



Department
for Work &
Pensions

The Child Support (Miscellaneous Amendments) Regulations 2013

The Government's response to consultation on
draft regulations

June 2013

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Introduction

1. The Department for Work and Pensions ('the Department') introduced the 2012 child maintenance scheme ('the 2012 scheme') on 10 December 2012 for prescribed types of cases.
2. The Department is currently using a pathfinder approach and is only accepting new applications to the 2012 scheme where four or more qualifying children are named in the application with the same parent with care and alleged non-resident parent and where those parents do not have an existing child maintenance case. Certain cases linked to those applications are also dealt with on the 2012 scheme. Once the Department has assurance that the 2012 scheme is working properly, it will be opened to larger numbers of applicants.
3. The Government launched a public consultation on the draft Child Support (Miscellaneous Amendments) Regulations 2013 ("the Regulations") between 1 March 2013 and 12 April 2013. The Regulations would seek:
 - i. to allow the Secretary of State to seek current income information from non-resident parents where historic income information cannot be requested or obtained from HM Revenue and Customs;
 - ii. to allow the Secretary of State to use a nil income figure from HM Revenue and Customs to calculate child maintenance liability;
 - iii. to allow previously agreed variations to child maintenance liability to be re-instated automatically in appropriate circumstances;
 - iv. to make amendments required as a result of changes to Child Benefit affecting high income earners and thereby ensure that people on higher incomes who opt not to receive Child Benefit payments will not be disadvantaged in the Child Maintenance system; and
 - v. to make minor consequential amendments to the Child Support (Collection and Enforcement) Regulations 1992.
4. The Department did not consult on those matters set out in (iv) and (v) above, because they do not involve a change of policy.
5. The consultation document together with the supporting draft Regulations were made available on the Department's website and the Department also informed its main stakeholders of the consultation exercise. The consultation ran for 6, rather than the normal 10, weeks due to the relatively minor and technical nature of the proposed changes.

6. The final Regulations will be laid before Parliament shortly. They are subject to the negative resolution procedure, meaning that they will not be debated in Parliament unless MPs or Peers request such a debate.
7. This document sets out the main points made by respondents and provides the Government's response.
8. The Regulations and accompanying explanatory memorandum will be available on the National Archives' website at:
<http://www.legislation.gov.uk/uksi/2013>

The consultation questions and the Government's response

9. There were four responses to the consultation, three from members of the public and one from Resolution, a national organisation of family lawyers.
10. Gingerbread, a UK charity that provides advice and practical support for single parents, did not provide a formal response to the consultation but did meet with officials during the consultation period and their concerns are addressed here (see **Annex A** for list of respondents).
11. The three responses from members of the public did not directly address the subject matter of the consultation, with two concerning the respondents' more general experience of the Child Support Agency and one concerning shared care arrangements for members of the Armed Forces on active duty.
12. Both Resolution and Gingerbread were broadly supportive of the proposed amendments, but raised some concerns. These concerns have been considered carefully and are addressed in this response.

Consultation – Specific Questions

13. The consultation asked three specific questions. A summary of responses to these questions, and the Government's response, are presented below.

Question 1

What are your views on our proposal to amend the Regulations where HM Revenue and Customs income is unavailable to allow caseworkers to request current income information from the non-resident parent at the application and annual review application stages?

Respondents' views

14. Respondents were broadly supportive of this proposal.
15. However, Resolution said that they "would welcome further regulation to provide that where a paying parent has under-reported their current income, an adjustment by way of supersession can be made when the historic information as to their true income for that period if available at annual review stage the following year".

The Government's response

16. If a current income figure is in use, a non-resident parent who is an employee or office holder or on the nil rate, is obliged to inform us of certain changes of circumstances if we notify them that they must do so.

This includes an obligation to inform us of an increase of current income of at least twenty-five per cent above the current income figure taken into account in the calculation.

17. However, if HMRC data in the subsequent annual review differs from the current income figure, in order to maintain greater certainty and stability for parents in terms of what they should pay or should receive, this would not trigger a retrospective supersession. However, it should be noted that the current income calculation itself is an evidence based process and it is an offence to fraudulently under-report current income.
18. Therefore, the Government intends to lay this amendment before Parliament without any further changes.

Consultation Question 2

Do you have any views on proposed amendments on cases where HM Revenue and Customs provide a nil gross weekly income figure?

Respondents' views

19. Stakeholders expressed concerns that the proposal does not offer parents the option to contest the HMRC historic income figure.
20. Resolution, while recognising the logic of the proposed amendment, stated that both parents should be offered the option of challenging a nil assessment to ensure that children do not lose out on maintenance that they would otherwise be due.
21. Similarly, Gingerbread asked if the nil assessment notification would provide the parent with care with information that they are able to challenge a nil assessment based on a nil-income figure. They also asked how a current income figure would be determined as being at least twenty-five per cent different from a nil income figure and how it was possible for the parent with care to prove that the non-resident parent had likely current earnings.

The Government's response

22. Both parents will receive written notification that they can challenge a maintenance liability based on a HMRC historic income figure on the basis that the non-resident parent's current income is at least 25% greater than the historic figure.
23. As it is not possible to have a figure that is 25% greater than zero, evidence of any current income will satisfy the threshold to make a case eligible to switch to being based on current income.
24. As outlined in the consultation document, a parent with care seeking to challenge a historic income based liability in these circumstances need not prove that the non-resident parent has current income, only that they are likely to have such income. The Secretary of State could then initiate

evidence gathering to establish whether or not the non-resident parent has current income.

25. An example of this might be where the parent with care has seen the non-resident parent driving a company vehicle or working in a shop, either of which could be sufficient to initiate information gathering with a view to a current income calculation.
26. This low evidential threshold seeks to strike a balance between supporting the stability that a historic income based system provides and ensuring that children do not needlessly miss out on maintenance that they would otherwise have received.
27. Outside the consultation, Gingerbread flagged to us a concern that this amendment could curtail the Secretary of State's ability to estimate current income in a scenario where a nil income figure is returned by HMRC *and* the information in relation to current income is insufficient or unreliable. This was not the policy intent of the amendment and we are grateful to Gingerbread for raising this.
28. Therefore, the Government intends to lay this amendment before Parliament with a minor change to ensure that the Secretary of State retains the power to estimate current income in these circumstances.

Consultation Question 3

What are your views on our proposal to amend the Regulations so that, for special expenses variations, the responsibility lies with a parent to report if a change of circumstances has occurred since the variation was agreed or if the grounds for the variation have ceased?

Respondents' views

29. Respondents were supportive of this proposal, with Resolution agreeing that "the proposed amendment would seem to help to ensure the faster flow of maintenance to the qualifying children".
30. Resolution also requested confirmation that "it will be open to either parent to report a change of circumstance at any time, so that the appropriate adjustments can be made to a calculation".

The Government's response

31. Automatically re-instating a variation removes the extra burden of paperwork for parents. It will remove the delay that contacting the non-resident parent for information can cause and thereby allow maintenance to flow faster to the qualifying child.
32. If there has been a change to the variation prior to the decision to re-instate taking effect, both parents have thirty days to notify the Department to correct the calculation. If there is a change to the

variation after the decision has taken effect, the parents could report a change by way of an application for supersession.

33. Therefore, the Government intends to lay this amendment before Parliament without any further changes.

Amendments not consulted on

34. Other minor consequential amendments in the Regulations clarify that the Department will treat those parents, who elect to not receive Child Benefit payments, as the same as those that continue to receive the payments. In addition to the draft Regulations included within the consultation exercise, we have identified further changes to Regulations that are required to ensure that parents are treated equally regardless of whether or not they receive Child Benefit payments – these additional regulatory amendments will be included within the Regulations.
35. The Regulations make minor amendments to the Child Support (Collection and Enforcement) Regulations 1992 to include a definition relating to gross weekly income and to facilitate the effective use of regular deduction orders in the 2012 scheme.
36. The Regulations also rectify a minor drafting error which has been identified within the Child Support (Meaning of Child and New Calculation Rules)(Consequential and Miscellaneous Amendment) Regulations 2012.

Annex A: List of respondents to the consultation

Resolution

3 responses from individual members of the public

Officials also met with Gingerbread during the consultation.