EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2007

2007 No.

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 This is a package of miscellaneous amendments to various pieces of legislation relating to child support maintenance payments. Some amendments apply to the new child support scheme as introduced for cases with an effective date (as determined under specific provisions) on or after 3rd March 2003 and certain linked cases, and others amend regulations which relate to both schemes.

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

3.1 None

4. Legislative Background

4.1 This is a set of affirmative regulations made under powers in the Child Support Act 1991 ("the 1991 Act").

4.2 The child support 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 schemes.

4.3 In this memorandum, the child support 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 new scheme".

Use of affirmative procedure

4.4 The use of the affirmative procedure is required by section 52(2) of the 1991 Act prior to its amendment by the 2000 Act. Regulation 4 makes amendments which are subject to the affirmative resolution procedure. The remaining regulations are made using powers which, were they being used separately, would not attract the affirmative procedure.

4.5 The making of child support regulations packages is a fairly regular process designed to ensure that legislation is kept up-to-date, transparent, and in step with wider government legislation. In this package of regulations we are updating and amending child support legislation to bring it into line with changes that have been made to other legislation. Changes to the Magistrates Court Act have brought child support out of step with other relevant provisions. We are also clarifying the detail set out in the child support legislation surrounding the assessment of child support maintenance payments and special cases, to ensure that the legislation is legally in line with the original policy intentions which underpin it. This follows the House of Lords

decision in *Smith*, which found that legislation in this area did not support the original policy intention.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State, the Lord McKenzie of Luton, has made the following statement regarding Human Rights:

In my view the provisions of the Child Support (Miscellaneous Amendments) Regulations 2007 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 (the "absent" or "non-resident" parent) pay as a contribution to the upkeep of their children (these are called "qualifying children").

7.2 In the old child support scheme, a formula is used to work out how much child maintenance is payable by the non-resident parent. It takes into account the number and ages of the 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. Ability to pay is calculated by looking at the income available to parents after making allowances for their basic day-to-day expenses. Non-resident parents (NRPs) 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, and those with children living with them in their current family.

7.3 In the new scheme, the child maintenance calculation is based on a simple system of rates depending on the non-resident parent's weekly net 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 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 child, 20% for two children and 25% for three or more children. For non-resident parents (NRPs) who do not earn very much or who are in receipt of certain benefits, the reduced rate or flat rate (usually £5 a week) is used. Some NRPs, such as students and those on benefit sharing the care of a qualifying child, may pay nothing.

7.4 Regulations set out the allowable methods by which non-resident parents can make payments of child support maintenance. The Secretary of State decides which

method of collection shall apply after considering representations from the non-resident parent and the parent with care. Where it is considered appropriate, the Child Support Act 1991 allows the Child Support Agency ("the Agency") to implement a deduction from earnings order (DEO) whereby child support maintenance is collected direct from a non-resident parent's earnings, without the need for a court order. It is an offence for an employer not to implement, without acceptable reason, a deduction from earnings order, as requested by the Agency. The employer can levy an administrative charge for operating a DEO. Regulations set out the details of how DEOs are operated.

7.5 The Child Support Act also allows the Agency to take action through the courts to collect child support maintenance due. As a first step they can obtain a liability order to register the debt. Once this has been granted, there are a number of options for the Agency to try to obtain the debt due.

7.6 Sir David Henshaw's report into the future of the child support system has recommended sweeping policy and operational changes. Indeed, Sir David has recommended, and the Government has agreed, that the Child Support Agency should be abolished and existing clients asked to reapply to an entirely new system. The Department is currently engaged in a wholescale redesign of child support policy and operations. However, it is still vitally important that the Agency is given the most up-to-date and effective means of operating successfully in the years before these changes take place. Indeed, changes made now will be beneficial in ensuring that the transition process is as smooth as possible later on.

7.7 The Child Support (Miscellaneous Amendments) Regulations 2007 make amendments to a number of the sets of regulations which cover child support. The provisions amend regulations governing both the old and new schemes.

Regulation 2 – Amendment of the Child Support (Collection and Enforcement) Regulations 1992 (SI 1992/1989)

Regulation 2 makes amendments in respect of the following civil procedures:

- appeals against deduction from earnings orders;
- applications for a Liability Order;
- appeals in connection with distress;
- application for a warrant of commitment; and
- enquiries in relation to an application for a disqualification from driving order.

The amendment will:

- remove the provision that a court only has jurisdiction in the area in which the liable person lives
- allow non-resident parents who live abroad more time to make an appeal.

The amendment will enable any Court to have jurisdiction over a non-resident parent regarding the above civil procedures, regardless of where the non-resident parent lives. Currently, only the magistrates' court where the non-resident parent lives will have jurisdiction. The change will not have any immediate impact, but will support the centralisation of Child Support Agency court cases in the future. It will also bring Child Support Agency regulations into line with the recent changes made to the Magistrates Court Act 1980, which allow court jurisdiction regardless of geographical area. This amendment is chiefly in respect of Child Support Agency court cases heard

within England and Wales. Only minor amendment is necessary in terms of regulations affecting Scotland; centralisation in Scotland may be achievable by agreement with the relevant authorities.

The amendments will also allow any court to have jurisdiction for appeals, regardless of where the non-resident parent lives. This will ensure that non-resident parents who are living outside the UK, but are caught by the Act are able to appeal against deductions of earnings orders (DEOs) and to appeal in connection with the enforcement of a liability order by distress. This will ensure compliance with Article 6 of the ECHR - the right to a fair trial.

Non-resident parents who are resident abroad will be given 56 days in which to appeal against a DEO. The amendments also make changes to require the Secretary of State to give non-resident parents who live abroad 28 days notice that a liability order is being sought. This is because it may be more difficult for non-resident parents outside the UK to make representations or bring an appeal within the time specified for UK residents.

Regulation 3 – Amendment of the Child Support (Information, Evidence and Disclosure) Regulations 1992

Currently, the Child Support (Information, Evidence and Disclosure) Regulations ("the Information regulations") do not set out any definition of 'taxable profits' for the purpose of making a maintenance assessment or calculation. In the case of non-resident parents who are self-employed, this omission can be significant: in the Smith case, the House of Lords ruled that the phrase 'total taxable profits' used in the Child Support (Maintenance Assessment and Special Cases) Regulations 1992 and the Child Support (Maintenance Calculation and Special Cases) Regulations 2000 had a different meaning from that which was intended. Regulation 3 will amend the Information regulations to include a definition of 'taxable profits' in respect of a self-employed non-resident parent's income in line with child support policy intentions. 'Taxable profits' will be defined as profits calculated in accordance with the Income Tax (Trading and Other Incomes) Act 2005, taking into account any capital allowances and balancing charges applicable under the Capital Allowances Act 2001. The amendment also removes the words 'total' and 'as submitted to the Inland Revenue'. This is in line with amendments made in regulations 4 and 5 as set out below.

Regulation 4 – Amendment of the Child Support (Maintenance Assessments and Special Cases) Regulations 1992

Regulation 4 will amend the definition of earnings from self-employment set out in Schedule 1 of the Child Support (Maintenance Assessments and Special Cases) Regulations.

The House of Lords ruled in July 2006 that the existing legislation regarding earnings from self-employment should be interpreted in a way which differs from that originally intended. They held that 'total taxable profits' should be taken to mean the taxable business profits without recognition of capital allowances.

The amendment will ensure that the regulations reflect the original policy intention so that self-employment earnings for income tax purposes are the same as earnings for

child support earnings i.e. taking capital allowances into account. Tax calculation notices will also be used as the initial source of information when assessing earnings from self-employment.

Regulation 5 – Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000

Regulation 5 will amend the definition of earnings from self-employment set out in the Schedule of the Child Support (Maintenance Calculations and Special Cases) Regulations. This amendment will make similar amendments as regulation 4, but for the new scheme.

Consultation

7.8 This package of regulations updates child support legislation to bring it into line with changes that have been made to the Magistrates Court Act and ensures that the legislation is in line with the original policy intentions, as highlighted by the House of Lords' judgement on *Smith*. Therefore there has been no formal consultation on these regulations.

Guidance

7.9 The 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

7.10 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 Regulatory Impact Assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the voluntary sector.

8.2 The impact on the public sector is nil.

9. Contact

Liz Porter at the Child Support Agency, telephone 020 7340 4062 or e-mail liz.porter1@dwp.gsi.gov.uk, can answer any queries regarding this instrument.