

2012 No. 2785

FAMILY LAW

CHILD SUPPORT

**The Child Support (Meaning of Child and New
Calculation Rules) (Consequential and Miscellaneous
Amendment) Regulations 2012**

Made - - - - - *2nd November 2012*

Laid before Parliament *8th November 2012*

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 14(1), 29(3) and (3A), 51(1) and (2), 52(4), 54 and 55(1) of the Child Support Act 1991(a) and sections 55(4) and 57(2) of the Child Maintenance and Other Payments Act 2008(b).

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations 2012.

(2) This regulation and regulation 11 come into force on 10th December 2012.

(3) Regulations 2 and 3 come into force on the day on which section 42 of the 2008 Act (meaning of “child”) comes into force.

(4) Subject to paragraph (5), regulations 4 to 10 and 12 come into force in relation to a particular case on the day on which paragraph 2 of Schedule 4 to the 2008 Act (calculation by reference to gross weekly income) comes into force in relation to that type of case.

(5) Regulations 4(3) to (6) and 12 come into force in relation to an arrears-only case on 10th December 2012, subject to the saving in regulation 11(1).

(6) In these Regulations—

“2008 Act” means the Child Maintenance and Other Payments Act 2008.

(a) 1991 c. 48. Section 29(3) was substituted, and section 29(3A) was inserted, by the Welfare Reform Act 2009 (c. 24). Section 32C was inserted by section 22 of the Child Maintenance and Other Payments Act 2008 (c. 6) (“the 2008 Act”). Section 54 is cited because of the meaning given to the word “prescribed”. Section 55 was substituted by section 42 of the 2008 Act.

(b) 2008 c. 6.

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¹Defn. of “arrears of child support maintenance” substituted by reg. 9 of S.I. 2013/1517 as from 30.9.13.

►¹“arrears of child support maintenance” means any payment of child support maintenance—

- (a) which has become due in relation to a maintenance assessment, or a maintenance calculation made under 2003 scheme rules, and not paid; and
- (b) in respect of which the Secretary of State is arranging collection under section 29 of the 1991 Act;◀

“arrears-only case” means a case in which—

- (a) there are arrears of child support maintenance; and
- (b) there is—
 - (i) no maintenance assessment, or maintenance calculation made under 2003 scheme rules, still in force; and
 - (ii) no application for a maintenance assessment, or a maintenance calculation falling to be made under 2003 scheme rules, still to be determined;

“the Collection and Enforcement Regulations” means the Child Support (Collection and Enforcement) Regulations 1992(a).

(7) For the purposes of this regulation, a maintenance calculation is made (or will fall to be made) under 2003 scheme rules if the amount of the periodical payments required to be paid in accordance with it is (or will be) determined otherwise than in accordance with Part 1 of Schedule 1 to the Child Support Act 1991 as amended by Schedule 4 to the Child Maintenance and Other Payments Act 2008.

[Regulation 2 makes various amends to schedule 1 of S.I. 1992/7501.]

[Regulation 3 makes various amends to schedule 1 of S.I. 2001/157.]

[Regulation 4 makes various amends to S.I. 1992/1989.]

[Regulation 5 makes various amends to S.I. 1992/2645.]

[Regulation 6 makes various amends to S.I. 1999/991.]

[Regulation 7 amends regulation 1 and 2 of S.I. 2000/3177.]

[Regulation 8 makes various amends to S.I. 2008/2551.]

[Regulation 9 revoked by reg. 10 of S.I. 2013/1517 as from 30.9.13.]

[Regulation 10 (a) revokes the regulations laid down in S.I. 1992/1813.]

[Regulation 10 (b) revokes the regulations laid down in S.I. 1992/1815.]

[Regulation 10 (c) revokes regulations not included in these volumes.]

[Regulation 10 (d) revokes the regulations laid down in S.I. 1996/2907.]

[Regulation 10 (e) revokes the regulations laid down in S.I. 2001/155.]

[Regulation 10 (f) revokes the regulations laid down in S.I. 2001/156.]

[Regulation 10 (g) revokes the regulations laid down in S.I. 2001/157.]

PART 4

Savings and Transitional Provision

Saving where arrears-only case

11.—(1) Regulations 8, 10, 11 and 20 of the Collection and Enforcement Regulations continue to apply in relation to an arrears-only case, as they were in force immediately before the amendments made by regulation 4(3) to (6) come into force,

(a) S.I. 1992/1989.

until notice is given to the non-resident parent by the Secretary of State that the provisions of the Regulations as amended by regulation 4(3) to (6) apply to that case.

(2) Any notice given under paragraph (1) must be in writing and sent by post to the non-resident parent's last known or notified address and will be treated as having been given on the second day following the day on which it is posted.

(3) For the purposes of this regulation any reference to a non-resident parent includes reference to an absent parent.

Transitional provision

12.—(1) Where, in any case, a deduction from earnings order was made before the date on which the Collection and Enforcement Regulations as amended by regulation 4(3) to (6) apply in relation to that case, this regulation shall apply in respect of that order.

(2) Where the deduction from earnings order still has effect immediately before regulation 4(3) to (6) comes into force in relation to that case—

- (a) the order continues to take effect for the purposes of any deductions which are required to be made under the order until it is discharged or lapses;
- (b) the Collection and Enforcement Regulations, as they were in force before the amendments made by regulation 4(3) to (6) came into force, continue to apply in relation to the order until it is discharged or lapses; and
- (c) the order is to be treated as discharged, if it has not otherwise lapsed or been discharged, on the date that the first deduction from earnings order made under the Collection and Enforcement Regulations as amended by regulation 4(3) to (6) takes effect.

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

Steve Webb
Minister of State,
Department for Work and Pensions

2nd November 2012

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain provisions consequential on, or connected with, the bringing into force of the changes to the meaning of “child” for the purposes of the Child Support Act 1991, provided for in section 42 of the Child Maintenance and Other Payments Act 2008 (c. 6) (“the 2008 Act”), and the changes to the rules for the calculation of child support maintenance, provided for in Schedule 4 to the 2008 Act and the Child Support Maintenance Calculation Regulations 2012 (S.I. 2012/2677).

Part 2 of the Regulations, dealing with the meaning of “child”, comes into force on the day on which section 42 of the 2008 Act (meaning of “child”) is commenced. Part 3 of the Regulations comes into force in relation to a particular case on the day on which paragraph 2 of Schedule 4 to the 2008 Act (calculation by reference to gross weekly income) comes into force in relation to that type of case. Commencement Orders will set out when paragraph 2 of Schedule 4 will come into force for the purposes of particular types of cases. In relation to an arrears-only case, regulation 4(3) to (6), which amends provisions relating to deduction from earnings orders, comes into force on 10th December 2012, subject to the saving in regulation 11. Regulation 1(5) defines an “arrears-only case”.

Regulation 2 amends the Child Support (Maintenance Assessment Procedure) Regulations 1992 (S.I. 1992/1813), prescribing conditions for the purposes of section 55(1)(b) of the 1991 Act (meaning of “child”). Regulation 3 does the same in relation to the Child Support (Maintenance Calculation Procedure) Regulations 2000 (S.I. 2000/157).

Regulation 4 amends the Child Support (Collection and Enforcement) Regulations 1992 (S.I. 1992/1989) (“the Collection and Enforcement Regulations”). Paragraph (2) substitutes a provision allowing payments of child support maintenance to be scheduled as equal instalments payable over an annual period. Regulation 4(3) amends regulation 8 of the Collection and Enforcement Regulations changing the definition of “normal deduction rate” to set out the amount to be deducted per month and the amount for a 1, 2 and 4 week equivalent of that amount. Paragraph (4) substitutes regulation 10 of the Collection and Enforcement Regulations to provide that the normal deduction rate is set by reference to the period by reference to which the liable person is paid where that payment period is monthly or 1, 2 or 4 weekly. The employer must select the normal deduction rate which applies depending on the period by reference to which the liable person is paid. Where the liable person is not paid by reference to a monthly, 1, 2 or 4 weekly period the deduction from earnings order must be discharged in accordance with regulation 20. Regulation 4(6) amends regulation 20 to allow for deduction from earnings orders to be discharged in these circumstances. Regulation 4(5) substitutes regulation 11 of the Collection and Enforcement Regulations to provide that the protected earnings proportion must be 60% of net earnings at the liable person’s pay day for each deduction made under the order. Regulation 4(7) makes an amendment to the maximum deduction rate for a regular deduction order, so it is calculated by reference to gross, rather than net, income.

Regulation 6 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) by removing provisions relating to child support maintenance.

Regulation 8 inserts new provision in the Child Support Information Regulations 2008 (S.I. 2008/2551) allowing the Secretary of State to require a non-resident parent whose income has been calculated by reference to current employment as an employee or officeholder, or whose income has been calculated by reference to current income to whom the nil rate applies, to report an increase in that income. Failure to comply with the new provisions will be an offence under section 14A of the Child Support Act 1991. Regulation 8 also makes consequential amendments.

Regulations 5, 7 and 9 make consequential amendments to, respectively, the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992 (S.I. 1992/2645), Child Support (Voluntary Payments) Regulations 2000 (S.I. 2000/3177) and the procedure rules for the First-Tier Tribunal (Social Entitlement Chamber) (S.I. 2008/2685).

Regulation 10 revokes a number of sets of regulations which are replaced by the Child Support Maintenance Calculation Regulations 2012.

Regulation 11 saves regulations 8, 10, 11 and 20 of the Collection and Enforcement Regulations for the purposes of arrears-only cases as they have effect immediately before regulation 4(3) to (6) comes into force until notice is given to the non-resident parent in such cases that the regulations as amended apply in their case.

Regulation 12 makes transitional provision. Where a deduction from earnings order made under the Collection and Enforcement Regulations, prior to the amendments in regulation 4(3) to (6) coming into force, has effect immediately before those provisions come into force in the case, the existing deduction from earnings order will continue to take effect until it lapses or is discharged. The existing order will be discharged, if it is still in effect, on the date on which the first order made under the Collection and Enforcement Regulations as amended by regulation 4(3) to (6) takes effect.

These Regulations reduce costs on the private sector and civil society organisations. An assessment of the impact has been made; a copy of the impact assessment is available in the libraries of both Houses of Parliament and is annexed to the Explanatory Memorandum, which is available alongside the instrument on www.legislation.gov.uk. Copies of the impact assessment may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

A full impact assessment of the effect that the Child Support Maintenance Calculation Regulations 2012 will have on the costs of business and the voluntary sector is also available from the same address and is annexed to the Explanatory Memorandum to those Regulations, which is available alongside that instrument on www.legislation.gov.uk.

