

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.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

FAMILY LAW

CHILD SUPPORT

**The Child Support (Ending Liability in Existing Cases and
Transition to New Calculation Rules) Regulations 2013**

Made - - - - - ***

Coming into force in accordance with regulation 1(1)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 55(3) and (4) of, and paragraphs 2, 3, 5, 6 and 7 of Schedule 5 to, 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 (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2013 and come into force on the day on which Schedule 5 to the 2008 Act (maintenance calculations: transfer of cases to new rules) comes into force.

(2) In these Regulations—

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

“2008 Act” means the Child Maintenance and Other Payments Act 2008;

“existing case” has the meaning given by paragraph 1(2) of Schedule 5 to the 2008 Act;

“liability end date” has the meaning given by regulation 5;

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

(a) 2008 c. 6. Schedule 5 to the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”) was amended by the Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S. I. 2012/[]) (“the 2012 Order”).

(b) Section 55(5) of the 2008 Act was amended by the 2012 Order.

(c) 1991 c. 48.

“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 statutory scheme” means the scheme for child support maintenance in the Child Support Act 1991;
“the transition period” has the meaning given by regulation 3(2).

- (3) For the purposes of these Regulations an existing case is related to a new application if—
- (a) the non-resident parent in relation to that application is also the non-resident parent in relation to the existing case; and
 - (b) the person with care in relation to that application is not the person with care in relation to the existing case.

Meaning of “interested parties”

2. For the purposes of Schedule 5 to the 2008 Act and these Regulations “interested parties” means, in relation to an existing case—

- (a) the non-resident parent;
- (b) the person with care; and
- (c) in the case of an application made by a qualifying child under section 7(1) of the 1991 Act(a), or a maintenance assessment or a maintenance calculation made in response to an application under that section, the child in question.

Scheme for timing etc. in relation to ending liability in existing cases

3.—(1) The power under paragraph 1(1) of Schedule 5 to the 2008 Act (power to require the parties to an existing case to choose whether or not to stay in the statutory scheme, so far as future accrual of liability is concerned) must be exercised in accordance with a scheme prepared by the Secretary of State.

(2) The scheme must provide for the transition period, which must be the period during which the power in paragraph 1(1) of Schedule 5 to the 2008 Act may be exercised, which must include the dates on which the period will begin and end.

(3) The transition period must begin no later than [...].

(4) The scheme must make provision for the exercise of the power in stages, applying the following principles—

- (a) subject to sub-paragraph (b), where a new application for a maintenance calculation is made during the transition period the power is to be exercised in relation to any existing case that is related to that application;
- (b) the power is not to be exercised in relation to an existing case where the youngest, or only, qualifying child will have reached the age of 20 before the end of the transition period;
- (c) cases other than those to which either sub-paragraphs (a) or (b) apply, are to be selected in tranches and, in making that selection, priority may be given to clerical cases and to older cases over more recent cases.

(5) For the purposes of paragraph (4)—

- (a) a clerical case is one that cannot be processed by either of the main computer systems operated by the Secretary of State for existing cases; and

(a) Section 7(1) was amended by sections 1(2) and 26 of, and paragraph 11(2) and (4)(a) of Schedule 3 to, the Child Support, Pensions and Social Security Act 2000 (c.19) (“the 2000 Act”), sections 13(4) and 58 of, and paragraphs 1 and 5 of Schedule 3 and Schedule 8 to, the 2008 Act and the 2012 Order.

- (b) the age of a case is determined by the date the case was first recorded on the main computer systems, mentioned in sub-paragraph (a).
- (6) The scheme may be revised by the Secretary of State.

Exercise of the choice as to whether or not to stay in the statutory scheme

4.—(1) This regulation makes provision for the exercise of the right to make a choice required under paragraph 1(1) of the Schedule 5 to the 2008 Act.

(2) At the appropriate time in relation to each case, as determined in accordance with the scheme referred to in regulation 3, the Secretary of State must notify the interested parties of the liability end date and the manner in which a choice to remain in the statutory scheme is to be made.

(3) A party is taken to have been notified in accordance with paragraph (2) on the second day after written notice is sent by post to that party's last known or notified address.

(4) A choice to remain in the statutory scheme must be made—

- (a) by way of an application to the Secretary of State for a maintenance calculation; and
- (b) before the liability end date.

(5) The Secretary of State may require information to be provided in an application made under this regulation and may do so despite such information having been notified for the purposes of the existing case.

Liability end date

5. The date determined for the purposes of paragraph 5(1) and (2) of Schedule 5 to the 2008 Act (that is the date beyond which no further liability accrues in relation to the case) is —

- (a) if the existing case is related to a new application under section 4(a) or 7 of the 1991 Act, the day falling 30 days after the date on which notice is given to the person with care under regulation 4(2);
- (b) in any other case, the day falling 182 days after the date on which that notice is given.

Effect of an application exercising the choice to remain in the statutory scheme

6.—(1) The 1991 Act and regulations made under that Act apply in relation to an application under regulation 4(4) as if it were an application made under section 4(1) (or, in the case of an application by a child in Scotland, section 7(1)) of that Act.

(2) Subject to paragraph (3), the 1991 Act and regulations made under that Act apply in relation to a maintenance calculation made in response to an application under regulation 4(4) as if it were a maintenance calculation made in response to an application made under section 4(1) (or, in the case of an application by a child in Scotland, section 7(1)) of that Act.

(3) Where an application under regulation 4(4) is made, the maintenance calculation made in response to that application is to be calculated by reference to the information applicable at the date the non-resident parent is notified of that application but takes effect from the day after the liability end date.

Treating applications for a maintenance assessment or for a maintenance calculation falling to be made under existing rules as withdrawn

7. Where the power in paragraph 1(1) of Schedule 5 to the 2008 Act is exercised in relation to a case mentioned in paragraph 1(2)(b) or (d) of that Schedule (application for a maintenance assessment or maintenance calculation falling to be made under existing rules), if none of the

(a) Section 4(1) was amended by sections 1(2) and 26 of, and paragraph 11(2) of Schedule 3 to, the 2000 Act, section 13(4) of, and paragraph 3 of Schedule 3 to, the 2008 Act and the 2012 Order.

interested parties exercises a choice to remain in the statutory scheme before the liability end date, the Secretary of State may treat that application as withdrawn.

Person with care whose youngest or only child will reach the age of 20 by end of transition period

8.—(1) This regulation applies to an existing case where the qualifying child (or, if there is more than one qualifying child, the youngest of them) will have reached the age of 20 before the end of the transition period.

(2) Where the person with care makes a request to the Secretary of State under section 4(5) of the 1991 Act to cease acting, if, before the expiry of the period of 13 weeks after the date liability has ended following that request the non-resident parent makes an application under section 4 of the 1991 Act in relation to the same qualifying child, the non-resident parent’s application is treated as made on the day after the expiry of that 13 week period.

Signed by authority of the Secretary of State for Work and Pensions.

Date *Name*
Parliamentary Under Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make transitional provision for the cases that are existing cases under the statutory child support maintenance scheme at the date when new calculation rules come into force.

The new calculation rules are the provisions in Schedule 1 to the Child Support Act 1991 (“the 1991 Act”) as amended by the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”). The calculation rules that applied to an existing case when the new rules came into force continue to apply.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 provides the meaning of “interested parties” for the purposes of Schedule 5 to the 2008 Act and these Regulations.

Regulation 3 makes provision for the power in paragraph 1 of Schedule 5 to the 2008 Act (power to require the parties to an existing case to make a choice as to whether to stay in the statutory child support scheme) to be exercised in accordance with a scheme prepared by of the Secretary of State. The Scheme must provide for a transition period during which the power can be exercised. Paragraph (4) provides that the Scheme must make provision for the exercise of the power in stages and lists the principles that must be applied in making such provision.

Regulation 4 provides for the exercise of the right to make a choice. At a time determined in accordance with the scheme, the parties to the case must be notified of the date on which liability in the existing case will end and by which they must choose whether to remain in the statutory child support maintenance scheme. This notice period (that is, the date by which they must choose) is 30 days if the case is related to a new application and 182 days if it is not. The choice to remain in the statutory child support maintenance scheme is to be exercised by way of a new application for a calculation of child support maintenance.

Regulation 5 provides for the meaning of “liability end date” for the purposes of paragraph 5 of Schedule 5 to the 2008 Act and these Regulations.

Regulation 6 provides for the application of the 1991 Act, and Regulations made under it, to an application made under regulation 4, and a calculation made in response to an application under regulation 4, as if it were an application made under section 4 (or, where appropriate, section 7) of that Act. The exception to this is that the maintenance calculation made in response to the application under regulation 4 is to be calculated by reference to the information applicable at the date the non-resident parent is notified of the application but the effective date will be the day after the liability end date.

Regulation 7 provides for the treatment of an existing case where no calculation of maintenance has yet been made. If the choice to stay in the statutory scheme is not exercised the application may be treated as withdrawn.

Regulation 8 makes provision for cases where a person with care, who is excluded from the exercise of the power in paragraph 1 of Schedule 5 to the 2008 Act because the youngest or only qualifying child will have reached 20 before the transition period ends, makes a request for the Secretary of State to cease acting. If the non-resident parent then applies to the statutory scheme within the period of 13 weeks after the date liability has ended following the request from the person with care, the application of the non-resident parent is treated as made on the day after expiry of the 13 week period. The new calculation rules will apply to any application made after expiry of the 13 week period.