EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2019

2019 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 Her Majesty.

1.2 This memorandum contains matters of interest to the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends legislation relating to Child Maintenance. The instrument will change the range of benefits from which arrears of Child Maintenance can be deducted. It also expands the list of persons from whom relevant information can be requested by or on behalf of the Secretary of State. Provision is also made to enable inspectors appointed under the Child Support Act 1991 to apply for judicial warrants to authorise entry to premises for the purposes of carrying out their functions under that Act.

2.2 This instrument also provides for Child Maintenance debt that was subject to a protected trust deed that has expired to be written off. Minor and technical changes are also made to the Child Maintenance calculation and fees regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These draft Regulations supersede the draft Regulations with the same name that were originally laid before Parliament on 30 April. This is being done to correct an error in the preamble. The Regulations as originally laid on 30 April stated that "In accordance with section 172(1) of the 1992 Act, the Secretary of State has referred the proposals in Part 2 of these Regulations to the Social Security Advisory Committee." However, proposals for the Regulations were not in fact required to be referred to the Committee under section 172(1). In addition, only Part 2 of the Regulations are within the remit of the Committee.

3.2 The draft regulations are therefore being replaced with new draft which corrects the error in the original preamble. The preamble now states "In accordance with section 173(1)(b) of the Social Security Administration Act 1992, the Social Security Advisory Committee has agreed that the proposals in respect of Part 2 of these Regulations should not be referred to it."

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 The territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

5.1 The Minister for Family Support Housing and Child Maintenance, Will Quince MP has made the following statement regarding Human Rights:

"In my view the provisions of the Child Support (Miscellaneous Amendments) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations have been made using the following powers:

Deductions from benefits to recover arrears of Child Maintenance

6.2 The Child Support Act 1991[1], section 43, and section 5(1)(p) of the Social Security Administration Act 1992 [2] give the Secretary of State (SoS) the power to make provision for Child Maintenance deductions (or deductions to cover arrears of such maintenance) from a range of benefits.

6.3 We are using these powers to make amendments to the Social Security (Claims and Payments) Regulations 1987[3] and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013[4] to increase the weekly amount which may be deducted from benefits towards arrears from £1.20 to £8.40. This aligns the amount that may be deducted towards arrears with the amount which may be deducted where there is ongoing maintenance. The amendments also permit deductions from benefits to be made from a non-resident parent in receipt of Universal Credit (with or without earnings), who meets the criteria for the flat rate of Child Maintenance to apply (they may not actually have a flat rate calculation in place, if they no longer have an on-going maintenance liability and only owe arrears).

Power to write off arrears: Protected Trust Deeds

6.4 Section 41E of the Child Support Act 1991[5] gives the SoS the ability to write off Child Maintenance arrears in prescribed circumstances where it would be considered unfair or inappropriate to enforce them. The relevant circumstances are prescribed in the Child Support (Management of Payment and Arrears) Regulations 2009.[6] These Regulations amend those Regulations to enable arrears of Child Maintenance which were subject to a protected trust deed that has expired to be written off. These arrears are no longer legally recoverable.

Information Regulations

[1] http://www.legislation.gov.uk/ukpga/1991/48/pdfs/ukpga_19910048_310817_en.pdf
[2] http://www.legislation.gov.uk/ukpga/1992/5/section/5/enacted
[3] http://www.legislation.gov.uk/uksi/1987/1968/contents/made
[4] http://www.legislation.gov.uk/uksi/2013/380/contents/made
[5] http://www.legislation.gov.uk/ukpga/1991/48/pdfs/ukpga_19910048_310817_en.pdf
[6] https://www.legislation.gov.uk/uksi/2009/3151/contents

6.5 Section 14(1) of the Child Support Act 1991[7] allows the SoS to make regulations to require the provision of information or evidence needed in connection with the calculation, collection or enforcement of Child Maintenance. We are using this power to add mortgage lenders and occupational pension providers to the list of persons/organisations in the Child Support Information Regulations 2008[8] from whom the Child Maintenance Service (CMS) may request information.

Powers of Entry

6.6 Section 15 of the Child Support Act 1991 confers powers of entry on inspectors appointed by the SoS under that section. Section 40 of the Protection of Freedoms Act 2012[9] enables the SoS to make amendments to the 1991 Act to add additional safeguards in relation to the power of entry. This package makes changes to the Child Support Act 1991[10] to enable an inspector to apply for a judicial warrant authorising access to premises, as well as to make various consequential amendments. In future, an inspector will, for example, be able to apply for a warrant authorising entry to premises where the occupier has previously refused access to those premises.

Change to calculation of Child Maintenance

6.7 Section 11 of the Child Support Act 1991[11] allows the SoS to make a maintenance assessment where an application has been made under sections 4[12] or 7[13] of that Act. For the purposes of that assessment, the SoS must calculate the "gross weekly income" of the non-resident parent. "Gross weekly income is to be calculated in accordance with regulations made under paragraph 10 of Schedule 1 to the 1991 Act. The method of calculation is currently set out in the Child Support Maintenance Calculation Regulations 2012[14] and may be made on the basis of "historic income". Regulation 36 of the 2012 Regulations sets out what information Her Majesty's Revenue and Customs (HMRC) must provide to the CMS when a Child Maintenance liability is calculated a historic income basis. These Regulations amend regulation 36 of the 2012 Regulations so that employment income is no longer taken before allowable deductions are made.

Fees Regulations

6.8 Section 6 of the Child Maintenance and Other Payments Act 2008 allows the SoS to make provision in regulations for the charging of fees in connection with the exercise of the SoS's functions. That provision is made in the Child Support Fees Regulations 2014. Regulation 7 of those Regulations provides for a collection fee where there are arrangements for collection. Paragraph (6) of that regulation sets out when there are considered to be "arrangements for collection". These Regulations amend that paragraph to clarify the circumstances in which the relevant arrangements are to be considered to be in place.

[7] http://www.legislation.gov.uk/ukpga/1991/48/section/14/enacted
[8] http://www.legislation.gov.uk/uksi/2008/2551/contents/made
[9] http://www.legislation.gov.uk/ukpga/2012/9/section/40/enacted
[10] http://www.legislation.gov.uk/ukpga/1991/48/section/15/enacted
[11] http://www.legislation.gov.uk/ukpga/1991/48/section/11/enacted
[12] http://www.legislation.gov.uk/ukpga/1991/48/section/4/enacted
[13] http://www.legislation.gov.uk/ukpga/1991/48/section/7/enacted
[14] http://www.legislation.gov.uk/uksi/2012/2677/regulation/36/made

7. Policy background

7.1 Since the introduction of the revised Child Maintenance system in 2012, the Government has continuously reviewed customer experiences and listened to issues raised by stakeholders including the Work and Pensions Select Committee. As a result of this we proposed a new Child Maintenance compliance and arrears strategy ("the strategy")[15], on which we consulted in late 2017; and the measures in this instrument are part of that strategy. As part of the strategy, we aim to deliver changes which will increase compliance, minimising accrual of new arrears, and introduce more effective and efficient ways of collecting arrears.

Deduction from Benefits

7.2 Amending our powers to deduct from benefits is a key component of the strategy, by extending our ability to deduct on-going maintenance, increasing the amount we can deduct towards arrears, while removing the inconsistency in the amounts deducted, making the policy fairer for non-resident parents. We are amending the Social Security (Claims and Payments) Regulations 1987[16] and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 to:

- Increase the amount we can deduct from benefits towards arrears to £8.40. This will align with the amount we already deduct for on-going maintenance. Deductions towards arrears have not increased from £1.20 since they were introduced in 2003. The amount for arrears deductions was originally intended to be deducted at the same time as deductions for on-going maintenance, hence the low amount. There are no current plans to further increase deductions above the current maximum of £8.40;
- Extend deductions for arrears to all of the benefits from which we can deduct ongoing maintenance;
- Prevent arrears being deducted at the same time as deductions towards ongoing maintenance. The maximum amount that will be deducted at any one time is £8.40 – the amount of the flat rate maintenance calculation plus the collection fee, so all non-resident parents with deductions from their benefit will pay the same amount, whether it is for on-going maintenance or arrears. An amount of £8.40 towards ongoing maintenance will be deducted until there is no longer a liability, only then will a deduction of £8.40 for arrears owed commence;
- Enable deductions for ongoing maintenance and arrears from Universal Credit where the non-resident parent has earnings and has income meeting the criteria for the flat rate maintenance calculation, as well as allowing for deductions for arrears if the non-resident parent is in receipt of Universal Credit (without earnings). We can already deduct for ongoing maintenance from Universal Credit where the non-resident parent has no earnings and meets the criteria for the flat rate maintenance calculation, so this will ensure that clients with the same financial circumstances are treated equally;
- Revoke powers that enable the Secretary of State to retain payments, and also revoke powers that relate to the contribution to maintenance and arrears

[15] https://www.gov.uk/government/consultations/child-maintenance-a-new-compliance-and-arrears-strategy
[16] http://www.legislation.gov.uk/uksi/1987/1968/contents/made

deductions on the 1993 Child Support Agency scheme as all ongoing maintenance cases have now ended on this scheme.

7.3 These changes will make deductions from benefits much simpler and fairer for all parties involved and support our main objective to reduce outstanding arrears.

7.4 Child Maintenance is classed as a "social obligation" deduction for Universal Credit purposes. It is deducted from Universal Credit after "last resort" deductions where a parent is at risk of being made homeless or having their fuel supply disconnected. When ongoing flat rate deductions are satisfied and arrears exist, these will share the same position on the priority order.

7.5 Where a parent is in receipt of Income Support, Jobseeker's Allowance (Income Based), Employment Support Allowance (Income Related) or Pension Credit, Child Maintenance deductions are not subject to the list of Third Party Deductions that can be taken from these benefits. They will always be the first deduction to be taken following deductions for mortgage interest.

Protected Trust Deed

7.6 A protected trust deed is a formal agreement which can be made in Scotland between a debtor and their creditors. It is possible that a non-resident parent with arrears of Child Maintenance will make such a deed.

7.7 Where a protected trust deed is in place, the relevant creditors will receive some payments towards outstanding debts. This will include payments towards any arrears of Child Maintenance. Once the protected trust deed expires, the SoS is no longer able to legally collect any arrears of Child Maintenance covered by the deed and accrued up to and including the day on which the protected trust deed is granted.

7.8 This instrument amends the Management of Payments and Arrears Regulations 2009[17] to enable the Child Maintenance Service and Child Support Agency to write off all Child Maintenance debt which becomes legally uncollectable as a result of the protected trust deed process.

Information Regulations

7.9 The Child Support Information Regulations 2008 place a duty upon listed individuals and organisations to provide information, as is required by the SoS, to enable the amount of Child Maintenance payable by the non-resident parent to be calculated, or the amount to be recovered from the non-resident parent.

7.10 This instrument adds mortgage lenders and occupational pension providers to that list. Including these organisations makes the process far simpler for them to supply requested information to the Child Maintenance Service. Previously, an inspector would have had to visit their premises. Now they will be able to respond to information requests by secure electronic means. This is far more convenient and less intrusive for these organisations.

Powers of Entry

7.11 The Protection of Freedoms Act 2012 required all government departments to review their statutory powers of entry. The aim of the review was to reduce the number of powers or, where that was not possible, build in additional safeguards to protect the public.

[17] https://www.legislation.gov.uk/uksi/2009/3151/contents

7.12 On reviewing Child Maintenance Service's powers of entry, we considered the use of inspectors to be critical to securing payment of maintenance. These powers are used to obtain information needed to either calculate the Child Maintenance liability, or to decide which of our collection and enforcement powers to use. We decided to retain inspectors' powers of entry in section 15 of the Child Support Act 1991[18] and introduce an additional safeguard.

7.13 Consequently, these Regulations insert a new section 15A into the 1991 Act providing for the grant of judicial warrants authorising inspectors to enter relevant premises. An inspector must apply for a warrant if access to the relevant premises has previously been refused and may apply for a warrant if, for example, it is considered likely that access without a warrant will be refused.

7.14 A warrant granted under this new provision will be valid for one month from the date on which it is granted. Further amendments have been made to the 1991 Act, so that a person will only commit an offence under section 15(9)(a) of that Act by delaying or obstructing an inspector's entry to the premises if a warrant is in force at the time of the obstruction or delay.

Calculation Change

7.15 Child Maintenance liabilities are usually calculated based on records held by HMRC for the Paying Parent's income for the most recent complete tax year. This is known as calculating based on 'historic income'. Regulation 36 of the Child Support Maintenance Calculations Regulations 2012 sets out the information to be provided by HMRC in these historic income cases.

7.16 This instrument also amends the Child Support Maintenance Calculation Regulations 2012 to ensure allowable expenses under Part 5 of the Income Tax (Earnings and Provisions) Act 2003[19] are not treated as income when calculating Child Maintenance liabilities. This reflects the judgement of the Upper Tier Tribunal in the case of *SH v Secretary of State for Work and Pensions, CH and Her Majesty's Revenue and Customs (CSM) [2018] UKUT 157 (AAC)*[20].

Fees Regulations

7.17 We are also changing the wording of regulation 7(6) of the Child Support Fees Regulations 2014[21] to clarify the circumstances in which arrangements are considered to be in place for the purposes of determining whether a collection fee is payable. This change is made in response to a court judgement which could have made the interpretation of this provision unclear.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

[18] http://www.legislation.gov.uk/ukpga/2012/9/section/15/enacted
[19] https://www.legislation.gov.uk/ukpga/2003/1/part/5
[20] https://www.gov.uk/administrative-appeals-tribunal-decisions/sh-v-secretary-of-state-for-work-and-pensions-ch-and-her-majesty-s-revenue-and-customs-csm-2018-ukut-157-aac
[21] https://www.legislation.gov.uk/ukdsi/2014/9780111106365/regulation/7

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via the National Archive website: legislation.gov.uk.

10. Consultation outcome

10.1 We consulted on the Child Maintenance compliance and arrears strategy between 14 December 2017 and 8 February 2018. The consultation was well received. Some of our main stakeholders made suggestions that we accepted.

10.2 The majority of the suggestions related to operational processes and procedures, and client communications, so were not directly related to the content of the regulations. Of these, most of them were things that we were already planning to do, such as making the best use of our current powers.

10.3 The deduction from benefits changes were included in this consultation and respondents were generally in favour of the approach to introduce a consistent amount for deductions for on-going maintenance and arrears.

10.4 We consulted on the Power of Entry and Information changes between 14 January 2019 and 11 February 2019. We specifically invited views from relevant stakeholder organisations including The Pensions Regulator and UK Finance. There were few responses received, although overall, respondents were in favour of the measures. We received a total of 22 responses, 2 of which were from stakeholder organisations – Parenting Northern Ireland and the Scottish Courts and Tribunals Service; the remainder were from private individuals.

10.5 Overall, respondents were in favour of the changes. Some respondents raised concerns that inspectors should not be applying for judicial warrants, but it will add a necessary safeguard to the current power of entry provisions, ensuring that the department is fully compliant with the Protection of Freedoms Act 2012.

10.6 One respondent was concerned about the fairness of the judicial warrant application process and some were keen that the warrant could be appealed. The process will be balanced and fair, and applications will be considered either in the Magistrates' court (in England and Wales), or Sheriff Court (in Scotland). The existing rights of appeal in connection with decisions made by a magistrates' court or sheriff or summary sheriff will also continue to apply in relation to a decision to issue or not issue a warrant (for example in section 111A of the Magistrates' Court Act 1980[22]).

10.7 Some respondents did not agree with our proposal to require mortgage lenders and occupational pension providers to provide us information, because they thought the information provided by HMRC was already sufficient. We do, however, require information from these organisations in specific circumstances, for example when identifying a variation to the calculation of income. This is a necessary change that will benefit these organisations by simplifying the process for them, and reducing the need for our inspectors to visit them.

11. Guidance

11.1 The Department is continuing to work to ensure that its clients and stakeholders are fully informed of the changes arising from the introduction of these powers.

[22] https://www.legislation.gov.uk/ukpga/1980/43/section/111A

Information will be made available on our website explaining the changes and how they will impact clients.

12. Impact

12.1 The impact on business, charities or voluntary bodies is as follows:

- The cumulative annual estimate of costs for all occupational pension and mortgage providers is currently around £16,000 per year, providing us with information in a total of 300 cases annually.
- The proposed legislative changes will place a legal requirement on these providers to give us information when we request it, enabling them to do so in writing instead of to a Child Maintenance Service agent under our powers of entry. This is likely to result in efficiencies for providers, reducing their costs from the estimated £16,000.

12.2 The impact on the public sector is that these legislative changes are estimated to represent a saving of £49,000 for the taxpayer. This is because Child Maintenance agents will no longer need to visit suppliers as they currently do in the majority of these cases.

12.3 An Impact Assessment on changes to deductions from benefits has not been carried out because the benefit system is undergoing substantial change while Universal Credit is rolled out. During this transition a reliable estimate of impact is not possible.

12.4 Analysis of the number of cases that have been subject to power of entry provisions over the last three years is not publicly available. It is estimated that we will apply for 20 Judicial Warrants per year in cases where inspectors are refused access to premises.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 It will be easier for small mortgage lenders and occupational pension providers to provide us with information in writing or via secure email, without the need for a visit from an inspector.

13.3 The new requirement for a Judicial Warrant will mean the Child Maintenance Service will need to seek a Judicial Warrant where access to premises is either refused or expected to be refused. This additional step will need to happen before they are able to attempt to prosecute occupiers for refusing access to premises.

13.4 Small business owners will have the chance to appear in the Magistrates' Court (or Sheriff Court in Scotland) to prove that a Child Maintenance inspector should not be allowed into their property, for example, where the property is both their business premises and their home.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause and in line with the requirements of the Small Business, Enterprise and Employment Act 2015. Will Quince MP has made the following statement:

"The implementation of these changes will be carefully monitored. We will regularly engage with key stakeholders and will review these provisions if we receive feedback from our stakeholders or customers surrounding their effectiveness or operation".

15. Contact

15.1 Sheena Taylor at the Department for Work and Pensions (email: sheena.m.taylor@dwp.gov.uk) can be contacted with any queries regarding the instrument.

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

15.3 Will Quince, Parliamentary Under-Secretary of State for Family Support, Housing and Child Maintenance at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.