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

2014 No. 0000

FAMILY LAW

CHILD SUPPORT

The Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014

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 sections 6(2)(g) and 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(**1**).

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(**2**).

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 2014 and come into force on the day on which section 19 (transfer of cases to new rules) of the Child Maintenance and Other Payments Act 2008 comes into force for all purposes.

(2) In these Regulations—

"the 1991 Act" means the Child Support Act 1991(**3**);

"the 1992 Regulations" means the Child Support (Maintenance Assessments and Special Cases) Regulations 1992(**4**);

"the 2008 Act" means the Child Maintenance and Other Payments Act 2008;

(**1**) 2008 c. 6. Paragraph 7 is cited for the meaning of "interested parties" and "prescribed". 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. 2012/2007) ("the 2012 Order").
(**2**) Section 55(5) of the 2008 Act was amended by the 2012 Order.
(**3**) 1991 c. 48.
(**4**) S.I. 1992/1815. The 1992 Regulations were revoked with savings by S.I. 2001/155 and 2012/2785.

"absent parent" has the meaning given in section 3(2) (meaning of certain terms) of the 1991 Act (**5**);

"liability end date" has the meaning given in regulation 6;

"non-resident parent" has the meaning given in section 3(2) of the 1991 Act(**6**);

"person with care" has the meaning given in section 3(3) of the 1991 Act;

"partner" has the meaning given in paragraph 10C(4) (references to various terms) of Schedule 1 (maintenance calculations) to the 1991 Act (**7**);

"prescribed benefit" means a benefit prescribed by regulations made under paragraph 4(1)(c) (flat rate) of Schedule 1 to the 1991 Act;

"qualifying child" has the meaning given in section 3(1) of the 1991 Act(**8**);

"the scheme" means the scheme prepared by the Secretary of State under regulation 3(1);

"transition period" has the meaning given in regulation 3(2).

(3) For the purposes of these Regulations an existing case is related to an application made under section 4(1) (child support maintenance) or 7(1) (right of a child in Scotland to apply for assessment) of the 1991 Act if—

(a) the non-resident parent in relation to that application is also the non-resident parent or absent parent in relation to the existing case and the person with care in relation to that application is not the person with care in relation to the existing case; or

(b) the non-resident parent in relation to that application is a partner of a non-resident parent or absent parent and either or both are in receipt of a prescribed benefit.

Meaning of "interested parties"

2. For the purposes of Schedule 5 to the 2008 Act "interested parties" means, in relation to an existing case—

(a) the absent parent or 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(**9**), or a maintenance assessment or a maintenance calculation made in response to an application under that section, the child in question.

Scheme 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) must be exercised in accordance with a scheme prepared by the Secretary of State.

(2) The transition period during which the power in paragraph 1(1) of Schedule 5 to the 2008 Act may be exercised shall begin on the day on which these Regulations come into force.

(**5**) The substitution of the term "absent parent" with "non-resident parent" by section 26 of, and paragraph 11(1) and (2) of Schedule 3 to, the Child Support, Pensions and Social Security Act 2000 ("the 2000 Act") was partially commenced for the types of cases specified in article 3 of the Child Support, Pensions and Social Security Act 2000 (Commencement No.12) Order 2003 (S.I. 2003/192) ("the 2003 Order").

(**6**) See footnote (e) above.

(**7**) The substitution of Part 1 of Schedule 1 to the 1991 Act by section 1(3) of, and Schedule 1 to, the 2000 Act was partially commenced for the types of cases specified in article 3 of the 2003 Order.

(**8**) The amendment of the definition of "qualifying child" by section 26 of, and paragraph 11(1) and (2) of Schedule 3 to, the 2000 Act was partially commenced for the types of cases specified in article 3 of the 2003 Order.

(**9**) The amendment of section 7(1) of the 1991 Act by sections 1(2) and 26 of, and paragraph 11(1), (2) and (4)(a) of Schedule 3 to the 2000 Act was partially commenced for the types of cases specified in article 3 of the 2003 Order. Section 7(1) was also amended by section 58 of, and Schedule 8 to, the 2008 Act and by the 2012 Order.

(3) The scheme prepared by the Secretary of State shall state the date on which the transition period ends.

(4) The scheme may be revised from time to time by the Secretary of State.

Staging under the scheme

4.—(1) The scheme prepared by the Secretary of State must make provision for the exercise of the power in paragraph 1(1) of Schedule 5 to the 2008 Act in stages, applying the principles in paragraphs (2) to (4).

(2) Where an application is made under section 4(1) or 7(1) of the 1991 Act during the transition period the power is to be exercised in relation to any existing case that is related to that application.

(3) 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 unless that case is related to an application referred to under paragraph (2).

(4) Cases other than those to which either paragraphs (2) or (3) apply, are to be selected in tranches and, in making that selection priority may be given to cases where—

(a) the nil rate is payable under regulation 26 (cases where child support maintenance is not to be payable) of the 1992 Regulations(**10**);

(b) regulation 28 (amount payable where absent parent is in receipt of income support or other prescribed benefit) of the 1992 Regulations(**11**) applies;

(c) the nil rate is payable under regulation 5 (nil rate) of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000(**12**).

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

5.—(1) The right to make a choice required under paragraph 1(1) of Schedule 5 to the 2008 Act must be exercised in accordance with this regulation.

(2) An interested party must make a choice following receipt of written notice given by the Secretary of State.

(3) The notice to the interested parties must specify—

(a) the liability end date; and

(b) the manner in which they are to exercise a choice to remain in the statutory scheme.

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

(5) 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.

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

(7) The Secretary of State may withdraw a notice given under paragraph (2) where—

(a) in the Secretary of State's opinion the notice was given in error; and

(**10**) Regulation 26 was amended by S.I. 1995/1045 and 1998/58 and was partially revoked by S.I. 2001/155 and revoked with savings by 2012/2785.
(**11**) Regulation 28 was amended by S.I. 1993/913, 1993/925, 1996/1345, 1998/58 and was partially revoked by S.I. 2001/155 and revoked with savings by 2012/2785.
(**12**) S.I. 2001/155. Regulation 5 was amended by S.I. 2003/2779, 2004/2415, 2008/1554, 2009/396, 2012/2785 and 2013/630.