



BRIEFING PAPER

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Child maintenance: Child Support (Miscellaneous Amendments) Regulations 2019 (GB)

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Summary

Please note that this paper is not being updated further. The last update occurred in March 2020. These regulations applied to Great Britain only.

This briefing paper considers the [Child Support \(Miscellaneous Amendments\) Regulations 2019](#). Introducing the Measure in the Commons in June 2019, the Undersecretary of State, Will Quince, [stated](#) that the regulations intended to introduce:

provisions to make deductions from benefit fairer, to address uncollectable debt and to improve information-gathering processes, alongside amendments to the calculation and fees regulations so that they better reflect the intent of the 2012 reforms.

These 2012 reforms are detailed in the Library Briefing Papers, [Child Maintenance: How it is calculated under the 2012 scheme](#) and [Child Maintenance: Fees, enforcement and arrears](#). The Measure was also [debated](#) in the House of Lords in July 2019.

The regulations were introduced following the publication of the [Child Maintenance and Arrears Strategy](#) (2018) by the Department for Work and Pensions (DWP).

[Part 2 \(regulations 3–8\)](#) of the Statutory Instrument (SI) increased the amount the Child Maintenance Service (CMS) could deduct in arrears from benefit payments to £8.40 each week and enabled deductions for ongoing maintenance and arrears from Universal Credit.

[Part 3 \(regulation 9\)](#) allows the CMS and Child Support Agency (CSA) to write off all child maintenance debt when it becomes legally uncollectable as a result of the protected trust deed process. A protected trust deed is a formal agreement in Scotland between a debtor and their creditors, where the relevant creditors will receive some payments towards outstanding debts.

[Part 4 \(regulations 10–13\)](#) expanded on the [Child Support Information Regulations 2008](#), that placed a duty on listed individuals and organisations to provide information to enable the amount of child maintenance payable by the non-resident parent to be calculated, or for arrears to be recovered. The CMS was already able to request information from mortgage lenders and occupational pensions on a voluntary basis, and this change made it compulsory to provide information. Part 4 also amended the CMS's powers of entry, by allowing an inspector to apply to the relevant court for a warrant for entry if access to the relevant premises has previously been refused or if it is considered likely that access without a warrant will be refused.

[Part 5 \(regulation 14\)](#) amends the maintenance calculation regulations to take account of an Upper Tribunal ruling, so as to ensure that allowable expenses under [Part 5 of the Income Tax \(Earnings and Provisions\) Act 2003](#) are not treated as income when calculating child maintenance liabilities.

[Part 6 \(regulation 15\)](#) seeks to clarify the circumstances in which arrangements are considered to be in place for the purposes of determining whether a collection fee is payable, following a court judgment.

This SI applied to Great Britain only.

1. Provisions within the Statutory Instrument

1.1 Payment of ongoing maintenance where non-resident parent is in receipt of universal credit and has earnings

The Department for Work and Pensions' (DWP) December 2017 [consultation](#) proposed changes to the statutory child maintenance scheme. This included enabling deductions from universal credit (UC) for ongoing maintenance and arrears where the non-resident parent was receiving UC and had earnings and income meeting the criteria for the flat rate maintenance calculation. Before the SI, it was already possible to deduct from UC where the non-resident parent had no earnings and met the criteria for the flat rate maintenance calculation.¹

The DWP said:

We believe that a deduction directly from UC is likely to be more effective for people who are liable to pay flat rate maintenance and fail to maintain their financial commitment to their children voluntarily.

This change would make UC consistent with other benefits paid alongside earnings, where we can already deduct if they are liable to pay flat rate maintenance. It should also encourage personal responsibility amongst paying parents as they can avoid collection fees by paying their maintenance voluntarily direct to the receiving parent.²

If the Child Maintenance Service (CMS) collects and passes on child maintenance to the person with care, under its [collect and pay scheme](#), then it can deduct the flat rate plus a collection fee of 20%.

Previous to the 2019 SI, to qualify for the flat rate of child maintenance of £7 per week, a non-resident parent had to have a gross weekly income of under £100 per week, or they (or their partner) had to be in receipt of a specified welfare benefit (including UC) where they had no earnings).³

¹ [Explanatory Memorandum to The Child Support \(Miscellaneous Amendments\) Regulations 2019](#), p4, para 7.2

² Department for Work and Pensions (DWP), [Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation](#), December 2017, p14, paras 48–49

³ Child Maintenance Service, [How We Work Out Child Maintenance](#), February 2017, pp23-4

1.2 Increased deductions for arrears from welfare benefits where non-resident parent has no ongoing maintenance liability

Under the statutory child maintenance scheme, a non-resident parent may cease to have an ongoing liability to pay child support in respect of a child because the child is no longer a “qualifying child”. A “qualifying child” is either: under 16, under 20 if they are still in full-time, non-advanced education (e.g. A-Levels), entitled to child benefit, and never been married or in a civil partnership.

However, if any arrears have built up on case, these do not disappear simply because the child is no longer a qualifying child, and the CMS can use its collection actions and enforcement powers to collect them. These are set out in the Library Briefing [Child Maintenance: Fees, Enforcement and Arrears](#).

[Part 2 \(regulations 3–8\)](#) of the Statutory Instrument (SI) increased the amount the CMS could deduct in arrears each week to £8.40 and enabled deductions for ongoing maintenance and arrears from UC. Explaining the change, the DWP stated that this “aligns the amount that may be deducted towards arrears with the amount which may be deducted where there is ongoing maintenance”.

The DWP listed 15 benefits, which included carer’s allowance, some forms of state pension, income support, UC, and income-based jobseeker’s allowance, that would be subject to deductions due to child maintenance arrears. The DWP noted that “around 20% of paying parents currently claim one of these benefits so [we] anticipate that this would be successful in maintaining on-going compliance and helping collect outstanding arrears.”⁴

The DWP argued that “this would send a clear message to paying parents that failing to pay for their children is not an option. We will recover the arrears eventually, even if we have to wait until they claim State Pension”.⁵

In the [Memorandum on the SI](#), the DWP noted that it had “no current plans to further increase deductions above the current maximum of £8.40” and noted that “deductions towards arrears have not increased from £1.20 since they were introduced in 2003”.⁶

The figure of £8.40 equates to the flat rate of £7 a week plus a 20% collection fee for the child maintenance payable (£1.40). This matches the 20% fee for non-resident parents who are not on benefits but use the [collect and pay scheme](#).

⁴ DWP, [Child Maintenance: A New Compliance and Arrears Strategy – Public Consultation](#), December 2017, pp14 and 15, paras 50, 51, 55.

⁵ [Ibid](#), para 56.

⁶ [Explanatory Memorandum to The Child Support \(Miscellaneous Amendments\) Regulations 2019](#), p4.

1.3 Expired protected trust deeds and the write off of child support arrears

[Part 3 \(regulation 9\)](#) allows the CMS and Child Support Agency (CSA) to write off all child maintenance debt when it becomes legally uncollectable as a result of the protected trust deed process. A protected trust deed is a formal agreement in Scotland between a debtor and their creditors, where the relevant creditors will receive some payments towards outstanding debts.

Regulation 13G was inserted into the [Child Support \(Management of Payments and Arrears\) Regulations 2009](#), as amended, to specify the circumstances under which the Secretary of State could write-off arrears under [section 41E of the Child Support Act 1991](#).

The Explanatory Memorandum explains the addition:

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 S[ecretary] o[f] S[tate] 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

1.4 Changes to existing powers of entry and information requesting powers

[Part 4 \(regulations 10–13\)](#) expanded on the [Child Support Information Regulations 2008](#), that placed a duty on listed individuals and organisations to provide information to enable the amount of child maintenance payable by the non-resident parent to be calculated, or for arrears to be recovered. The CMS was already able to request information from mortgage lenders and occupational pension providers to share this information on a voluntary basis, and this change made it compulsory to provide information.

Part 4 also amended the CMS's powers of entry, by allowing an inspector to apply to the relevant court for a warrant for entry if access to the relevant premises has previously been refused or if it is considered likely that access without a warrant will be refused.

Access to information

Previous to the SI, the CMS under the [Child Support Information Regulations 2008](#) could seek information from a wide range of prescribed organisations (such as banks, utility companies, local authorities, etc) to enable it to trace the non-resident parent, calculate maintenance, maintain the case, and enforce child maintenance arrears.

[Regulation 13](#) of the SI amended the [Child Support Information Regulations 2008](#) "to require a qualifying lender (within the meaning given in [section 19\(7\) of the Welfare Reform and Work Act 2016](#)) and a

⁷ [Ibid](#), p5.

trustee or manager of an occupational pension scheme (within the meaning of [section 1\(1\) of the Pension Schemes Act 1993](#)) to provide information to the Secretary of State in connection with the Secretary of State's functions under the Child Support Act 1991".

This amendment therefore added mortgage lenders and occupational pension providers to the list. Explaining the change, the DWP said that "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 information will, the DWP said, "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".⁸ Examples of when the CMS may request information from these sources include:

establish[ing] if a parent with child maintenance arrears owns any property – if we establish they do own property, we may consider putting a charging order on the property

establish[ing] if a parent has an occupational pension that we may be able to make a deduction of earnings order from to help collect outstanding child maintenance arrears.⁹

Powers of entry

Regulations [10 to 12](#) amended the *Child Support Act 1991* by inserting new section 15A to allow inspectors under the 1991 Act to apply for judicial warrants to authorise entry to premises for the purposes of carrying out their functions under that Act.

When a warrant is granted, it will be valid for one month from the date on which it is granted. Amendments were also made to the 1991 Act, so that a person will be guilty of an offence under [Section 15, subsection 9A of the 1991 Act](#) if they are found to be "intentionally delaying or obstructing an inspector's entry to premises that are occupied only if, at the time of the delay or obstruction, entry to the premises is authorised by a warrant issued under section 15A."¹⁰

In terms of the judicial warrant process, applicants will be considered in the Magistrates' Court (England and Wales) or Sheriff Court (Scotland). The right to appeal in connection with decisions made by a Magistrates' Court or Sheriff or Summary Sheriff applies in relation to a decision to issue or not issue a warrant (for example in [section 111A of the Magistrates' Court Act 1980](#)).

On the frequency of the use of these powers, the DWP stated in response to the Consultation on the measures that an "an application for a Judicial Warrant will only be made in the rare instances where our inspectors either have been refused access or have reason to suspect they would be refused access to the premises."¹¹ It estimated that 20

⁸ [Ibid.](#), p5, paras 7.9-7.10

⁹ DWP, [Government Response to 'Child Maintenance: Changes to Powers of Entry and Information Requests'](#), 26 March 2019, para 47

¹⁰ [The Child Support \(Miscellaneous Amendments\) Regulations 2019](#), Part 4

¹¹ DWP, [Government Response to 'Child Maintenance: Changes to Powers of Entry and Information Requests'](#), 26 March 2019, para 22

Judicial Warrants will be applied for each year where inspectors are refused access to premises.¹²

The Government response to the Consultation on the measures set out the approaches in the two jurisdictions:

How will you get a judicial warrant for premises in England and Wales?

We propose the inspector will make a judicial warrant application to the magistrates' court in England and Wales.

If the application for a judicial warrant is granted the occupier of the premises will be given a period of at least 21 days to make representations. If representations are made a date will be arranged for a face-to-face hearing in the magistrates' court. If representations are not made within a period of 21 days, the hearing will be heard by a magistrate over the telephone. The magistrate will consider all the available evidence and make a decision whether to award the warrant.

How will you get a judicial warrant for premises in Scotland?

In Scotland an application for a judicial warrant will be made by summary application and will be considered by either a sheriff or summary sheriff.

If the court accepts the application, a warrant of citation/intimation will be signed which will specify a date, time and location for the hearing of the application. The occupier will be given a period of 21 days' notice of the hearing. The occupier may attend the hearing if they so wish or be legally represented.¹³

1.5 Allowable expenses & calculation change

[Part 5 \(regulation 14\)](#) amends the maintenance calculation regulations to take account of an Upper Tribunal ruling, so as to ensure that allowable expenses under [Part 5 of the Income Tax \(Earnings and Provisions\) Act 2003](#) are not treated as income when calculating child maintenance liabilities.

The Upper Tier Tribunal ruling was in the case of SH v Secretary of State for Work and Pensions, CH and the Commissioners for Her Majesty's Revenue and Customs.¹⁴

The case concerned the treatment of fuel expenses when calculating a non-resident parent's gross weekly income.

HM Revenue and Customs (HMRC) deducted them from the non-resident parent's gross weekly income (as he not been reimbursed for them) and then calculated his tax on the basis of his adjusted figure, using taxation legislation.

However, using the child maintenance calculation regulations, the CMS did not deduct the fuel expenses from the gross weekly income figure,

¹² [Explanatory Memorandum to The Child Support \(Miscellaneous Amendments\) Regulations 2019](#), p8, para 12.4

¹³ DWP, [Government Response to 'Child Maintenance: Changes to Powers of Entry and Information Requests'](#), 26 March 2019, paras 29–32

¹⁴ [\[2018\] UKUT 157 \(AAC\), Upper Tribunal Case No: CCS/1384/2017](#)

and used the unadjusted gross weekly income figure to calculate the child maintenance amount (see paragraphs 19 to 22 of the ruling) under the [Child Support Maintenance Calculation Regulations 2012](#) (as amended) that are applicable to the current, 2012, statutory child maintenance scheme.

The case found that there was a tension between [regulation 36\(1\) and regulation 36\(2\)\(b\) of SI 2012/2677](#), which Judge Jacobs found was “internally contradictory” and impossible to reconcile. As [Family Law Week](#) noted, the “only option therefore was to determine which provision should take priority. As a result of the overall structure of the Regulation, he takes Regulation 36(1) to have priority, therefore leaving 36(2)(b) redundant”.¹⁵

In his ruling, the Judge said that “the Secretary of State will now have to decide whether any amendment to the regulation and any change to the arrangements with Her Majesty’s Revenue and Customs are required”.¹⁶

The SI amendment, the DWP states, means that:

employment income is no longer taken [i.e. into the child maintenance calculation process] before allowable deductions are made.¹⁷

1.6 Collection fee

[Part 6 \(regulation 15\)](#) seeks to clarify the circumstances in which arrangements are considered to be in place for the purposes of determining whether a collection fee is payable, following a court judgment. This, the DWP states, “is made in response to a court judgement which could have made the interpretation of this provision unclear”.¹⁸

For more information on fees, see the Library briefing paper, [Child Maintenance: Fees, Enforcement and Arrears](#)

¹⁵ [“SH v Secretary of State for Work and Pensions, CH and Revenue and Customs \(CSM\) \(Child support - calculation of income\) \[2018\] UKUT 157 \(AAC\)”](#), Family Law Review, 2018

¹⁶ [SH v Secretary of State for Work and Pensions, CH and the Commissioners for Her Majesty’s Revenue and Customs, \[2018\] UKUT 157 \(AAC\)](#), p11, para 31

¹⁷ [Explanatory Memorandum to The Child Support \(Miscellaneous Amendments\) Regulations 2019](#), p3, para 6.7

¹⁸ [Ibid](#), p6, para 7.17

2. Impact of the SI

The [Explanatory Memorandum](#) published alongside the SI detailed the impact expected from the SI (bold added to the original):

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.¹⁹

¹⁹ [Ibid](#), p8

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