requirement that non-resident parents be 'gainfully employed' in Great Britain or Northern Ireland means that they fall outside the statutory system if they earn money outside of these areas. In the future, as the Commission moves towards the use of Her Majesty's Revenue and Customs (HMRC) income data, it will be able to use any income that is subject to UK tax, wherever earned as long as HMRC have a record of the income.

7.17 This instrument amends the 2003 scheme legislation to allow the Commission to take into account the UK taxable earnings of all non-resident parents that are habitually resident in the UK, even if they are paid abroad. This will reduce the number of cases where the Commission makes a nil assessment and ensure that money is flowing from the non-resident parent that works and earns overseas to the qualifying child.

Estimate of earnings of the non-resident parent where insufficient information is available

7.18 The Annual Survey of Hours and Earnings (ASHE) database is compiled by the Office for National Statistics and provides information on levels, distribution and make-up of earnings and hours paid for employees within industries, occupations and regions. The Child Support Agency caseworkers currently have access to the ASHE database, which can be used as a tool to estimate a person's earnings if their occupation and location are known, and in cases where they are unwilling to provide evidence of their income. The use of ASHE has been a key factor in improving the Child Support Agency's performance over recent years.

7.19 This instrument amends the 2003 scheme legislation to explicitly provide for the estimation of income for both employed and self-employed earners by reference to statistical data in cases where no income information is available. The amendment will clarify any ambiguity and confirm that where no evidence is available (or the evidence available is unreliable) the Commission may assume that the non-resident parent's income is the average for his/her occupation in the area in which they live.

Consolidation

7.20 Informal consolidation of the instrument will be included in due course in the Department's 'The Law relating to Child Support' available on the internet at no cost to the public at:

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-child-support/>

8. Consultation outcome

8.1 The Commission consulted a wide range of stakeholders with an interest in child support maintenance on the draft Regulations between 26 July 2011 and 26 October 2011. The consultation document was published on the Commission's website. The document was drawn specifically to the attention of the Commission's external stakeholders who were encouraged to respond. A total of eight responses were received from representatives of bodies / organisations with an interest in child maintenance.

8.2 Respondents to the consultation were generally supportive of the draft regulations. Some of the stakeholders expressed concerns on the proposed prescriptive 14 days timescale for the non-resident parent to request an arrears notice detailing the amount of all outstanding arrears due and not paid. This instrument reflects stakeholder comments in relation to the Commission's proposal on arrears notice (regulation 3) which has been amended to remove the requirement for non-resident parents to request an account breakdown within 14 days.

8.3 Some additional issues were raised, e.g., stakeholders highlighted that the measure on foreign earnings will not fully address the anomaly, as it will

not cover a non-resident parent who is habitually resident in the UK, but whose overseas earnings are not subject to UK income tax. The Commission is presently considering how best to tackle these cases.

8.4. The response to the consultation is available on the Commission's website at:

<http://www.childmaintenance.org/en/publications/consultations.html>

9. Guidance

Classroom based training is being delivered on these regulations to enable Child Support Agency Decision Makers to handle cases under the new rules and Procedures had been updated to reflect the changes. The Commission will write to inform its stakeholders of the changes and also publicise the Commission Response to the external consultation via its website at: <http://www.childmaintenance.org/en/pdf/misc-regs-2012-govt-response.pdf>

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This instrument makes only minor changes to Regulations and there is no fundamental change of policy so a formal review of these amendment regulations will not be undertaken. However, the Commission monitors the accuracy of its decision making and actively engages with its stakeholders, including parents' representative groups and will continue to do so to ensure that the policy intent is maintained.

13. Contact

Mercy Adebisi at the Child Maintenance and Enforcement Commission can answer any queries regarding the instrument, Tel: 020 7853 8072 or E-mail: mercy.adebisi1@childmaintenance.gsi.gov.uk