Draft Regulations laid before Parliament under section 52(2) and (2A) of the Child Support Act 1991 for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2012 No.

FAMILY LAW

CHILD SUPPORT

The Child Support Maintenance Calculation Regulations 2012

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 3(3), 5(3), 12(4) and (5), 14(1) and (1A), 16(1), (4) and (6), 17(2), (3) and (5), 20(4) and (5), 28ZA(2)(b) and (4)(c), 28ZB(6)(c) and (8), 28A(5), 28B(2)(c), 28C(2)(b) and (5), 28F(2)(b), (3)(b) and (5), 28G(2) and (3), 42, 51(1) and (2), 52(4), 54 and 55(1)(b) of, and paragraphs 3(2) and (3), 4(1) and (2), 5, 5A(6)(b), 7(3), 8(2), 9, 10(1) and (2), 10C(2)(b) and 11 of Schedule 1, paragraphs 2, 4 and 5 of Schedule 4A and paragraphs 2(2) to (5), 4, 5 and 6 of Schedule 4B to, the Child Support Act 1991(**1**).

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 52(2) and (2A) of that Act(**2**).

(**1**) 1991 c. 48. Section 5(3) was amended by section 1(2)(a) of the Child Support, Pensions and Social Security Act 2000 (c. 19) ("the 2000 Act"). Section 12 was substituted by section 4 of that Act. Section 14(1) was amended by section 12 of, and paragraph 11(1) and (7) of Schedule 3 to, that Act and amended by Schedule 8 to the Child Maintenance and Other Payments Act 2008 (c. 6) ("the 2008 Act"). Section 14(1A) was inserted by paragraph 3 of Schedule 3 to the Child Support Act 1995 (c. 34). Section 16 was substituted by section 40 of the Social Security Act 1998 (c. 14). Section 17 was substituted by section 41 of the Social Security Act 1998; subsections (2) and (3) were substituted by section 17 of the 2008 Act. Sections 28ZA and 28ZB were inserted by section 43 of the Social Security Act 1998. Sections 28A, 28B, 28C, 28F, 28G and Schedule 4A and 4B were inserted by sections 5 to 7 of, and Schedule 2 to the 2000 Act. Section 42 was amended by paragraph 11(1) and (2) of Schedule 3 to the 2000 Act. Section 51 was amended by section 1(2) of, and paragraph 11(1) and (19)(a) of Schedule 3 to, the 2000 Act. Section 55 was substituted by section 42 of the 2008 Act. Schedule 1 was amended as follows. Paragraphs 4 and 5 were amended by paragraphs 1 and 2 of Schedule 4 to the 2008 Act. Paragraph 5A was inserted by paragraph 5 of Schedule 4 to the 2008 Act. Paragraph 8(2) was amended by paragraphs 1 and 7 of Schedule 4 to the 2008 Act. Paragraph 9 was amended by paragraphs 1 and 8(2) to (4) of Schedule 4 to, and Schedule 8 to, the 2008 Act. Paragraph 10 was amended by paragraphs 1, 2, 9 and 10 of Schedule 4 to the 2008 Act. Paragraph 10C was amended by paragraph 1(1) and (31) of Schedule 7 to the 2008 Act. Schedules 4A and 4B were substituted by sections 6 of, and Schedule 2 to, the 2000 Act and amended by Schedule 8 to the 2008 Act and by S.I. 2008/2833. Section 54 is cited for the meaning of "prescribed". References in the 1991 Act to "the Commission" were replaced by references to "the Secretary of State" by S.I. 2012/xxxx.

(**2**) Section 52(2) was substituted by section 25 of the 2000 Act; section 52(2A) was inserted by paragraph 1(1) and (23) of Schedule 7 to the 2008 Act.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Child Support Maintenance Calculation Regulations 2012 and come into force in relation to a particular case on the day on which paragraph 2 of Schedule 4 to the Child Maintenance and Other Payments Act 2008(**3**) (calculation by reference to gross weekly income) comes into force in relation to that type of case.

Interpretation

2. In these Regulations—

"the 1991 Act" means the Child Support Act 1991;

"contributory employment and support allowance" means an allowance to which a person is entitled under section 1(2)(a) of the Welfare Reform Act 2007(**4**);

"capped amount" means the figure specified in paragraph 10(3) of Schedule 1 to the 1991 Act (or in that sub-paragraph as modified by regulations under paragraph 10A of Schedule 1 to the 1991 Act(**5**));

"couple" has the meaning given by paragraph 10C(5) of Schedule 1 to the 1991 Act;

"current income" has the meaning given in regulation 37;

"the flat rate" means the flat rate of child support maintenance payable under paragraph 4 of Schedule 1 to the 1991 Act;

"gross weekly income" means income calculated under Chapter 1 of Part 4;

"historic income " has the meaning given in regulation 35;

"HMRC" means Her Majesty's Revenue and Customs;

"the HMRC figure" has the meaning given in regulation 36;

"income support" means support to which a person is entitled under section 124 of the Social Security Contributions and Benefits Act 1992(**6**);

"initial effective date" has the meaning given in regulation 12;

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003(**7**);

"ITTOIA" means the Income Tax (Trading and Other Income) Act 2005(**8**);

"local authority" means, in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly and, in relation to Wales, a county council or a county borough council and, in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**9**);

(**3**) 2008 c. 6.
(**4**) 2007 c. 5.
(**5**) Paragraph 10A was amended by paragraph 1(1) and (30) of the 2008 Act.
(**6**) 1992 c. 4; section 124 was amended by paragraph 30(2), (4) and (5) of Schedule 2 to, and paragraph 1 of Schedule 3 to, the Jobseekers Act 1995 (c. 18), paragraph 28 of Schedule 8 to the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 2(2) of Schedule 2 to, and paragraph 1 of Schedule 3, to the State Pensions Credit Act 2002 (c. 16), paragraph 42 of Schedule 24(3) of the Civil Partnership Act 2004 (c. 33) and paragraph 9 of Schedule 3 to the Welfare Reform Act 2007 (c. 5).
(**7**) 2003 c. 1.
(**8**) 2005 c. 5.
(**9**) 1994 c. 39. Section 2 was amended by paragraph 232(1) of Schedule 22 to the Environment Act 1995 (c. 25).

"net pay arrangements" means arrangements for relief in respect of pension contributions under section 193 of the Finance Act 2004(**10**);

"the nil rate" means the nil rate of child support maintenance payable under paragraph 5 of Schedule 1 to the 1991 Act;

"partner" has the meaning given by paragraph 10C(4) of Schedule 1 to the 1991 Act;

"party", in relation to a maintenance calculation in force or an application for a maintenance calculation, means the non-resident parent, the person with care and, in the case of an application by a child under section 7 of the 1991 Act or a maintenance calculation made in response to such an application, the child in question;

"the PAYE Regulations" means the Income Tax (Pay As You Earn) Regulations 2003(**11**);

"qualifying lender" has the meaning given to it in section 376(4) of the Income and Corporation Taxes Act 1988(**12**);

"the reduced rate" means the reduced rate of child support maintenance payable under paragraph 3 of Schedule 1 to the 1991 Act;

"relievable pension contributions" has the meaning given by section 188(2) of the Finance Act 2004;

"review date" has the meaning given in regulation 19;

"self-assessment return" means a return which an individual is required to make and deliver under section 8 of the Taxes Management Act 1970(**13**);

"supersession decision" means a decision made under section 17 of the 1991 Act superseding a decision mentioned in subsection (1) of that section;

"state pension credit" means the benefit payable in accordance with section 1 (entitlement) of the State Pension Credit Act 2002(**14**);

"tax year" has the meaning given by section 4 of the Income Tax Act 2007(**15**);

"Tribunal Procedure Rules" means the Tribunal Procedure (First-tier Tribunal) (Social (Entitlement Chamber) Rules 2008(**16**); and

"UK social security pension" means a pension to which section 577 of ITEPA applies(**17**).

Meaning of "calculation decision"

3. In these Regulations "calculation decision" means a decision of the Secretary of State under section 11 (the maintenance calculation), section 16 (revision) or section 17 (supersession) of the 1991 Act determining the amount of child support maintenance to be fixed in accordance with Part 1 of Schedule 1 to that Act.

(**10**) 2004 c. 12. Section 193 was amended by paragraph 475 of Part (2) of Schedule 1 to the Income Tax Act 2007 (c. 3).
(**11**) S.I. 2003/2682.
(**12**) 1988 c. 1. Section 376(4) was amended by paragraph 1 of Part (V)(19) of Schedule 26 to the Finance Act 1994 (c. 9), paragraph 42 of Schedule 8 to, and paragraph 12 of Schedule 9 to, the Housing and Regeneration Act 2008 (c.17), paragraph 55 of Schedule 16, and paragraph 1 of Part IV of Schedule 18, to the Government of Wales Act 1998 (c. 38), Part (III)(7) of Schedule 20 to the Finance Act 1999 (c. 16), paragraph 24 of Schedule 19 to the Localism Act 2011 (c. 20) and by S.I.s 2001/1149 and 3629.
(**13**) 1970 c. 9. The provisions in subsection (1) on the power to require a return were amended by section 121(1) of the Finance Act 1996 (c. 8) and by paragraph 1 of Part 5(3) of Schedule 27 to the Finance Act 2007 (c. 11).
(**14**) 2002 c. 16.
(**15**) 2007 c. 3.
(**16**) S.I.2008/2685 (L13).
(**17**) Section 577 was amended by paragraph 1 of Part (2)(12) of Schedule 42, and paragraph 9(4)(a) of Schedule 17, to the Finance Act 2004 (c. 12) and by section 10(2) of the Finance (No. 2) Act 2005 (c. 22).

Meaning of "latest available tax year"

4.—(1) In these Regulations "latest available tax year" means the tax year which, on the date on which the Secretary of State requests information from HMRC for the purposes of regulation 35 (historic income) or regulation 69 (non-resident parent with unearned income), is the most recent relevant tax year for which HMRC have received the information required to be provided in relation to the non-resident parent under the PAYE Regulations or in a self-assessment return.

(2) In this regulation a "relevant tax year" is any one of the 6 tax years immediately preceding the date of the request for information referred to in paragraph (1).

Calculation – information applicable

5. Information required for the purposes of making a calculation decision or a decision in relation to an application for a variation is the information applicable at the date from which that decision (assuming that the decision was a decision to make or amend a maintenance calculation) would have effect.

Rounding

6. Where a calculation decision or a decision in relation to an application for a variation results in a fraction of a penny, that is to be treated as a penny if it is either one half or exceeds one half, and otherwise it is to be disregarded.

Service of documents

7.—(1) Where any document is given or sent to the Secretary of State, that document is to be treated as having been given or sent on the date of receipt by the Secretary of State.

(2) Where the Secretary of State sends any written notification or any document by post to a person's last known or notified address that document is treated as having been given or sent on the second day following the day on which it is posted.

Authorisation of representative

8.—(1) A person may authorise a representative, whether or not legally qualified, to receive notices and other documents on their behalf and to act on their behalf in relation to the making of applications and the supply of information under any provision of the 1991 Act or these Regulations.

(2) Where a person has authorised a representative for the purposes of paragraph (1) who is not legally qualified, that person must confirm the authorisation in writing to the Secretary of State.

PART 2

APPLICATION FOR A MAINTENANCE CALCULATION

Applications under section 4 or 7 of the 1991 Act

9.—(1) The Secretary of State may determine the form in which an application for a maintenance calculation is to be made and may require the applicant to provide such information or evidence as the Secretary of State reasonably requires in order to process the application (including, in the case of an application by a person with care, information sufficient to enable the person named as the non-resident parent to be identified).

(2) The application is to be taken to have been made when the application has been submitted to the Secretary of State in the required form and the information required under paragraph (1) has been provided.

Multiple applications

10.—(1) Where two or more applications for a maintenance calculation are made with respect to the same child the Secretary of State may determine which to proceed with.

(2) In making a determination under paragraph (1) the Secretary of State must have regard to the following order of priority—

(a) an application by a person with care or a non-resident parent has priority over an application by a child under section 7 of the 1991 Act(**18**);

(b) otherwise an earlier application has priority over one made later.

(3) Where—

(a) in relation to an application under section 4 or 7 of the 1991 Act(**19**), both parents of a qualifying child are named as non-resident parents; or

(b) an application is made under section 4 of that Act by both non-resident parents of a qualifying child,

the Secretary of State must proceed with the application in relation to each non-resident parent, treating it as a single application for a maintenance calculation in respect of that qualifying child.

Notice of application

11.—(1) Where an application has been made under section 4 or 7 of the 1991 Act the Secretary of State must, as soon as reasonably practicable, give written notice to the non-resident parent—

(a) requesting such information as the Secretary of State may require to make the maintenance calculation; and

(b) where relevant, advising the non-resident parent of the power of the Secretary of State to make an estimate of income or a default maintenance decision.

(2) The notice must be sent by post to the last known address of the non-resident parent.

PART 3

DECISION MAKING

CHAPTER 1

MAKING THE MAINTENANCE CALCULATION

Initial effective date

12. The effective date of a decision under section 11 of the 1991 Act(**20**) ("the initial effective date") is the date on which notice is given to the non-resident parent in accordance with regulation 11.

(**18**) Section 7 was amended by paragraph 21 of Schedule 7 to, and Schedule 8 to, the Social Security Act 1998 (c. 14), section 1(2) of, and paragraph 11(1) and (2) and (4) to Schedule 3 of, the 2000 Act, and by section 35(2) of the 2008 Act.
(**19**) Section 4 was amended by section 18(1) of the Child Support Act 1995 (c. 34), paragraph 19 of Schedule 7, and Schedule 8, to the Social Security Act 1998 c. 14), sections 1(2) and 2(1) to (3) of, and paragraph 11(1), (2) and (3) of Schedule 3 to, the 2000 Act and by section 35(1) of, and Schedule 8 to, the 2008 Act.
(**20**) Section 11 was substituted by section 1(1) of the 2000 Act and amended by Schedule 8 to the 2008 Act.