Draft Statutory Instrument laid before Parliament under section 52(2) of the Child Support Act 1991, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No.

FAMILY LAW

CHILD SUPPORT

The Child Support (Miscellaneous Amendments) Regulations 2003

Made - - - - 2003

Coming into force in accordance with regulation 1(3)

Whereas a draft of this instrument was laid before Parliament in accordance with section 52(2) of the Child Support Act 1991(**1**) and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 17(5), 28B(2)(c), 28E(5), 31(8), 42, 46(5), 51, 52 and 54 of, and paragraphs 5, 6, 7, 10 and 11 of Schedule 1 to and paragraphs 2(2) and 5(1) of Schedule 4B to, the Child Support Act 1991(**2**) and section 29 of the Child Support, Pensions and Social Security Act 2000(**3**), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, interpretation and commencement

1.—(1) These Regulations may be cited as the Child Support (Miscellaneous Amendments) Regulations 2003.

(2) In these Regulations—

(**1**) 1991 c. 48. Section 52(2) was amended by paragraph 15 of Schedule 3 to the Child Support Act 1995 (c. 34) and is substituted by section 25 of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(**2**) Section 17 was substituted by section 41 of the Social Security Act 1998 (c. 14). Sections 28B, 46(5) and 51 and paragraph 5 of Schedule 1 were amended by, respectively, paragraph 35 of Schedule 7 to the Social Security Act 1998, paragraph 12 of Schedule 3 to the Child Support Act 1995 and paragraph 43(2) of Schedule 7 to the Social Security Act 1998, paragraph 46 of Schedule 7 to the Social Security Act 1998 and paragraph 20(7) of Schedule 2 to the Jobseekers Act 1995 (c. 18). Sections 28B and 28E and paragraphs 2(2) and 5(1) of Schedule 4B were inserted by, respectively, sections 2, 5 and 6(2) of and Schedule 2 to, the Child Support Act 1995. Sections 17, 42 and 51, and paragraph 11 of Schedule 1 are amended by, and sections 28B, 46(5) and paragraph 10 of Schedule 1 are substituted by, respectively, section 9 of, paragraph 11(2) and (19) of Schedule 3 to, sections 5(2), 19 and 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act 2000. Section 28B is modified by regulations made under section 28G(2)(b), as substituted by section 7 of the Child Support, Pensions and Social Security Act 2000. Section 54 is cited because of the meaning ascribed to "prescribed". *See* also S.I. 2003/ (C.).

(**3**) 2000 c. 19.

"the Collection and Enforcement Regulations" means the Child Support (Collection and Enforcement) Regulations 1992(**4**);

"the Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**5**);

"the Departure Regulations" means the Child Support Departure Direction and Consequential Amendments Regulations 1996(**6**);

"the Maintenance Assessment Procedure Regulations" means the Child Support (Maintenance Assessment Procedure) Regulations 1992(**7**);

"the Maintenance Assessments and Special Cases Regulations" means the Child Support (Maintenance Assessments and Special Cases) Regulations 1992(**8**);

"the Maintenance Calculation Procedure Regulations" means the Child Support (Maintenance Calculation Procedure) Regulations 2000(**9**);

"the Maintenance Calculations and Special Cases Regulations" means the Child Support (Maintenance Calculations and Special Cases) Regulations 2000(**10**);

"the Transitional Regulations" means the Child Support (Transitional Provisions) Regulations 2000(**11**); and

"the Variations Regulations" means the Child Support (Variations) Regulations 2000(**12**).

(3) These Regulations shall come into force as follows—

(a) subject to sub-paragraphs (b) to (d), these Regulations shall come into force on the day after the day that they are made;

(b) regulation 3 shall come into force in relation to a particular case on the day on which section 17 of the Child Support Act 1991 as amended by the Child Support, Pensions and Social Security Act 2000 comes into force in relation to that type of case;

(c) regulation 6(3), (7)(c) and (8)(a) shall come into force on 1st April 2003; and

(d) regulations 2, 4, 5, 6(2), (4), (5), (6), (7)(a) and (b) and (8)(b), 7(3), 8(2) and (4) and 10 shall come into force on 6th April 2003.

Amendment of the Collection and Enforcement Regulations

2. In regulation 8(4) of the Collection and Enforcement Regulations (interpretation of Part III—deduction from earnings orders)(**13**), after sub-paragraph (e), there shall be added—

"(f) working tax credit payable under section 10 of the Tax Credits Act 2002(**14**).".

Amendment of the Decisions and Appeals Regulations

3.—(1) The Decisions and Appeals Regulations shall be amended in accordance with the following paragraph.

(**4**) S.I. 1992/1989.
(**5**) S.I. 1999/991.
(**6**) S.I. 1996/2907, which is revoked, with savings, by S.I. 2001/156.
(**7**) S.I. 1992/1813, which is revoked, with savings, by S.I. 2001/157.
(**8**) S.I. 1992/1815, which is revoked, with savings, by S.I. 2001/155.
(**9**) S.I. 2001/157.
(**10**) S.I. 2001/155.
(**11**) S.I. 2000/3186.
(**12**) S.I. 2001/156.
(**13**) Regulation 8(4) was amended by S.I. 1999/977.
(**14**) 2002 c. 21.

(2) In regulation 7B (date from which a decision superseded under section 17 of the Child Support Act 1991 takes effect)(**15**) after paragraph (17) there shall be inserted—

"(17A) Where a superseding decision is made in a case to which regulation 6A(2)(a) or (3) applies, and the relevant circumstance is that a person has ceased to be a person with care in relation to a qualifying child in respect of whom the maintenance calculation was made, the decision shall take effect from the first day of the maintenance period in which that person ceased to be a person with care in relation to that qualifying child.

(17B) Where a superseding decision is made in a case to which regulation 6A(3) applies, and the relevant circumstance is that there is a further qualifying child in respect of the non-resident parent and the person with care to whom the maintenance calculation being superseded relates, the superseding decision shall take effect from—

(a) subject to sub-paragraph (b), the first day of the maintenance period in respect of the maintenance calculation in force, following—

(i) where an effective application is made under section 17(1) of the Child Support Act by the non-resident parent, the date on which that application is made; or

(ii) where the application made under section 17(1) of that Act is made by the person with care, or, where a maintenance calculation has been made in response to an application by a child under section 7 of that Act, by the child, the date of notification to the non-resident parent of that application;

(b) the first day of the maintenance period in respect of the maintenance calculation in force where the date set out in head (i) or (ii) falls on the first day of that maintenance period.

(17C) For the purposes of paragraph (17B)—

(a) in head (i) of sub-paragraph (a), an application is effective if, were it an application for a maintenance calculation, it would comply with regulation 3(1) of the Maintenance Calculation Procedure Regulations;

(b) in head (ii) of sub-paragraph (a), notification to the non-resident parent shall take the same form in respect of an application for a supersession as it would in regulation 5 of the Maintenance Calculation Procedure Regulations, in respect of an application for a maintenance calculation.".

Amendment of the Departure Regulations

4.—(1) The Departure Regulations shall be amended in accordance with the following paragraphs.

(2) In regulation 9 (departure directions and persons in receipt of income support, income-based jobseeker's allowance, working families' tax credit or disabled person's tax credit)(**16**) in the heading and in paragraphs (1)(b) and (3)(b), for ", working families' tax credit or disabled person's tax credit" there shall be substituted "or working tax credit".

(3) In regulation 12 (meaning of "benefit" for the purposes of section 28E of the Act)(**17**), for "working families' tax credit, disabled person's tax credit", there shall be substituted "working tax credit".

(**15**) Regulation 7B was inserted by S.I. 2000/3185 and amended by S.I. 2002/1204.
(**16**) Regulation 9 was substituted by S.I. 1998/58 and amended by S.I. 1999/2566 and is revoked, with savings, by S.I. 2001/156.
(**17**) Regulation 12 was amended by S.I. 1999/2566 and is revoked, with savings, by S.I. 2001/156.

Amendment of the Maintenance Assessment Procedure Regulations

5. In regulation 35A of the Maintenance Assessment Procedure Regulations (circumstances in which a reduced benefit direction shall not be given)(**18**), after paragraph (b) there shall be added—

"or

(c) an amount prescribed under section 9(5)(c) of the Tax Credits Act 2002 (increased elements of child tax credit for children or young persons with a disability) is included in an award of child tax credit payable to the parent in question or a member of that parent's family living with him.".

Amendment of the Maintenance Assessments and Special Cases Regulations

6.—(1) The Maintenance Assessments and Special Cases Regulations shall be amended in accordance with the following paragraphs.

(2) In regulation 1(2) (citation, commencement and interpretation)(**19**)—

(a) after the definition of "Child Benefit Rates Regulations", there shall be inserted the following definition—

""child tax credit" means a child tax credit under section 8 of the Tax Credits Act 2002;";

(b) the definitions of "disabled person's tax credit" and "family credit" shall be omitted; and

(c) for the definition of "working families' tax credit", there shall be substituted the following definition—

""working tax credit" means a working tax credit under section 10 of the Tax Credits Act 2002;".

(3) In regulation 9(1)(e)(i) (exempt income: calculation or estimation of E)(**20**), for "an invalid care allowance", there shall be substituted "a carer's allowance".

(4) In regulation 10A (assessable income: working families' tax credit or disabled person's tax credit paid to or in respect of a parent with care or an absent parent)(**21**), in the heading and in paragraph (1), for "working families' tax credit or disabled person's tax credit", there shall be substituted "working tax credit".

(5) In regulation 11(2)(a) (protected income)(**22**), after head (v), there shall be added—

"(vi) there shall be taken into account any child tax credit which is payable to the absent parent or his partner; and".

(6) In Schedule 1 (calculation of N and M)(**23**)—

(a) in paragraphs 2(1A) and 5(5), for "working families' tax credit or disabled person's tax credit", there shall be substituted "working tax credit or child tax credit";

(b) in paragraph 7, sub-paragraphs (2) to (5) shall be omitted;

(**18**) Regulation 35A was inserted by S.I. 1995/3261 and amended by S.I. 1996/1345 and 1999/1047 and is revoked, with savings, by S.I. 2001/157.
(**19**) Regulation 1(2) was amended by S.I. 1993/913, 1995/1045, 1995/3261, 1996/1345, 1996/1803, 1996/1945, 1996/3196, 1998/58, 1999/977, 1999/1510 (C. 43) and 1999/2566 and is revoked, with savings, by S.I. 2001/155.
(**20**) Regulation 9 was amended by S.I. 1993/913, 1995/1045, 1995/3261, 1996/1803, 1996/1945, 1996/2907, 1998/58 and 2002/1204 and is revoked, with savings, by S.I. 2001/155.
(**21**) Regulation 10A was inserted by S.I. 1996/3196 and amended by S.I. 1999/1510 (C. 43) and 1999/2566 and is revoked, with savings, by S.I. 2001/155.
(**22**) Regulation 11 was amended by S.I. 1994/227, 1995/1045, 1995/3261, 1996/1803, 1996/1945 and 1998/58 and is revoked, with savings, by S.I. 2001/155.
(**23**) Schedule 1 was amended by S.I. 1993/913, 1995/1045, 1996/1345, 1996/1803, 1996/1945, 1996/3196, 1998/58, 1999/977, 1999/1510 (C. 43) and 1999/2566 and is revoked, with savings, by S.I. 2001/155.

(c) in paragraph 12(e), for the words after "under", there shall be substituted "regulation 62(2A)(b) of the Income Support (General) Regulations 1987(**24**) towards such costs;";

(d) after paragraph 14A, there shall be inserted—

"**14B.**—(1) Subject to sub-paragraph (2), payments to a person of working tax credit shall be treated as the income of the parent who has qualified for them by his normal engagement in remunerative work at the rate payable at the effective date.

(2) Where working tax credit is payable and the amount which is payable has been calculated by reference to the earnings of the absent parent and another person—

(a) if during the period which is used to calculate his earnings under paragraph 2 or, as the case may be, paragraph 5, the normal weekly earnings of that parent exceed those of the other person, the amount payable by way of working tax credit shall be treated as the income of that parent;

(b) if during that period the normal weekly earnings of that parent equal those of the other person, half of the amount payable by way of working tax credit shall be treated as the income of that parent; and

(c) if during that period the normal weekly earnings of that parent are less than those of that other person, the amount payable by way of working tax credit shall not be treated as the income of that parent."; and

(e) paragraph 16 shall be amended as follows—

(i) in sub-paragraph (1), for "(6)", there shall be substituted "(7)"; and

(ii) after sub-paragraph (6), there shall be added—

"(7) This paragraph shall not apply to payments of working tax credit referred to in paragraph 14B.".

(7) In Schedule 2 (amounts to be disregarded when calculating or estimating N and M)(**25**)—

(a) in paragraph 22, for the words from "paragraph 19" to the end of the paragraph, there shall be substituted "paragraph 19 of Schedule 9 to the Income Support (General) Regulations 1987(**26**) which would have applied if he had been in receipt of income support.";

(b) after paragraph 48C, there shall be inserted—

"**48D.** Any payment of child tax credit."; and

(c) after paragraph 48D, there shall be inserted—

"**48E.** Any payment made by a local authority relating to—

(a) welfare services in respect of which the Secretary of State has paid a grant to the local authority under section 93(1) of the Local Government Act 2000(**27**);

(b) welfare services in respect of which the National Assembly for Wales has paid a grant to the local authority under section 93(2) of the Local Government Act 2000; or

(**24**) S.I. 1987/1967. Regulation 62(2A) was inserted by S.I. 1992/468, substituted by S.I. 1999/1935 and amended by S.I. 2001/2319 and 2002/1589.
(**25**) Schedule 2 was amended by S.I. 1993/913, 1995/1045, 1995/3261, 1996/481, 1996/1345, 1996/3196, 1998/58 and 1999/977 and is revoked, with savings, by S.I. 2001/155.
(**26**) S.I. 1987/1967. Paragraph 19 of Schedule 9 was substituted by S.I. 1994/527 and amended by S.I. 1995/516 and 2002/668.
(**27**) 2000 c. 22.