

*Draft Order laid before Parliament under section *** of the *** Act ***, for approval by resolution of each House of Parliament.*

S T A T U T O R Y I N S T R U M E N T S

2008 No.

FAMILY LAW

CHILD SUPPORT

The Child Support (Write Off of Arrears) Regulations 2008

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred on him by section 41E of the Child Support Act 1991(a):

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Child Support (Write off of Arrears) Regulations 2008 and shall come into force on the **** 2008.

(2) In these Regulations “the Act” means the Child Support Act 1991.

(3) In relation to an application under section 7 of the 1991 Act (right of child in Scotland to apply for an assessment) a reference in these Regulations to the person with care shall be taken to be a reference to the qualifying child.

Circumstances in which the Commission may exercise powers in section 41E

2. The circumstances prescribed for the purposes of section 41E of the 1991 Act (that is the circumstances in which the Commission may extinguish liability in respect of arrears of child support maintenance if it appears to the Commission that it would be unfair or otherwise inappropriate to enforce that liability) are-

- (a) that there is no current maintenance calculation in force; and
- (b) that recovery of the arrears in question has been suspended for any of the following reasons-
 - (i) the person with care has requested the Commission to cease acting;
 - (ii) the person with care has died;
 - (iii) the non-resident parent has died and there is no further action that can be taken with regard to recovery of the arrears from the non resident parent’s estate (for example because the death occurred before the coming into force of section 43A of the Act or because the estate is insolvent).

(a) 1991 c.48. Section 41E was inserted by section 31 of the Child Maintenance and Other Payments Act 2008 (c.xx).

Notice in cases where the Commissions has been requested to cease acting

3.—(1) Where the Commission is considering exercising its powers under section 41E in circumstances which fall within regulation 2(b)(i) (Commission has been requested to cease acting) the Commission must, before it makes its decision, give written notice to the person with care and the non-resident parent.

(2) The notice must-

- (a) state why it appears to the Commission that it would be unfair or inappropriate to enforce liability in respect of the arrears;
- (b) invite the person with care and the non-resident parent to state their views as to whether liability in respect of the arrears should be extinguished;
- (c) explain the effect of the 12 month waiting period under regulation 4 .

(3) The Commission must take account of any representations received from the person with care or the non-resident parent in making its decision and must notify them of its decision.

(4) The Commission may not decide to extinguish liability in respect of the arrears if the person with care states that he or she wishes that liability to be enforced.

(5) The requirement to give notice under this regulation does not apply where the person in question cannot be traced.

12 month waiting period

4.—(1) If notice is given to the person with care under regulation 3 and either-

- (a) no response is received; or
- (b) that person objects to liability in respect of the arrears being extinguished but does not state that they wish them to be enforced,

the Commission may not extinguish the arrears until the expiry of 12 months from the date on which that notice was given.

(2) The Commission may not extinguish liability in respect of the arrears if, before the expiry of that 12 months, the person with care has requested that liability in respect of those arrears be enforced.

Signed by the authority of the Secretary of State for Work and Pensions.

Date *Name*
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the power to write off arrears of child support maintenance under section 41E of the Child Support Act 1991.

Regulation 2 prescribes the circumstances in which the Child Maintenance and Enforcement Commission may extinguish arrears of child support maintenance.

Regulation 3 sets out the requirement to notify the parties before making a decision in cases where the person with care has requested the Commission to cease acting.

Regulations 4 provides for a 12 month waiting period where there is no response to the notice or the person with care does not wish the debt to be written off, but is not seeking to have it enforced.

