EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS) REGULATIONS 2009

2009 No. 736

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 is a package of miscellaneous and consequential amendments to legislation relating to child maintenance payments. The provisions restore or maintain the original policy intent in three areas: the "diversion of income" ground for a departure or variation, required following a recent Upper Tribunal judge's decision; parents' eligibility for particular allowances in a maintenance assessment, which needs updating as a result of the phased increase, from 2010, to the age at which State Pension Credit is payable; and ensuring that short-term payments made to lone parents returning to work may not be included in a maintenance assessment, following the recent introduction of such payments by Jobcentre Plus.

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

3.1 None.

4. Legislative Context

4.1 These regulations are subject to affirmative resolution procedure and are made under powers in the Child Support Act 1991 ("the 1991 Act").

4.2 The 1991 Act makes provision for the calculation, collection and enforcement of child maintenance, which is an amount of money that parents who do not normally live with the children concerned pay as a contribution to the upkeep of their children. Child maintenance legislation is focused around the general principle that all parents take financial responsibility for all of their children.

4.3 The child maintenance scheme in the 1991 Act was substantially amended by the Child Support, Pensions and Social Security Act 2000 ("the 2000 Act"). Some of the amendments are fully in force, whilst others have so far been brought into force for the purposes of specified cases only. This means there are effectively two child maintenance schemes.

4.4 In this memorandum, the child maintenance scheme in force prior to the amendments to the 1991 Act made by the 2000 Act is referred to as "the old scheme" and the child support scheme in force following those amendments is referred to as "the current scheme".

4.5 Further amendments to child maintenance legislation have been made by the Child Maintenance and Other Payments Act 2008 ("the 2008 Act"). However, no powers in the 2008 Act are being used for the purposes of these regulations.

4.6 Another Statutory Instrument containing miscellaneous amendments to child maintenance legislation (but subject to the negative resolution Parliamentary procedure), which is also intended to come into force from 6 April 2009, will be laid before Parliament in early 2009.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Kitty Ussher, Parliamentary Under-Secretary of State for Work and Pensions, has made the following statement regarding Human Rights:

"In my view the provisions of the Child Support (Miscellaneous and Consequential Amendments) Regulations 2009 are compatible with the Convention rights."

7. Policy Background

Policy

7.1 Child Support legislation is focused around the general principle that all parents take financial responsibility for all of their children. Child maintenance is an amount of money that parents who do not normally live with the children concerned (referred to as "absent parent" in the old scheme and "non-resident parent" in the current scheme) pay as a contribution to the upkeep of their children (these are called "qualifying children").

7.2 In the old scheme, a formula is used to work out how much child maintenance is payable by the absent parent. It takes into account the number and ages of the qualifying children. The ability of both parents to contribute towards child maintenance is calculated unless the parent with care (the main provider of day-to-day care of the qualifying children) is in receipt of benefit, in which case only the absent parent's income is taken into account. Ability to pay is calculated by looking at the income available to parents after making allowances for their basic day-to-day expenses. Absent parents are normally expected to pay at least a minimum amount of maintenance for their children (currently £6.00 a week), but there are some exceptions, including those in receipt of certain sickness and disability benefits.

7.3 In the current scheme, the child maintenance calculation is based on a simple system of rates depending on the non-resident parent's net weekly income or benefit status. The amount of child maintenance depends on:

- the number of qualifying children the child maintenance is for;
- the non-resident parent's income and circumstances; and
- the number of other children living with the non-resident parent (these are called "relevant other children").

In most cases the amount of maintenance is worked out as a percentage of the non-resident parent's income – 15% for one qualifying child, 20% for two children and

25% for three or more children. For non-resident parents who do not earn very much or who are in receipt of certain benefits, the reduced rate or flat rate (currently £5 a week) is used. Some non-resident parents, such as students and those on benefit sharing the care of a qualifying child, may pay nothing.

7.4 The 2008 Act established the Child Maintenance and Enforcement Commission ("the Commission"), a Non Departmental Public Body, which assumed responsibility for the delivery of the child maintenance system – including calculating, collecting and enforcing child maintenance liabilities – on 1 November 2008.

Regulations

7.5 The Child Support (Miscellaneous and Consequential Amendments) Regulations 2009 amend three sets of regulations, governing both the old and current schemes.

Regulation 2 – Amendments to the Child Support (Departure Direction and Consequential Amendment) Regulations 1996 (SI 1996/2907)

Regulation 4 – Amendments to the Child Support (Variations) Regulations 2000 (SI 2001/156)

7.6 Regulation 2 amends the Departure Direction Regulations which apply to old scheme cases, and Regulation 4 makes corresponding amendments to the Variations Regulations, which apply to current scheme cases.

7.7 Under both schemes either parent may apply to the Commission where the circumstances of their particular case are such that the application of the standard maintenance rules may not be fair and equitable. This is known as a "departure" in the old scheme and a "variation" in the current scheme. Regulations set out specific grounds for departures and variations, and their effect on the standard maintenance assessment or calculation. One such ground is that the non-resident parent has reduced the amount of income that would otherwise have been included within the maintenance assessment or calculation, thus unreasonably reducing the child maintenance liability. This is commonly known as "diversion of income".

7.8 A recent decision by a judge in the Upper Tribunal (previously a Commissioner) held that the existing diversion of income provisions did not apply to a non-resident parent making extraordinarily high pension contributions (and thereby driving down the maintenance liability by reducing the net weekly income used in the maintenance calculation). This amendment is intended to reverse the effect of that decision in both the old and current schemes and thus restore the original policy intention, which is that, if Commission agrees with the grounds for the departure or variation application, it may adjust the income taken into account by the amount the Commission considers reasonable in the circumstances of the case.

Regulation 3 - Amendment to the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (SI 1992/1815)

7.9 Under the Pensions Act 1995, equalisation of state pension age between men and women will be gradually phased in between 2010 and 2020 and as a consequence, the qualifying age for State Pension Credit will also increase from 60 to 65 by 2020. Regulation 3(2) to (4) ensures that non-resident parents on the old scheme, who are under 60 years of age and receive an allowance within the formula maintenance assessment as a result of being eligible for the disability premium in income support, will continue to receive that allowance up to the new qualifying age for State Pension Credit, from which point income support is no longer payable.

7.10 This amendment applies only to the old scheme because the current scheme does not make use of such allowances.

7.11 Jobcentre Plus has introduced weekly payments to lone parents who move into work of at least 16 hours per week. As these payments are not classed as income for many purposes such as national insurance, council tax benefit and housing benefit, and are solely intended to help people into work (by providing them with additional payments for a fixed period) it would not seem appropriate to include them when assessing income for child maintenance purposes. Regulation 3(5) therefore ensures that these payments are ignored in the maintenance assessment.

7.12 This amendment applies only to the old scheme because the existing equivalent regulations governing the current scheme already ensure that these payments are excluded from the maintenance calculation.

8 Consultation

8.1 No consultation has taken place with regard to these regulations as the provisions either reassert original policy intentions or introduce minor consequential amendments to ensure that the policy intention is maintained. Additionally, there is no impact on the private or voluntary sectors and only negligible impact on the public sector.

9 Guidance

9.1. The Commission 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.

10 Impact

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

10.2 The impact on the public sector is negligible and limited to the Commission.

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

11. Regulating Small Business

11.1 The regulations do not affect small businesses.

12. Monitoring & Review

12.1 This instrument either restores the original policy intent of the regulations it amends or makes consequential amendments to ensure that those regulations continue to reflect original policy. The Commission 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

Liz Porter
Child Maintenance and Enforcement Commission
Telephone: 020 7853 8018
e-mail: liz.porter1@childmaintenance.gsi.gov.uk