



Department
for Work &
Pensions

The Child Support (Miscellaneous Amendments) Regulations 2013

Consultation on Draft Regulations

1 March 2013

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Executive summary

1. As part of the Government's child maintenance reform programme, we introduced the 2012 child maintenance scheme ('the 2012 scheme') on 10 December 2012 using a Pathfinder approach.
2. Under the Pathfinder approach we are currently accepting new applications to the 2012 scheme where four or more qualifying children named in the application relate to the same parent with care and alleged non-resident parent. The 2012 scheme will be opened up to larger numbers of applicants once we have the assurance that the new scheme is working properly.
3. This consultation is seeking views on the following proposed regulatory amendments to support the effective administration of the scheme:-
 - a. **Where historic income information cannot be requested or supplied from HM Revenue and Customs** – we propose to change the 2012 child maintenance scheme rules to allow caseworkers to request current income information from the non-resident parent.
 - b. **Where HM Revenue and Customs provides a 'nil income' assessment** – accept nil income reported by HM Revenue and Customs and use this in making maintenance calculation at both the application and annual review stages, unless current income is reported by the person with care or non-resident parent.
 - c. **Re-instating a previously agreed variation** – in cases where, for example, a non-resident parent stops receiving prescribed benefits we propose re-instating previously agreed variations. Where parents report that there has been a change of circumstances in the intervening period, the decision can be revised to take this into account.
4. This document also sets out two measures that do not involve a change of policy and therefore we are not consulting on:
 - a. **To take account of Child Benefit changes affecting high income earners** – to clarify the position in respect of changes to Child Benefit legislation which enables those who earn more than £50,000 a year to elect for payments of Child Benefit not to be made. Such cases are not impacted for child maintenance purposes by the change to the payment of Child Benefit. Changes to clarify this are being made to regulations which apply to the 1993, 2003 and 2012 schemes.
 - b. **Make minor consequential amendments to the Child Support (Collection and Enforcement) Regulations 1992** - to include a definition relating to gross weekly income for the purpose of deduction orders.

5. We intend to introduce the proposed changes when the 2012 scheme is opened to all applicants.

Background

6. The Department for Work and Pensions ('the Department ') is responsible for child maintenance policy in Great Britain. There are presently three statutory child maintenance schemes running in parallel:
 - a. the 1993 scheme (for cases opened before 3 March 2003),
 - b. the 2003 scheme (for cases opened on or after 3 March 2003) and
 - c. the 2012 scheme (for cases opened on or after 10 December 2012 which meet the pathfinder group criteria).
7. Separate sets of Regulations provide the calculation rules for each scheme. Apart from the proposed amendments to clarify the position following the changes to Child Benefit, the proposals discussed in this consultation only apply to the 2012 scheme.
8. To support the first phase of the 2012 scheme, the Child Support Maintenance Calculation Regulations 2012 ('the 2012 Regulations') were made on 20 October 2012 and took effect on 10 December 2012 for a pathfinder group of new applicants.
9. Commencement rules, which brought the 2012 Regulations into force, included transitional measures to resolve income assessment issues that were discovered in the run-up to the introduction of the 2012 scheme last December.
10. We are now seeking to amend provisions contained within the 2012 Regulations themselves to permanently resolve these and other issues.

Amendments we are consulting on

Policy proposal 1: Where we are unable to request or obtain historic income information from HM Revenue and Customs, make changes to the existing rule to allow caseworkers to request current income information from the non-resident parent to make the calculation.

Discussion: How maintenance calculations are made when historic income information cannot be obtained from HM Revenue and Customs

11. Under the 2012 child maintenance scheme, most maintenance calculations are intended to be based on a non-resident parent's gross weekly income. Gross weekly income essentially consists of taxable income from employment, taxable profits from self-employment or income from occupational or personal pensions schemes.
12. Other forms of taxable income are not routinely taken into account, but can be considered if a parent applies for a variation. Variations allow a calculation made under standard rules to be adjusted in specified circumstances, for example where the non-resident parent has additional income. The types of taxable income that can be considered under a variation mainly consist of income from savings and capital, dividend income and income from land or property. This is sometimes referred to as 'unearned income'.
13. Initially we will try to determine a non-resident parent's gross weekly income by requesting income information for the latest available tax-year from HM Revenue and Customs. This is known as 'historic income'. If HM Revenue and Customs holds no income information on the non-resident parent or reports a nil income (i.e. £0.00 earnings), and the non-resident parent is not currently receiving a social security benefit, we will attempt to obtain his or her current income.
14. HM Revenue and Customs income records are considered to be a generally reliable source of income information, resulting in quicker and more accurate calculations. This also avoids some of the difficulties of existing schemes, which largely rely on non-resident parents themselves for income details. If the non-resident parent is unco-operative, or selective about the information they are prepared to provide, this can lead to serious delays in putting an accurate calculation into effect.
15. An IT interface has been designed between this Department and HM Revenue and Customs to facilitate this process. In a small minority of cases, this

interface may be unavailable and at the moment there is no other means to obtain historic income information from HM Revenue and Customs.

16. The 2012 Regulations provide that, when a new application is received, efforts must be made first to establish historic income information supplied by HM Revenue and Customs. They do not allow income information to be requested from the non-resident parent if HM Revenue and Customs have not been able to provide any information due to the unavailability of the IT interface.
17. The practical effect of the 2012 Regulations if left unamended would be that it would prevent an application from proceeding where we are not able to obtain any information via the IT interface. The only option would be to issue a default maintenance decision, which takes no account of the non-resident parent's (NRP's) circumstances, other than the number of children they are required to support.
18. Where this has occurred since December 2012, we currently have transitional rules that allow us to request current income information from the non-resident parent, but those rules will end once the new scheme is opened to all new applicants.
19. A similar situation will occur when the Department approaches HM Revenue and Customs at the annual review, under which it looks to obtain updated income information, or following an application for certain types of variation e.g. where the non-resident parent is on a flat rate or nil income but has earned or unearned income. The Regulations for these other situations similarly require reference to HM Revenue and Customs for income details first, and also prevent cases proceeding if these steps cannot be taken.

Proposed amendment

20. The overall intention of these proposals is to enable a maintenance calculation still to be made based on the non-resident parent's gross weekly income in the small proportion of cases where the link to HM Revenue and Customs income data is not available. To achieve this we propose allowing caseworkers to continue the process currently in force during the Pathfinder, namely to obtain current income information directly from the non-resident parent. Relating the calculation to the non-resident parent's own income circumstances will be preferable to setting one with a default rate solely based on the number of qualifying children.
21. We therefore propose to amend the regulations to allow caseworkers to request current income information from the NRP when calculating gross weekly income, in circumstances where we are unable to rely on the IT interface to provide information from HM Revenue and Customs.
22. For the majority of cases, the non-availability of income information via the IT interface is unlikely to be a long-term phenomenon and a normal historic income maintenance calculation will be made at, but not before, the case's next annual review.

Policy proposal 2: Accept nil income reported by HM Revenue and Customs and use this in making maintenance calculation at both the application and annual review stages

Discussion: How maintenance calculations are made when HM Revenue and Customs returns a 'nil income' figure

23. The 2012 Maintenance Calculations Regulations also currently provide that the non-resident parent's income is to be based on current income where the amount of historic income provided by HM Revenue and Customs is nil. This may occur when making the first calculation following the application for child maintenance or when the maintenance liability is updated at annual review.
24. The rationale for considering current income where HM Revenue and Customs provides a figure is that if the NRP is not on benefit, it may raise the question of what the NRP is currently living on. Some NRPs may genuinely have no current income and may be living off their partners, but others may be working.
25. If a positive figure is supplied by HM Revenue and Customs in either of these circumstances, no matter how small, it will be used to make a calculation.
26. This creates an anomaly where a HMRC return of just £1 income would result in a calculation on the basis of that historic figure where as a return of £0 would trigger a current income case.
27. The initial calculation and annual review processes have been designed with operational simplicity in mind, so that in many cases these can proceed without the need for any information from parents. This will enable many children to benefit from maintenance payments more quickly.

Proposed amendment

28. We propose amending the 2012 Regulations to remove this anomaly so that the non-resident parent's income is based on historic income provided by HM Revenue and Customs even where that figure is nil. This change would also align the 2012 Regulations more closely with the over-arching policy aim of a faster, more efficient system.
29. As a safeguard, both parties will have been informed of the annual review assessment through the refreshed payment schedule and, where the PWC is not happy with the HM Revenue and Customs assessment, they will easily be able to request a current income assessment as it will not be necessary for PWCs to prove that NRPs have current earnings, only that they are likely to do so.

Policy proposal 3: Re-instating a previously agreed variation

Discussion: What happens to variations when a person moves on and off benefits

30. A variation can be made to the maintenance calculation in specified circumstances. This may be because the non-resident parent has income not taken into account in the main calculation, for example income from dividends. A variation may also apply if a non-resident parent incurs significant specified expenses, such as costs in maintaining contact with a child of theirs who does not live with them. These variations usually cease if a non-resident parent starts to receive benefit and in some other circumstances where the nil rate or flat rate applies. This is because the flat rate of maintenance payable in such circumstances represents a minimum amount payable.
31. The 2012 Regulations permit amongst other things, a variation previously in force (e.g. special expenses) to be re-instated when a non-resident parent stops receiving prescribed benefits, providing there has been no material change in his/her circumstances, e.g. the special expenses amount has not changed.
32. The practical effect of this provision is that caseworkers will have to contact the non-resident parent in question to verify if there have been changes, or not, in his/her circumstances. Contacting an NRP will cause a delay in the maintenance calculation process and subsequently, a delay in money flowing to the qualifying child.

Proposed amendment

33. We therefore propose to amend the Regulations so that, for special expenses variations, we would no longer ask parents if a change of circumstance has occurred before reinstating the variation. Following the reinstatement of the variation, parents will have an opportunity to report any change of circumstances that has occurred and the calculation decision can be revised to take this into account.

Other amendments

34. The below changes are minor and consequential and do not represent any change to current Child Maintenance policy. These changes are therefore not subject to this public consultation, but included for information purposes.

Other amendment 1: To clarify that the HM Revenue and Customs changes to Child Benefit affecting higher earners have no impact on maintenance calculations (or maintenance assessments)

Discussion: The effect of changes to Child Benefit

35. In January 2013 the Government introduced a 'high income' Child Benefit charge which functions to offset payments of Child Benefit for persons earning more than £50,000 a year. For persons earning between £50,000 and £60,000 per year, the new charge will partially offset that person's child benefit payment. For persons earning £60,000 or more, the high income charge will fully offset that person's Child Benefit payment.
36. HM Revenue and Customs is allowing individuals with incomes above £50,000, or their partners, to elect for payments of Child Benefit not to be made as an alternative to paying the high income charge. In such cases, the individual remains entitled to Child Benefit and the claim remains open.
37. The 2012 child maintenance scheme contains three main examples where a particular treatment is conditional upon a person receiving Child Benefit:-
38. First, a child can only be treated as a relevant other child if the non-resident parent or their partner receives Child Benefit. Where a child is so treated (this will normally be a child living in the non-resident parent's household) the usual effect is to reduce the gross weekly income figure used to set child maintenance and as a result the liability otherwise payable.
39. The second situation is a minor variant of the first and has the same effect. A child can still be a relevant other child if they are wholly or partly in local authority care, as long as the non-resident parent or their partner receives Child Benefit for them.
40. Thirdly, where there is joint care of a qualifying child, the person with the greater share of day-to-day care is treated as the person with care. In these cases there is a legislative presumption that the person with care is the person receiving Child Benefit for the child (although that presumption will be disapplied where evidence of the actual day-to-day care arrangements does not confirm care being apportioned in this way).

41. The 2003 scheme contains broadly equivalent provisions to the three scenarios outlined above; as does the 1993 scheme in respect of determining who is the parent with care in cases where there is joint care of the qualifying child.

Proposed amendment:

42. We intend to clarify the position that parents who elect for Child Benefit payments not to be made as a result of the new HM Revenue and Customs earnings rules will not be treated differently from parents who choose to continue to receive Child Benefit payments.
43. For example, a non-resident parent has a child living with them and they are entitled to Child Benefit for that child. If they elect for Child Benefit payments not to be made, but keep their claim open, the child in question continues to be treated as a relevant other child. In these cases, the changes to Child Benefit have no impact on maintenance calculations.
44. However a person who has not claimed Child Benefit or has closed their claim is not regarded as receiving Child Benefit for the purpose of the provisions. The amendments referred to in the previous paragraph clarify this position.

Other amendment 2: To make minor consequential amendments to the Child Support (Collection and Enforcement) Regulations 1992

45. Following the making of the Child Support (Meaning of Child and New Calculation Rules (Consequential and Miscellaneous Amendment) Regulations 2012, a minor drafting error has been identified that will be addressed within these Regulations. Consequential amendments are also required to include a definition of 'gross weekly income' for the purpose of Deduction Orders (where monies are deducted directly from a non-resident parent's bank account) in the Child Support (Collection and Enforcement) Regulations 1992.

Consultation questions

Question 1

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

Question 2

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

Question 3

48. 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 circumstance has occurred since the variation was last agreed or if the grounds for the variation have ceased?

About this consultation

Who is this consultation aimed at?

49. We welcome comments from stakeholders, primarily parents who live apart, representative organisations for parents who live apart or their children, representatives of the legal profession and members of the general public with an interest in child maintenance issues.

Purpose of the consultation

50. This consultation document describes proposed changes to new scheme rules. The Department is formally inviting you to review the proposals outlined in this document and provide your comments on them.

51. Your views are important to us and wherever possible we will use them to inform our recommendations on the provisions that we propose to include in the Child Support (Miscellaneous Amendments) Regulations 2013 ('the 2013 Regulations') which will implement amendments to the 2012 Regulations.

Scope of consultation

52. This consultation applies to Great Britain.

Duration of consultation

53. The consultation period will run from **1 March 2013** until **12 April 2013**.

How to respond to this consultation

54. Please send your consultation responses, preferably by email, to:

Email: calculation.amendments@dwpgsi.gov.uk

Or by post to:

The Child Maintenance Group
2012 Scheme Policy Team
Department for Work and Pensions
7th Floor Caxton House
Tothill Street
London SW1H 9NA.

55. Please ensure that your response reaches us by 12 April.

56. When responding, please state whether you are doing so as an individual or representing the views of an organisation . If you are responding on behalf of an organisation , please make it clear who the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

Queries about the content of this document

57. Please direct your queries about the subject matter of this consultation preferably by email, to:

Email: calculation.amendments@dwp.gsi.gov.uk

Or by post to:

The Child Maintenance Group

New Scheme Policy Team

Department for Work and Pensions

7th Floor Caxton House

Tothill Street

London SW1H 9NA.

How we consult

Freedom of information

58. The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.
59. All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.
60. To find out more about the general principles of Freedom of Information (Fol) and how it is applied within DWP, please contact:
- Email: Freedom-of-information-request@dwp.gsi.gov.uk
- Central Freedom of Information Team
- Caxton House
- Level 4, Caxton House, Tothill Street, London SW1H 9NA
61. The Central Freedom of Information team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information.
62. This consultation is being conducted in line with the new Cabinet Office Consultation Principles. The key principles are:
63. departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
64. departments will need to give more thought to how they engage with and consult with those who are affected;
65. consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
66. the principles of the Compact between government and the voluntary and community sector will continue to be respected.

67. The Government's new Consultation Principles document was published on 17 July 2012 and is accessible at:
<https://www.gov.uk/government/publications/consultation-principles-guidance>.

Feedback on the consultation process

68. We value your feedback on how we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Email: CAXTONHOUSE.LEGISLATION@DWP.GSI.GOV.UK

Elias Koufou

Legislation Manager

Caxton House

Tothill Street

London SW1H 9NA

Phone: 020 7449 7439

69. In particular, please tell us if you believe that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

70. If you have any requirements that we need to meet to enable you to comment, please let us know.

71. We will publish the responses to the consultation in due course in a report on the consultations section of our website www.dwp.gov.uk/consultations. The report will summarise the responses and the action that we will take as a result of them.

Annex A - Draft Regulations

[Draft Child Support \(Miscellaneous Amendments\) Regulations 2013](#)