EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT AND CLAIMS AND PAYMENTS (MISCELLANEOUS AMENDMENTS AND CHANGE TO THE MINIMUM AMOUNT OF LIABILITY) REGULATIONS 2013

2013 No.

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

2 Purpose of the Instrument

The flat rate of child support maintenance is the amount of child support maintenance a non-resident parent is liable to pay if they have weekly income of £100 or less or they are in receipt of certain prescribed benefits. It is intended that the flat rate will increase from £5 to £7 at a date to be confirmed later in 2013. This instrument makes a number of amendments to both child maintenance and social security secondary legislation as a consequence of this change. This instrument also makes a number of amendments to secondary legislation concerning the rules for the calculation of child support maintenance and variations (which allow for deviations from the usual rules of calculating child support maintenance in certain limited circumstances).

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

None.

4 Legislative Context

4.1 A statutory child maintenance scheme has been in operation within Great Britain since 1993 and was established through the Child Support Act 1991.

4.2 A second statutory scheme was introduced for all applications received after March 2003 and currently operates alongside the 1991 scheme. A new scheme, the 2012 child maintenance scheme ('the 2012 scheme'), was introduced on 10 December 2012 but is currently only open to limited circumstances (namely for new applications made after that date which relate to at least 4 qualifying children with the same non-resident parent and parent with care). The 2012 scheme will open to all new applications to the statutory scheme on a gradual basis. Statutory schemes also operate within Northern Ireland which mirror those operating within Great Britain.

4.3 The Child Support Act 1991 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 their children (the non-resident parent) pay as a contribution to the upkeep of those children.

4.4 Following Sir David Henshaw's report to the Secretary of State for Work and Pensions; *Recovering child support: routes to responsibility (Cm 6894):* http://www.dwp.gov.uk/docs/henshaw-complete22-7.pdf, in July 2006 and the

Government's response – *A fresh start: child support redesign (Cm 6895)*: http://www.dwp.gov.uk/policy/child-maintenance/sir-david-henshaws-report/governments-response/ the Government brought forward the Child Maintenance and Other Payments Act 2008 ("the 2008 Act") which provided the overarching legislation for a simplified and improved system of child support. The 2008 Act introduced a new way of calculating child support maintenance and introduced a number of other important changes to the statutory child maintenance scheme.

4.5 One of the changes made by the 2008 Act is to increase the flat rate of child support maintenance from £5 to £7. This change has not as yet been made, however it is intended that this increase will be introduced sometime later in 2013.

5 Territorial Extent and Application

This instrument applies to England, Wales and Scotland. Similar provision will be made separately for the statutory child maintenance scheme for Northern Ireland.

6 European Convention on Human Rights

Steve Webb MP, the Minister of State for Pensions, has made the following statement regarding Human Rights:

In my view the provisions of the Child Support and Claims and Payments (Miscellaneous Amendments and Change to the Minimum Amount of Liability) Regulations 2013 are compatible with the Convention rights.

7 Policy Background

7.1 The 2003 scheme of child support was introduced to provide a radically simpler system than the highly complex system of calculation in the 1993 scheme.

7.2 Once the 2003 scheme had been in operation for some time it became evident that although there had been improvements from the 1993 scheme, the gathering of income information to calculate child maintenance was cumbersome and time consuming and did not allow for a quick and effective method of getting money to the children who need it.

7.3 As part of the Government's child maintenance reform programme the 2012 child maintenance scheme ('the 2012 scheme') was introduced on 10 December 2012 for limited circumstances (namely for new applications made after that date which relate to at least 4 qualifying children with the same non-resident parent and parent with care). The 2012 scheme will open to all new applications to the statutory scheme on a gradual basis. To support the first phase of the 2012 scheme, the Child Support Maintenance Calculation Regulations 2012 ('the 2012 Regulations') were made on 20 October 2012 and took effect on 10 December 2012 for the limited group of new applicants (described above).

7.4 The flat rate of child maintenance is payable by a non-resident parent whose gross weekly income is more than £5 per week and less than £100 per week or who is in receipt of certain prescribed benefits.

7.5 The Child Maintenance and Other Payments Act 2008 made provision to increase the flat rate to £7 for the 2012 scheme, however, the Child Support Maintenance (Changes to the Basic Rate Calculation and Minimum Amount of Liability) Regulations 2012 made a technical change to ensure that the flat rate of maintenance was £5 when the amendments in the 2008 Act were first commenced.

7.6 The Department had intended to increase the flat rate to £10 once the 2008 amendments have been commenced for all cases. However the Department has reconsidered its position on the flat rate of maintenance, reflecting the concerns of stakeholders representing the interests both of parents with care and non-resident parents and will reduce the proposed increase to the 2012 scheme flat rate from £10 to £7.

7.7 This instrument also makes other consequential amendments as a result of the increase to the flat rate for 2012 scheme cases, and to the calculation of the reduced rate of child support maintenance which is payable if neither the flat rate, or nil rate applies, and the non-resident parent has income of less than £200 but more than £100.

7.8 Variations allow for deviations from the usual rules for calculating maintenance in certain limited circumstances. Commencement rules, which brought the 2012 Regulations into force, included transitional measures to resolve income assessment issues that were discovered in the run-up to the introduction of the 2012 scheme last December, which will be resolved along with other issues.

7.9 These miscellaneous amendments in relation to variations include where the Secretary of State is unable to request or obtain information from HMRC, the non-resident parent's unearned income can be determined by reference to the most recent tax year, based as far as possible on information that would be required to be provided in a self-assessment return and relievable pension contributions can be taken account of for the purposes of calculating unearned income. In addition where a variation is applied which decreases the amount of child maintenance payable resulting in a maintenance figure under the flat-rate, then the maintenance payable would be equivalent to the flat-rate.

7.10 Commencement date: It is intended that the Child Support and Claims and Payments (Miscellaneous Amendments and Change to the Minimum Amount of Liability) Regulations 2013 will come into force when the amendments made by the 2008 Act (introducing the 2012 scheme) are commenced for all purposes.

- **Consolidation**

  The law relating to child support is available on the internet site and is generally updated twice-yearly. This can be accessed via the link below:

http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-child-support/

8 Consultation Outcome

8.1 The Government consulted on increasing the flat rate beyond £7 in question 7 of the Child Support Maintenance Calculation Regulations 2012 consultation, which ran from 1 December 2011 to 23 February 2012. A total of 36 responses were received from representatives of bodies and organisations with an interest in child maintenance, for example, Families Need Fathers and Gingerbread.

8.2 The consultation engaged stakeholders on the principle that all parents should support their children where they have the means to do so, and that the amounts paid are seen to be meaningful. It also argued that the current £5 flat rate of child support maintenance meant that people on benefits saw a lower proportion of their income deducted as child maintenance compared to working people with comparably low incomes and that increasing the flat rate would reduce that gap.

8.3 In response to the consultation there was a general recognition that the current flat rate of £5 has not changed in more than 10 years and an increase to £7 was not considered to be unreasonable.

8.4 There was also some support from key stakeholders for an increase beyond £7 but stakeholders were mostly concerned that such an increase would place an excessive burden on the poorest non-resident parents.

8.5 A full analysis of consultation responses is available on the website at: https://www.gov.uk/government/consultations/child-support-maintenance-calculation-regulations-2012-technical-consultation

9 Guidance

The Department will ensure that clients, employers and stakeholders are kept informed of the changes. Staff will be trained in the new policies, relevant client notifications and leaflets will be prepared and web-based guidance will be available to support caseworkers.

10 Impact

10.1 The impact on business, charities or voluntary bodies is [none].

10.2 The impact on the public sector is [negligible and limited to the Department for Work and Pensions].

10.3 An impact assessment has not been prepared for this instrument.

11 Regulating Small Business

The legislation does not apply to small businesses.

12 Monitoring & Review

The Department will closely monitor the operation of these regulations following implementation, as part of a wider group of policy changes affecting child maintenance. There will be a benefits realisation evaluation for the entire change programme which will include checking that the activities in the new 2012 scheme are delivering the intended outcomes. In particular, the success of the new 2012 scheme in achieving intended improvements in service to clients and efficiencies for the public sector and employers will be monitored and evaluated. The evaluation process will include monitoring the time taken to process and maintain cases using management information as well as assessing client satisfaction through surveys. The first comprehensive evaluation will be published 30 months after the introduction of charging for the use of the new 2012 scheme.

13 Contact

Timothy West at the Department for Work and Pensions, Child Maintenance Group Telephone: 0207 340 4354 or E-mail: timothy.west@dwp.gsi.gov.uk can answer any queries regarding the instrument.