EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS) (NO 2) REGULATIONS 2014

2014 No. 1621

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. This instrument amends commencement provisions in the Child Support (Consequential and Miscellaneous Amendments) Regulations 2014[1] (S.I. 2014/1386) ("the 2014 Regulations") and clarifies that certain amendments made by those Regulations apply only to cases administered under the 2012 scheme of child support maintenance ("the 2012 scheme"). It also revokes an amendment made by those Regulations to the Child Support (Management of Payment and Arrears) Regulations 2009[2] (S.I. 2009/3151) ("the 2009 Regulations") and makes the same amendment in this instrument so it is clear when that amendment comes into force.

3. Matters of special interest

3.1 Regulation 3 of this instrument amends regulations 1, 2 and 6 of the 2014 Regulations and comes into force on 24th June 2014. The instrument will not be laid before Parliament for 21 days before regulation 3 comes into force.

3.2 The 2014 Regulations do not make provision for when regulation 6(5) of those Regulations is commenced. The Department's view is that regulation 6(5) did not come into force when the Regulations were made, but the Department acknowledges that it could be argued that regulation 6(5) came into force upon the making of the instrument, as no provision for commencement was made. Accordingly, the Department's view is that the 2014 Regulations do not breach the 21 day rule and regulation 6(5) did not come into force before the instrument was laid. The Department therefore has not written to the Speakers of the House of Lords and the House of Commons (as is necessary when an instrument comes into force before laying). Because it is acknowledged that different interpretations are possible as to when regulation 6(5) comes into force, this instrument is being made to put the matter beyond doubt by revoking regulation 6(5) and making regulation 2 of this instrument in its place. The 21 day rule is being breached in relation to regulation 3 of these Regulations for the express purpose of ensuring, as quickly as possible, that there can no longer be any uncertainty in relation to the commencement date. The instrument also varies the 2014 Regulations so that those Regulations will be fully commenced on 30th June 2014 and so that the modifications made by regulations 2 and 6 of those Regulations will only apply to cases administered under the 2012 scheme. Commencement of certain provisions was linked to the date on which provisions in primary legislation are commenced; the commencement provisions can be simplified by this instrument because the date on which those provisions will be commenced is now known.

[1] http://www.legislation.gov.uk/uksi/2014/1386/contents/made
[2] http://www.dwp.gov.uk/docs/o-8801.pdf

4. Legislative Context

4.1. This instrument makes technical amendments to the 2014 Regulations in relation to the application of certain provisions and in relation to commencement. Regulation 6 of the 2014 Regulations amends the 2009 Regulations. This instrument revokes paragraph (5) of regulation 6 of those Regulations, for which there is no commencement provision in the 2014 Regulations. The amendment that was made by paragraph (5) is now made by this instrument so it is clear when it comes into force.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

- ***What is being done and why***

7.1. This instrument makes technical amendments to the commencement provisions in the 2014 Regulations and to regulations 2 and 6 of those Regulations to clarify that the amendments made by regulations 2 and 6 apply only to 2012 scheme cases. It also revokes a provision in the 2014 Regulations which amends the 2009 Regulations, for which there is no express commencement provision; the amendment is now made in this instrument so that it is clear when the amendment comes into force. The amendment that is made to the 2009 Regulations is required as a consequence of the introduction of fees for those using some services in the 2012 scheme of child support. One of the fees being introduced is a collection fee, which is a fee payable when the Secretary of State makes arrangement for collection in a child support case. Child support regulations include provision which enables the Secretary of State to recover arrears of child maintenance from a deceased person's estate. The amendment to the 2009 Regulations enables the Secretary of State to recover collection fees from a deceased person's estate.

- **Consolidation**

7.2. Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk . An explanation as to which instruments are maintained on each site is available here.

8. Consultation

8.1. The amendment made by regulation 2 is consequential on the introduction of collection fees under the Child Support Fees Regulations 2014 (S.I. 2014/612). It has

not been consulted on as it is consequential, however the introduction of fees was consulted on in the Green Paper '*Strengthening families, promoting parental responsibility: the future of child maintenance*' (Cm7990) which ran for 12 weeks from January 2011. 482 responses were received from members of the public and 67 responses from stakeholder organisations. The Government response (Cm8130) acknowledged concerns raised by some respondents, who were in general opposed to charging for access to or use of the statutory child maintenance scheme, but reiterated the rationale behind charging, that fees are necessary to encourage collaboration and to enable parents to move towards family-based arrangements which the Government believes, will deliver better outcomes for children.

8.2. The Fees Regulations and the Ending Liability Regulations themselves were consulted on in the Command Paper '*Supporting separated families; securing children's futures'* (Cm8399), a public consultation on the draft Child Support Fees Regulations 2013 and the draft Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2013, which covered exactly how the levying of fees would work. This consultation ran from July 2012 to October 2012, receiving a total of 90 responses: 51 from individuals, 37 from organisations and two from Department for Work and Pensions Staff. An Impact Assessment was also made available on the DWP website.

8.3. In response (Cm8742) the Government extended the list of reporting organisations for the declaration-based application fee waiver for victims of domestic violence, and recognised concerns raised by most respondents over the level of the parent with care collection fee by lowering this from the proposed seven percent to four percent.

9. Guidance

9.1. The Department is continuing work to ensure that its clients, employees and stakeholders are fully informed of the changes arising from the introduction of fees. This activity includes discussions with key stakeholders, staff training, amending relevant leaflets, producing new client notifications and providing guidance. This guidance is currently in development, and will be available for caseworkers from the 30th of June.

10. Impact

10.1. There is no impact on business, or civil society organisations.

10.2. There is minimal impact on the public sector, limited to the Department for Work and Pensions.

10.3. An Impact Assessment has not been published for this instrument.

11. Regulating Small Business

11.1. The legislation does not apply to small businesses.

12. Monitoring & Review

12.1. Section 6(3A) to (3D) of the Child Maintenance and Other Payments Act 2008, as amended by the Welfare Reform Act 2012, commits the Secretary of State to reviewing the effect of charging 30 months after charging begins. The Secretary of State must publish a report following this review containing conclusions and a statement detailing what action will be taken in respect of these conclusions. The Secretary of State must lay this report before Parliament.

12.2. As part of an overall evaluation of child maintenance reforms, the department is compiling an evaluation strategy. This will be published later in 2014 detailing how the Child Maintenance Reforms will be evaluated in terms of the 30 month review and beyond.

13. Contact

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