EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (MANAGEMENT OF PAYMENTS AND ARREARS AND FEES) (AMENDMENT) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument removes the £20.00 application fee a person must pay to the Secretary of State on making an application for child support maintenance.

2.2 This instrument will also introduce powers permitting the Secretary of State to write off maintenance arrears under £7.00 when certain circumstances are met.

3. Matters of special interest to Parliament

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

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. European Convention on Human Rights

5.1 The Minister for Lords, Viscount Younger of Leckie has made the following statement regarding Human Rights:

"In my view the provisions of the Child Support (Management of Payments and Arrears and Fees) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The Child Support Fees Regulations (S.I. 2014/612)[1] are being amended to remove the £20.00 application fee.

6.2 Section 41E of the Child Support Act 1991[2] permits the Secretary of State to write off arrears where it appears it would be unfair or inappropriate to enforce them and the circumstances of the case are specified in regulations. These circumstances are set out in regulation 13G of the Child Support (Management of Payments and Arrears)

[1] https://www.legislation.gov.uk/uksi/2014/612/made
[2] https://www.legislation.gov.uk/ukpga/1991/48

Regulations (S.I. 2009/3151)[3] as amended[4]. This instrument adds to those circumstances.

7. Policy background

Removal of Application Fee

What is being done and why?

7.1 Since the introduction of the 2012 statutory scheme, the Child Maintenance Service (CMS), applications to the statutory scheme have been lower than anticipated. While the National Audit Office (NAO) recognised that the estimated proportion of separated families with family-based arrangements increased following the introduction of the CMS, they noted that the estimated proportion of families with no arrangements in place also increased and take-up of CMS arrangements reduced substantially and by much more than planned – from an estimated 46% of separated families in 2011-12 to 18% by 2019-20 (compared to an expected take-up of 33%)[5]. The proportion of separated families with CMS arrangements stood at 19% in 2021/22[6]. Removal of the application fee would remove a barrier to parents having a successful arrangement which will ensure that children will receive money through CMS.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 The CMS currently applies a £20.00 application fee before an application is progressed. The fee is payable even if a maintenance calculation is not made. The legislation currently allows the application fee to be waived if the applicant has been a victim of domestic violence or abuse, or where they are aged under 19. There are no other scenarios where the fee may be waived, and reimbursement is only possible when any relevant qualifying child dies after an application has been made, and before a maintenance assessment is in place.

Why is it being changed?

7.3 Abolishing the application fee will remove a barrier to accessing the CMS, to ensure that customers are not excluded from the CMS due to financial constraints.

What will it now do?

7.4 These amendments will remove the need for the CMS to impose the application fee before progressing a CMS application.

Write Off Maintenance Arrears Under £7.00

What is being done and why?

7.5 There are cases with arrears under £7.00. The value of the debt in such cases is substantially less than the cost of collecting it. Current powers do not allow the CMS to write off such arrears where collection is not feasible, creating uncertainty for

[3] https://www.legislation.gov.uk/uksi/2009/3151
[4] Relevant amending instruments are S.I. 2012/3002, S.I. 2018/1279, S.I. 2019/1084 and S.I. 2022/503 - https://www.legislation.gov.uk/uksi/2022/503/contents/made
[5] https://www.nao.org.uk/wp-content/uploads/2022/03/Child-Maintenance.pdf
[6] https://www.gov.uk/government/statistics/separated-families-statistics-april-2014-to-march-2022-experimental

customers and the ongoing day to day maintenance of otherwise dormant cases incurs a cost to the Child Maintenance Service (CMS).

Explanations

What did any law do before the changes to be made by this instrument?

7.6 Several arrears management powers were introduced by the Child Support Management of Payments and Arrears (Amendment) Regulations 2012[7], the Child Support (Miscellaneous Amendments) Regulations 2018[8] and the Child Support (Miscellaneous Amendments) Regulations 2019[9] to allow efficient management of child maintenance arrears owed to parents. Under those powers, arrears may be written off if specified criteria apply, for example, a person with care requests that the Secretary of State ceases to act under section 4(5) of the Child Support Act 1991[10].

Why is it being changed?

7.7 Without a change, the cost of managing cases with arrears under £7.00 would continue with no increased chance of the unpaid child maintenance making its way to children.

What will it now do?

7.8 These amendments relate to arrears of child maintenance, accrued under an application for child maintenance made following the introduction of the CMS in 2012. They will permit the Secretary of State to write off arrears in such cases when a maintenance calculation ceases to have effect under specific provisions of the Child Support Act 1991[11], the arrears are less than £7 and the paying parent has failed to make any payments in the three months preceding the date the Secretary of State makes the decision to write off arrears.

7.9 The circumstances under which such a maintenance calculation has ceased, include where the person who made the application for a calculation asks the Secretary of State to cease acting, on the death of a non-resident parent or person with care or when the qualifying child in the case is no longer considered to be a child.

7.10 Arrears of less than £7 typically exist when a maintenance calculation ceases either because the parent has paid slightly less than they were required to pay, or more frequently as a result of rounding in the calculation.

7.11 The amendments in this instrument which specify circumstances in which the Secretary of State can write off arrears, also exempt the Secretary of State from the requirement to give notice of considering writing off those arrears and notification of a decision to write off. This is because providing a written notice would be disproportionate given the low amounts of debt being under £7.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

[7] https://www.legislation.gov.uk/uksi/2012/3002/made
[8] https://www.legislation.gov.uk/uksi/2018/1279/made
[9] https://www.legislation.gov.uk/uksi/2019/1084/made
[10] https://www.legislation.gov.uk/ukpga/1991/48
[11] https://www.legislation.gov.uk/ukpga/1991/48

9. Consolidation

9.1 There is no plan to consolidate the legislation that is being amended by this instrument.

10. Consultation outcome

10.1 We have not consulted on removing the application fee. There is no duty to consult, and it is a small positive change which will be welcomed by stakeholders and service users. Removing the application fee is in line with findings from research[12] and supports recommendations made by parliamentary committees (Public Accounts Committee[13] and Work and Pensions Select Committee[14]), to increase the number of effective child maintenance arrangements. We want to implement this change so that parents can benefit from not being charged for making an application to the Child Maintenance Service (CMS).

10.2 We consulted on extending CMS write-off powers between 18th June and 6th August 2021 in the public consultation "Child Maintenance: modernising and improving our service[15]". 122 responses were received: 10 from organisations and 111 from private individuals, of which 29 identified themselves as paying parents and 40 as receiving parents.

10.3 The consultation invited specific questions on our proposals for writing off low-level debt. Although there was general agreement with plans to write off low levels of debt in some cases, some reservations, possibly arising from a misunderstanding of the proposal, were that the CMS was looking at writing off any arrears, no matter how small. There were several differing opinions around the threshold at which the decision to write off the debt should be made. Some thought the threshold too high and others too low.

10.4 However, setting the maximum at "less than £7" (£0.01 less than the weekly flat rate of child maintenance; the minimum level of maintenance that a receiving parent should expect to receive to support a child) assures the efficient deployment of arrears collections services with minimum loss to the receiving parent.

10.5 Setting the threshold higher would give the wrong message to paying parents about their obligations. As the flat rate for child maintenance (which is the minimum amount a parent is expected to pay to meet their statutory duty to maintain their children) is £7 per week, setting the threshold just below that amount is, we consider, the best way to strike that balance.

10.6 The government's response to the consultation "Child Maintenance: modernising and improving our service[16]", was published in March 2022.

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[12] https://www.gov.uk/government/statistics/separated-families-statistics-april-2014-to-march-2022-experimental & https://www.gov.uk/government/publications/survey-of-child-support-agency-case-closure-outcomes

[13] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1107127/E02801818_-_CP_745_WEB.pdf

[14] https://publications.parliament.uk/pa/cm5803/cmselect/cmworpen/272/summary.html

[15] https://www.gov.uk/government/consultations/child-maintenance-modernising-and-improving-our-service/child-maintenance-modernising-and-improving-our-service

[16] https://www.gov.uk/government/consultations/child-maintenance-modernising-and-improving-our-service/outcome/government-response-child-maintenance-modernising-and-improving-our-service

11. Guidance

11.1 Guidance is planned be updated both internally and on gov.uk[17] two weeks prior to when these regulations come into force on 26 February 2024. However, there will not be an announcement about writing off maintenance arrears under £7 when certain circumstances are met.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 The removal of the application fee is expected to lead to some relatively modest costs to the public sector of circa £1-2m per annum as a result of ending the income from the fee and removing a potential barrier to applying to the service for a small number of customers who currently do not have arrangements or have family-based arrangements that are not working and may wish to form an arrangement through the Child Maintenance Service (CMS). Around 57,000 applicants to the CMS paid the fee in the year to June 2023.

12.4 Regarding writing off maintenance arrears under £7; as of December 2020, there were 2,800 cases with arrears under £7. This number will have increased as maintenance liabilities regularly come to an end with small debts remaining. The closure of these accounts will save the Department the cost of maintaining them, around £100,000 per year.

12.5 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on the public sector, business, charities, or voluntary bodies.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is from a number of sources. This will include looking at whether there are unintended consequences. This will be monitored by feedback from staff, service users and stakeholders. This monitoring will be continuous.

15. Contact

15.1 The Child Maintenance Policy Team at the Department for Work and Pensions, Email: childmaintenance.policyqueries@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Duncan Gilchrist, Deputy Director for Child Maintenance Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister for Lords, Viscount Younger of Leckie at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

[17] https://child-maintenance.service.gov.uk/get-help-arranging-child-maintenance/