

Draft (consultation draft) of 18.07.2012

Draft Regulations laid before Parliament under section 55(5) of the Child Maintenance and Other Payments Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

FAMILY LAW

CHILD SUPPORT

Child Support Fees Regulations 2013

Laid before Parliament in draft

Made - - - - ***

Coming into force - - ***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 6(1) to (4) and 55(3) and (4) of the Child Maintenance and Other Payments Act 2008(**a**).

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 55(5) of that Act(**b**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support Fees Regulations 2013 and come into force on [...].

(2) In these Regulations—

“the 1991 Act” means the Child Support Act 1991(**c**);

(a) c. 6. Section 6(1) was amended by art. 3(2) of, and paras. 72(1) and (2) of the Sch. to, the Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S.I. 2012/0000) (“the 2012 Order”). Section 6 was also amended by sections 140 and 141 of the Welfare Reform Act 2012 (c. 5). Section 55 of the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”) was amended by art. 3(2) of, and para. 90 of the Sch. to, the 2012 Order; but none are relevant for these purposes.

(b) Section 55(5) of the 2008 Act is amended by art. 3(2) of, and para. 90 of the Sch. to, the 2012 Order.

(c) c. 48.

“application for child support maintenance” means an application for child support maintenance under sections 4(1) or 7(1) of the 1991 Act(a);

“arrangements for the collection of child support maintenance” are arrangements made by the Secretary of State to collect child support maintenance in accordance with a maintenance calculation made under the 1991 Act and under which payments of child support maintenance are transmitted through the Secretary of State;

“non-resident parent” has the meaning in section 3(2) of the 1991 Act;

“parent with care” has the meaning in section 3(3) of the 1991 Act;

“qualifying child” has the meaning in section 3(1) of the 1991 Act;

“the 2008 Act” means the Child Maintenance and Other Payments Act 2008(b).

PART 1

Application fee

The application fee

2.—(1) On making an application for child support maintenance a fee of £20 is payable to the Secretary of State in full by the person making the application whether or not a maintenance calculation is made under the 1991 Act as a result of that application.

(2) An application for child support maintenance made under section 4(1) or 7(1) of the 1991 Act shall not be treated as made for the purposes of section 11(1) of the 1991 Act until payment of the application fee has been made, unless any application fee payable is waived under regulation 3 of these Regulations.

Waiver of the application fee

3.—(1) The application fee is waived where the person making the application for child support maintenance—

- (a) is 18 years of age or under at the time of making the application; or
- (b) has declared to the Secretary of State at the time of making the application that they are a victim of domestic violence.

(2) For the purposes of paragraph (1)(b), “domestic violence” means—

- (a) any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality;
- (b) which has been reported to any of the following organisations or people—
 - (i) a court;
 - (ii) the police;
 - (iii) a medical professional;
 - (iv) social services;
 - (v) a multi-agency risk assessment conference;

(a) Section 4(1) of the Child Support Act 1991 (c. 48) (“the 1991 Act”) was amended by sections 1(2) and 26 of, and para. 11(2) of Sch. 3 to, the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”); by section 13(4) of, and para. 3 of Sch. 3 to, the 2008 Act; and art. 3(2) of, and para. 3(a) of the Sch. to, the 2012 Order. Section 7(1) of the 1991 Act was amended by section 1(2) and section 26 of, and para. 11(2) of Sch. 3 to, the 2000 Act; and section 13(4) and section 58 of, and para. 5 of Sch. 3 and Sch. 8 to the 2008 Act; and art. 3(2) of, and para. 4 to, the 2012 Order.

(b) c. 6.

- (vi) a specialist domestic violence organisation or service including a refuge;
- (vii) an employer; or
- (viii) educational services.

Repayment of the application fee

4. Any application fee paid will be repaid by the Secretary of State to the person who made the application for child support maintenance where a qualifying child has died since the application for child support maintenance was made and before the making of a maintenance calculation under the 1991 Act and as a result a maintenance calculation will not be made.

PART 2

Collection fee

Interpretation of this Part

5. For the purposes of this Part—

“child support maintenance” means child support maintenance calculated under Part 1 of Schedule 1 to the 1991 Act^(a) as amended by Schedule 4 to the 2008 Act^(b) which has accrued after the coming in to force of these Regulations; and

“person with care” means a person with care, or a child who makes an application under section 7(1) of the 1991 Act, whoever any child support maintenance collected is paid to.

The collection fee

6.—(1) A collection fee is payable to the Secretary of State by—

- (a) the non-resident parent, and
- (b) the person with care

where the Secretary of State makes arrangements for the collection of child support maintenance in the case involving those persons.

(2) The amount of the collection fee payable by a non-resident parent is [x]% of the amount of any child support maintenance for which that non-resident parent is liable to pay and in relation to which the Secretary of State is making arrangements for collection.

(3) The amount of the collection fee payable by a person with care is [x]% of any payments of child support maintenance in relation to which the Secretary of State has made arrangements for collection, has collected and which would otherwise be paid to that person.

Recovery of the collection fee

7.—(1) Any amount of the collection fee payable by the non-resident parent under these Regulations may be recovered by the Secretary of State from any payment made by the non-resident parent.

(2) Any amount of the collection fee payable by the person with care under these Regulations may be recovered by the Secretary of State from any payments of child support maintenance which would otherwise be paid to that person.

(a) Part 1 of Sch. 1 to the Child Support Act 1991 (c. 48) (“the 1991 Act”) was substituted by section 1(3) of, and Sch. 1 to, the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”) and amended by Sch. 4 to the Child Maintenance and Other Payments Act 2008 (c. 6) (“the 2008 Act”) and art. 3(2) of, and para. 62(2) to the Sch. to, the Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S. I. 2012/0000) (“the 2012 Order”).

(b) Sch. 4 to the 2008 Act was amended by art. 95 of the 2012 Order.

PART 3

Enforcement fee

Interpretation of this Part

8. For the purposes of this Part—

“child support maintenance” means child support maintenance calculated under Part 1 of Schedule 1 to the 1991 Act as amended by Schedule 4 to the 2008 Act;

“deduction from earnings order” means an order made under section 31(2) of the 1991 Act(**a**);

“liability order” means an order made under section 33(3) of the 1991 Act(**b**);

“lump sum deduction order” means an order made under section 32E(1) of the 1991 Act(**c**); and

“regular deduction order” means an order made under section 32A(1) of the 1991 Act(**d**).

The enforcement fee

9. An enforcement fee of an amount set out in column (2) of the table below is payable to the Secretary of State by a non-resident parent when the Secretary of State takes any of the enforcement action specified in column (1) of the table below to secure payment of child support maintenance.

Column (1)	Column (2)
Enforcement Action	Fee payable
(i) Making a deduction from earnings order	£x
(ii) Making a regular deduction order	£x
(iii) Making a lump sum deduction order	£x
(iv) Applying for a liability order	£x

Recovery of an enforcement fee

10. Any enforcement fee payable by the non-resident parent under regulation 9 of these Regulations may be recovered by the Secretary of State from any payment made by the non-resident parent.

Waiver of an enforcement fee

11.—(1) An enforcement fee payable under regulation 9 may be waived in the circumstances specified in paragraphs (2), (3), (4) or (5).

(2) The circumstances specified in this paragraph are where an additional or subsequent fee is charged with respect to concurrent or subsequent action of the same type taken by the Secretary of State in circumstances where—

- (a) the non-resident parent has more than one employer at the same time and the Secretary of State has imposed two or more deduction from earnings orders; or

(a) Section 31(2) of the 1991 Act was amended by section 1(2) of the 2000 Act, section 13(4) of, and paragraphs 1 and 34 of Sch. 3 to, the 2008 Act; and art. 3(2) of, and para. 32(a) of the Sch. to, the 2012 Order.

(b) Section 33(2) of the 1991 Act was amended by section 13(4) of, and para. 36 of Sch. 3 to, the 2008 Act and art. 3(2) of, and para. 43 of the Sch. to, the 2012 Order.

(c) Section 32E(1) of the 1991 Act was inserted by section 23 of the 2008 Act and amended by art. 3(2) of, and para. 37 of the Sch. to, the 2012 Order.

(d) Section 32A(1) of the 1991 Act was inserted by section 22 of the 2008 Act. It was then amended by art. 3(2) of, and para. 34(a) of the Sch. to, 2012 Order.

- (b) the non-resident parent holds more than one account with a deposit-taker at the same time and the Secretary of State imposes more than one regular deduction order or lump sum deduction order simultaneously.

(3) The circumstances specified in this paragraph are where a second or additional fee is charged with respect to action taken to impose an additional or subsequent deduction from earnings order or regular deduction order in circumstances where—

- (a) the non-resident parent has changed employer,
- (b) the non-resident parent has changed account held with a deposit-taker, or
- (c) the amount being collected under the order has changed.

(4) The circumstances specified in this paragraph are where a fee is charged with respect to enforcement action taken by the Secretary of State in circumstances where—

- (a) an application for a liability order is made to a court, but no liability order is made by the court;
- (b) there has been a successful appeal made against the making of a deduction from earnings order, regular deduction order or lump sum deduction order under; or
- (c) a deduction from earnings order, a regular deduction order or lump sum deduction order has lapsed or discharged due to an error or maladministration by the Secretary of State.

(5) The circumstances specified in this paragraph are where a non-resident parent voluntarily elects to pay child support maintenance by way of a deduction from earnings order.

PART 4

Miscellaneous

Collection and enforcement of fees

12.—(1) Subject to paragraph (2), the provisions of the 1991 Act with respect to—

- (a) the collection of child support maintenance,
- (b) the enforcement of any obligation to pay child support maintenance,

shall apply equally to the collection and enforcement of fees payable by virtue of Parts 2 and 3 of these Regulations.

(2) The following provisions of the 1991 Act do not apply where those provisions would be used solely to enforce payment of a fee payable by virtue of Parts 2 and 3—

- (a) section 39A (commitment to prison and disqualification from driving)(**a**);
- (b) section 40 (commitment to prison)(**b**);
- (c) section 40A (commitment to prison: Scotland)(**c**); and
- (d) section 40B (disqualification from driving: further provisions)(**d**).

Signatory text

Name

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- (a) Section 39A of the Child Support Act 1991 (c. 48) (“the 1991 Act”) was inserted by section 16 of the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”) and amended by section 13(4) of, and para. 41 of Sch. 3 to, the 2008 Act and art. 3(2) of, and para. 48 of the Sch. to, the Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S. I. 2012/0000) (“the 2012 Order”).
 - (b) Section 40 of the 1991 Act was amended by sections 16(2), 17(1) and 85 of, and Part 1 of Sch. 9 to, the 2000 Act.
 - (c) Section 40A of the 1991 Act was inserted by section 17 of the 2000 Act.
 - (d) Section 40B of the 1991 Act was inserted by section 16 of the 2000 Act.

Date

Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the charging of fees by the Secretary of State in connection with the exercise of the Secretary of State's functions with regards to child support maintenance. These Regulations are made under sections 6(1) to (4) and 55(3) and (4) of the Child Maintenance and Other Payments Act 2008 (c. 6) and come in to force on [date].

Part 1 of these Regulations relates to the application fee.

Regulation 2 provides that on making an application for child support maintenance under either section 4(1) or 7(1) of the Child Support Act 1991 (c. 48) ("the 1991 Act"), a fee of £20 is payable to the Secretary of State by the person making that application. An application for child support maintenance shall not be treated as made until payment of the application fee is made, unless any application fee payable is waived.

Regulation 3 prescribes two circumstances in which any application fee payable under regulation 2 is waived. The first is where the applicant is 18 years of age or under at the time of making the application for child support maintenance. The second is where the applicant has declared to the Secretary of State at the time of making the application that they are a victim of domestic violence and that they have reported the incident of domestic violence to certain specified organisations or people.

Regulation 4 makes provision for the repayment of the application fee.

Part 2 of these Regulations relates to the collection fee. For the purposes of this Part, child support maintenance means child support maintenance calculated under Part 1 of Schedule 1 to the 1991 Act as amended by Schedule 4 to the 2008 Act ("the 2012 scheme") which has accrued since the coming in to force of these Regulations. Regulation 5 also provides that any references to "person with care" means a person with care, or a child who makes an application under section 7(1) of the 1991 Act, whoever any child support maintenance collected is paid to.

Regulation 6 provides that a collection fee is payable to the Secretary of State by the non-resident parent and the person with care where the Secretary of State makes arrangements for the collection of child support maintenance in their case. The amount of the collection fee payable by a non-resident parent is [x] % of the amount of any child support maintenance for which that non-resident parent is liable to pay and in relation to which the Secretary of State is making arrangements for collection. The amount of the collection fee payable by the person with care is [x]% of any payments of child support maintenance in relation to which the Secretary of State has made arrangements for collection, has collected and which would otherwise be paid to them.

Regulation 7 makes provision for the recovery of the collection fee. Any amount of the collection fee payable by the non-resident parent may be recovered by the Secretary of State from any payment made by the non-resident parent. Any amount of the collection fee payable by the person with care may be recovered by the Secretary of State from any payments of child support maintenance which would be otherwise payable to that person.

Part 3 of these Regulations relates to the enforcement fee.

For the purposes of this Part, child support maintenance means child support maintenance calculated under Part 1 of Schedule 1 to the 1991 Act as amended by Schedule 4 to the 2008 Act ("the 2012 scheme").

Regulation 9 provides that an enforcement fee of the amount specified in column (2) is payable to the Secretary of State by the non-resident parent where the Secretary of State takes any of the enforcement action specified in column (1) to secure payment of child support maintenance.

Regulation 10 makes provision for the recovery of an enforcement fee. It provides that any enforcement fee payable by the non-resident parent may be recovered by the Secretary of State from any payment made by the non-resident parent.

Regulation 11 prescribes circumstances in which an enforcement fee payable under regulation 9 may be waived.

Part 4 makes minor miscellaneous provision.

Regulation 12 provides that the provisions of the 1991 Act with respect to the collection and enforcement of child support maintenance shall apply to the collection and enforcement of fees payable under these Regulations with certain exceptions. The collection and enforcement provisions of the 1991 Act which do not apply equally to either a collection fee or an enforcement fees payable under these Regulations are sections 39A (commitment to prison and disqualification from driving), 40 (commitment from prison), 40A (commitment to prison: Scotland) and 40B (disqualification from driving: further provisions) where those provisions would be used solely to enforce payment of a fee payable by virtue of Parts 2 and 3 of these Regulations.