

## 2013 No. 2947 (C. 121)

### FAMILY LAW

#### CHILD SUPPORT

# The Child Maintenance and Other Payments Act 2008 (Commencement No. 12 and Savings Provisions) and the Welfare Reform Act 2012 (Commencement No. 15) Order 2013

Made - - - - 19th November 2013

The Secretary of State for Work and Pensions, in exercise of the powers conferred by section 62(3) and (4) of the Child Maintenance and Other Payments Act 2008(**a**) and section 150(3) and (4) of the Welfare Reform Act 2012(**b**), makes the following Order:

#### Citation and Interpretation

**1.**—(1) This Order may be cited as the Child Maintenance and Other Payments Act 2008 (Commencement No. 12 and Savings Provisions) and the Welfare Reform Act 2012 (Commencement No. 15) Order 2013.

(2) In this Order—

- “1991 Act” means the Child Support Act 1991(**c**);
- “2000 Act” means the Child Support, Pensions and Social Security Act 2000(**d**);
- “2008 Act” means the Child Maintenance and Other Payments Act 2008;
- “new calculation rules” means Part 1 of Schedule 1 to the 1991 Act as amended by the provisions of the 2008 Act specified in article 2.

(3) In this Order, a reference to an existing case is to a case in which there is—

- (a) a maintenance assessment in force;
- (b) a maintenance calculation, made otherwise than in accordance with the new calculation rules, in force;
- (c) an application for a maintenance assessment which has been made but not determined; or
- (d) an application for a maintenance calculation, which falls to be made otherwise than in accordance with the new calculation rules, which has been made but not determined.

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(a) 2008 c. 6.

(b) 2012 c. 5.

(c) 1991 c. 48.

(d) 2000 c. 19. The relevant amendments to the Child Support Act 1991 (“the 1991 Act”) were made by sections 1 and 26 of, and paragraph 11(1), (2) and (20) of Schedule 3 to, the Child Support, Pensions and Social Security Act 2000 (“the 2000 Act”).

- (4) In this Order, subject to paragraph (5)–  
 “maintenance calculation”, “non-resident parent”, “person with care” and “qualifying child” have the meanings given in the 1991 Act(a);  
 “absent parent” and “maintenance assessment” have the meanings given in the 1991 Act before its amendment by the 2000 Act.
- (5) In this Order–
- (a) a reference to a non-resident parent includes reference to a person who is–
- (i) alleged to be the non-resident parent for the purposes of an application for child support maintenance under the 1991 Act, or
  - (ii) treated as the non resident parent for the purposes of the 1991 Act(b);  
and
- (b) a reference to an absent parent includes reference to a person who is–
- (i) alleged to be the absent parent for the purposes of an application for child support maintenance under the 1991 Act, or
  - (ii) treated as the absent parent for the purposes of the 1991 Act(c).

[Arts. 2 - 5 make various amends to S.I. 2008 c. 6.]

[Art. 6 brings into force s. 136, 140 and 141 of S.I. 2012 c. 5.]

Signed by authority of the Secretary of State for Work and Pensions.

19th November 2013

*Steve Webb*  
 Minister of State,  
 Department for Work and Pensions

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- (a) The definition of “maintenance calculation” was substituted for the definition of “maintenance assessment” in section 54 of the 1991 Act by section 26 of, and paragraph 11(1) and (2)(d) of Schedule 3 to, the 2000 Act. The term “non-resident parent” was substituted for the term “absent parent” by section 26 of, and paragraph 11(1) and (2) of Schedule 3 to, the 2000 Act. The definition of “qualifying child” in section 3(1) of the 1991 Act was amended by section 26 of, and paragraph 11(1) and (2) of Schedule 3 to, the 2000 Act.
- (b) A person may be treated as a non-resident parent for the purposes of the 1991 Act under regulation 50(2) of the Child Support Maintenance Calculation Regulations 2012 (S.I. 2012/2677) or regulation 8(2) of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (S.I. 2001/155).
- (c) A person may be treated as an absent parent for the purposes of the 1991 Act under regulation 20(2) of the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (S.I. 1992/1815).

### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force provisions of the Child Maintenance and Other Payments Act 2008 (c. 6) (“the 2008 Act”) for the purpose of applying new rules for calculating child support maintenance to all cases other than existing cases. It also brings into force provisions in the Welfare Reform Act 2012 (c. 5).

The 2008 Act amends the statutory scheme for calculation, collection and enforcement of child support maintenance, as originally set out in the Child Support Act 1991 (c. 48) (“the 1991 Act”) and amended by the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”). The amendments made by the 2000 Act were brought into force by the Child Support, Pensions and Social Security Act 2000 (Commencement No. 12) Order 2003 (S.I. 2003/192) for new applications after 3rd March 2003 and for existing cases related to such applications. However, the original provisions of the 1991 Act remained in force for a substantial number of cases, effectively resulting in two separate schemes. The further amendments made by the 2008 Act, together with the 2000 Act amendments, constitute a third scheme (“the new calculation rules”).

The Child Maintenance and Other Payments Act 2008 (Commencement No. 10 and Transitional Provisions) Order 2012 (S.I. 2012/3042) brought the amendments made by the 2008 Act into force for new applications made on or after 10th December 2012 where there were four or more children with the same person with care and non-resident parent and no existing case with the same person with care and non-resident parent and for existing cases related to such applications. The Child Maintenance and Other Payments Act 2008 (Commencement No. 11 and Transitional Provisions) Order 2013 (S.I. 2013/1860) brought those amendments into force for new applications made on or after 29th July 2013 where there were two or three children with the same person with care and non-resident parent and no existing case with the same person with care and non-resident parent and for existing cases related to such applications.

Article 2 brings into force on 25th November 2013 the amendments made by the 2008 Act, in so far as they are not yet in force, for all purposes except where the saving in article 3 applies.

Article 3 is a savings provision which provides that the commencement of the 2008 Act provisions does not apply to existing cases. The calculation rules applicable to the case before the commencement of the 2008 Act provisions continue to apply until liability ceases to accrue in relation to that case (subject to article 4), until the Secretary of State notifies the parent with care that he has ceased acting where there is an application that has been made but not determined, or until article 5 applies.

Article 4 provides for a thirteen week linking rule so that the new calculation rules will not apply to an existing case if a person asks the Secretary of State to cease acting and reapplies to the statutory scheme within 13 weeks.

Article 5 provides for the application of the new calculation rules to an existing case where: a new application is made in relation to the non-resident parent in the existing case and there is a different parent with care; or a non-resident parent is the partner of a non-resident parent named in a new application and either of those non-resident parents claims a prescribed benefit.

Article 6 brings section 136 of the Welfare Reform Act 2012 into force. Section 136 inserts provision into the 1991 Act which enables the Secretary of State to take appropriate steps to encourage the making and keeping of family-based maintenance agreements, including inviting an applicant to consider whether it is possible to make such an agreement, before an application for child support maintenance is accepted. Article 6 also brings into force sections 140 and 141 of the Welfare Reform Act 2012, which amend section 6 of the 2008 Act (section 6 gives the Secretary of State power to

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make regulations about charging fees). Section 140 clarifies that section 6 can be used to make provision for the apportionment of fees and waiver of fees and matters to be taken into account in determining such apportionment and waiver. Section 141 requires the Secretary of State to review the effect of the first regulations made under section 6 and provides when that review must be carried out and the action that must be taken following that review.