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

DRAFT STATUTORY INSTRUMENTS

2012 No. 000

FAMILY LAW

CHILD SUPPORT

The Child Support Management of Payments and Arrears (Amendment) Regulations 2012

Made - - - - [ ] 2012

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 14(3), 41D(2) and (3), 41E, 51(1) and 52(4) of 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)(a) and (2A)(b)(**2**) of that Act.

Commencement and citation

1. These Regulations may be cited as the Child Support Management of Payments and Arrears (Amendment) Regulations 2012 and come into force on the day on which sections 32 (power to accept part payment of arrears in full and final satisfaction) and 33 (power to write off arrears) of the Child Maintenance and Other Payments Act 2008(**3**) come into force.

Amendment of the Child Support (Management of Payments and Arrears) Regulations 2009

2.—(1) The Child Support (Management of Payments and Arrears) Regulations 2009(**4**) are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of "the AIMA Regulations" insert—

(**1**) 1991 c. 48 ("the 1991 Act"). Sections 41D and 41E of the 1991 Act were inserted by sections 32 and 33 respectively, of the Child Maintenance and Other Payments Act 2008 (c. 6) ("the 2008 Act") and amended by the Public Bodies (Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions) Order 2012 (S. I. 2012/0000) ("the 2012 Order"). Section 51 of the 1991 Act was amended by section 1(2) of the Child Support, Pensions and Social Security Act (c. 19).

(**2**) Section 52(2)(a) of the 1991 Act was amended by section 57 of, and paragraph 22 of Schedule 7 to, the 2008 Act. Section 52(2A) of the 1991 Act was substituted by section 57 of, and paragraph 23 of Schedule 7 to, the 2008 Act.

(**3**) 2008 c. 6.

(**4**) S.I. 2009/3151

""child in Scotland" means a child who has made an application for a maintenance calculation under section 7 of the 1991 Act;".

(3) After Part 4 (recovery from estates) insert—

"PART 4A

Part Payment of Arrears in Full and Final Satisfaction

Interpretation of this Part

13A. In this Part—

"appropriate person" means the person from whom the appropriate consent is required under section 41D(5) or (6) of the 1991 Act.

Amounts owed to different persons to be treated separately

13B. Where the arrears of child support maintenance for which a person is liable comprise amounts that have accrued in respect of—

(a) separate applications for a maintenance calculation; or

(b) one application but would, if recovered, be payable to different persons,

those amounts are to be treated as separate amounts of arrears for the purpose of exercising the power under section 41D(1) of the 1991 Act.

Appropriate consent

13C.—(1) The Secretary of State may not exercise the power under section 41D(1) of the 1991 Act without the appropriate consent (as provided for in subsections (5) to (7) of section 41D), unless one of the following conditions applies—

(a) that the Secretary of State would be entitled to retain the whole of the arrears under section 41(2) of the 1991 Act if it recovered them; or

(b) that the Secretary of State would be entitled to retain part of the arrears under section 41(2) of that Act if it recovered them, and the part of the arrears that the Secretary of State would not be entitled to retain is equal to or less than the payment accepted under section 41D(1) of that Act.

(2) Where the consent of any appropriate person is required, the Secretary of State must make available such information and guidance as the Secretary of State thinks appropriate for the purpose of helping that person decide whether to give that consent.

Agreement

13D.—(1) Where the Secretary of State proposes to exercise the power under section 41D(1) of the 1991 Act, the Secretary of State must prepare a written agreement.

(2) The agreement must—

(a) name the non-resident parent, and where the consent of any appropriate person is required, the name of that person;

(b) specify the amount of arrears to which the agreement relates and the period of liability to which those arrears relate;

(c) state the amount that is agreed will be paid in satisfaction of those arrears;

(d) state the method of payment and to whom payment will be made; and

(e) state the day by which payment is to be made.

(3) The Secretary of State must send the non-resident parent and, where applicable, the appropriate person, a copy of the agreement.

(4) The agreement does not take effect until—

(a) the non-resident parent has agreed in writing to its terms; and

(b) where applicable, the appropriate person has given to the Secretary of State their consent in writing.

Where payment is received

13E.—(1) Unless the non-resident parent fails to comply with the terms of the agreement, the Secretary of State must not take action to recover any of the arrears to which the agreement relates.

(2) Where the non-resident parent has made full payment in accordance with the agreement all remaining liability in respect of the arrears of child support maintenance to which the agreement relates is extinguished.

(3) Where the non-resident parent fails to make any payment or only makes part payment or otherwise fails to adhere to the terms of the agreement, the non-resident parent remains liable to pay the full amount of any outstanding arrears to which the agreement relates and the Secretary of State may arrange to recover any of those outstanding arrears in accordance with the 1991 Act.

(4) Nothing in these Regulations prevents the Secretary of State from entering into a new agreement with the non-resident parent in respect of any of the arrears to which the previous agreement relates provided that the new agreement complies with the requirements set out in regulation 13D.

(5) Where the Secretary of State enters into a new agreement with the non-resident parent in respect of any of the arrears to which a previous agreement related, the previous agreement ceases to have effect on the coming into effect of that new agreement.

PART 4B

Write Off of Arrears

Amounts owed to different persons to be treated separately

13F. Where the arrears of child support maintenance for which a person is liable comprise amounts that have accrued in respect of—

(a) separate applications for a maintenance calculation; or

(b) one application, but would, if recovered, be payable to different persons,

those amounts are to be treated as separate amounts of arrears for the purpose of exercising the power under section 41E(1) of the 1991 Act.

Circumstances in which the Secretary of State may exercise the power in section 41E of the 1991 Act

13G. The circumstances of the case specified for the purposes of section 41E(1)(a) of the 1991 Act are that—