# EXPLANATORY MEMORANDUM TO

# THE CHILD SUPPORT (CONSEQUENTIAL PROVISIONS) (NO. 2) REGULATIONS 2008

**2008 No. 2656**

**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. Description

2.1 Previously, the Secretary of State was named in legislation as being responsible for child support functions. The Child Maintenance and Other Payments Act 2008 (the 2008 Act) transfers those functions from the Secretary of State to the Child Maintenance and Enforcement Commission (the Commission) and most of the legislation affected by the transfer is dealt with in the 2008 Act. These Regulations amend legislation not dealt with in the 2008 Act to ensure that it is consistent with the transfer of child support functions to the Commission. The transfer will take place on 1st November 2008.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

## 4. Legislative Background

4.1 These Regulations are subject to the negative resolution procedure and are made under powers in the 2008 Act.

4.2 The 2008 Act makes provision for the transfer of the child support functions exercised by the Secretary of State to the Commission. These regulations ensure that legislation not covered by the 2008 Act is also amended to reflect the transfer of child support functions to the Commission.

4.3 These regulations will come into force on 1 November 2008. It has been necessary to commence them on a Saturday to ease accounting and payroll issues in respect of internal resource management systems within the Department for Work and Pensions.

4.4 Further amendments to child support legislation have been made by the

2008 Act. Only a limited number of provisions in the 2008 Act have as yet been commenced.

4.5 Statutory instruments entitled:

The Child Maintenance and Other Payments Act 2008 (Commencement No.3 and Transitional and Savings Provisions) Order 2008;

The Child Maintenance and Other Payments Act 2008 (Commencement No.4 and Transitional Provisions) Order 2008;

The Child Support (Consequential Provisions) Regulations 2008;

The Child Support, Pensions and Social Security Act 2000 (Commencement No.14) Order 2008;

The Child Support (Miscellaneous Amendments) (No. 2) Regulations 2008; and

The Child Support Information Regulations 2008

are due to be published in October 2008.

## 5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

## 6. European Convention on Human Rights

James Purnell, Secretary of State for Work and Pensions has made the following statement regarding Human Rights:

In my view the provisions of the Child Support (Consequential Provisions) (No. 2) Regulations 2008 are compatible with the Convention rights.

## 7. Policy Background

### Policy

7.1 The Child Support Agency (the Agency) as an executive agency of the Department for Work and Pensions carries out its functions on behalf of the Secretary of State.

7.2 The 2008 Act establishes the Commission, a crown Non Departmental Public Body, which will assume responsibility for the delivery of the child maintenance system. All existing subordinate legislation outlined at schedule 2

of the 2008 Act will be transferred, allowing the functions of the Agency to be carried out by the Commission. This includes maintenance assessment procedure regulations, collection and enforcement regulations and information, evidence and disclosure regulations.

7.3 Under section 13(3) of the 2008 Act, those functions specified in secondary legislation listed in Schedule 2, are transferred to the Commission. Functions not being transferred to the Commission are listed at section 13(2) of the 2008 Act and include – appeals to the Child Support Commissioner and the higher courts, authorisation of a person as a "responsible person", commencement power and power to make consequential amendments, payment of expenses and power to make regulations under any other provision of the Act. However, the transfer of functions also impacts on the following primary legislation and regulations which are not covered in Schedules 2 and 3 to the 2008 Act.

7.4 Schedule 3 to the 2008 Act makes consequential amendments to primary legislation. For example, replacing references to the Secretary of State with the Commission.

Sexual Offences Act 2003

7.5 Sections 94 and 95 of the Sexual Offences Act 2003 provide for the sharing of information between the Secretary of State (carrying out his child support functions) and a chief officer of police (in Scotland, a chief constable), the National Policing Improvement Agency, and the Serious Organised Crime Agency. This could include, for example, providing the police with trace information for sex offenders. The amendment is needed to include the Commission, as well as the Secretary of State, in relation to any functions of the Commission.

Employment Act 2002

7.6 Section 13 of the Employment Act allows for the sharing of information in respect of functions relating to statutory payments for paternity and adoption. It allows the Board of Commissioners of Her Majesty's Revenue and Customs (HMRC) to supply information held for the purposes of functions relating to statutory paternity pay to the Secretary of State or Departments, or to persons providing services to the Secretary of State or Department. The amendment is needed to allow this information to be provided to the Commission in relation to any functions of the Commission.

The Social Security and Child Support (Decisions and Appeals) Regulations 1999

7.7 These regulations deal with the decision-making and appeals process for social security and related matters, including child support. A small number of

changes are made to the regulations to reflect the transfer of child support functions:

- The definition of a "party to the proceedings" to an appeal tribunal is amended to refer to the Commission, rather than the Secretary of State, when the proceedings relate to child support;

- The definition of "official error" is amended to include an error made by an officer of the Commission; and

- A definition is inserted to provide that "the Commission" means the Child Maintenance and Enforcement Commission.

**Consultation**

7.21 No consultation has been carried out on these particular amendments. However, a full consultation was completed following the publication of the Child Maintenance White Paper – *"A new system of Child Maintenance"* in December 2006 with the results of the consultation exercise published in May 2007. A summary of responses to the consultation exercise can be found at:

http://www.dwp.gov.uk/childmaintenance/pdfs/cmr-response-summary.pdf

Key stakeholders continued to be involved as the Child Maintenance and Other Payments Act 2008 completed its passage through Parliament.

**Guidance**

7.22 The Child Support Agency is developing a communication strategy to ensure that its clients are kept informed of the changes, which will include discussions with key stakeholders and amending relevant leaflets and web-based guidance when the changes are due to be brought into force.

**Consolidation**

7.23 The Law Relating to Child Support is available on the internet at http://www.dwp.gov.uk/advisers/docs/lawvols/orangvol/ and is generally updated twice-yearly.

## 8. Impact

8.1 A full impact assessment has not been published for this instrument as it has no impact on the private or voluntary sectors.

8.2 The impact on the public sector is negligible.

## 9. Contact

If you have any queries regarding this instrument, please contact Alison Fryatt at the Department for Work and Pensions, The Adelphi (6th floor), 1-11 John Adam Street, London, WC2N 6HT, telephone 020 7712 2598, or e-mail Alison.fryatt@dwp.gsi.gov.uk