



# Child Support Act 1991

## 1991 CHAPTER 48

### *[<sup>F1</sup>Variations*

#### **Textual Amendments**

- F1** Ss. 28A-28C substituted for ss. 28A-28C (10.11.2000 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [ss. 5\(2\), 86\(1\)\(a\)\(2\)](#) (with [ss. 28, 83\(6\)](#)); [S.I. 2000/2994](#), art. 2, Sch. Pt. 1; [S.I. 2003/192](#), art. 3, Sch.

#### **28A Application for variation of usual rules for calculating maintenance.**

- (1) Where an application for a maintenance calculation is made under section 4 or 7, or treated as made under section 6, the person with care or the non-resident parent or (in the case of an application under section 7) either of them or the child concerned may apply to the Secretary of State for the rules by which the calculation is made to be varied in accordance with this Act.
- (2) Such an application is referred to in this Act as an “application for a variation”.
- (3) An application for a variation may be made at any time before the Secretary of State has reached a decision (under section 11 or 12(1)) on the application for a maintenance calculation (or the application treated as having been made under section 6).
- (4) A person who applies for a variation—
  - (a) need not make the application in writing unless the Secretary of State directs in any case that he must; and
  - (b) must say upon what grounds the application is made.
- (5) In other respects an application for a variation is to be made in such manner as may be prescribed.
- (6) Schedule 4A has effect in relation to applications for a variation.]

*Status: Point in time view as at 14/07/2008.*

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**Modifications etc. (not altering text)**

- C1** S. 28A modified (31.1.2001) by [The Child Support \(Variations\) \(Modification of Statutory Provisions\) Regulations 2000 \(S.I. 2000/3173\)](#), regs. 1(1), 2, 3

**[<sup>F1</sup>28B Preliminary consideration of applications.**

- (1) Where an application for a variation has been duly made to the Secretary of State, he may give it a preliminary consideration.
- (2) Where he does so he may, on completing the preliminary consideration, reject the application (and proceed to make his decision on the application for a maintenance calculation without any variation) if it appears to him—
  - (a) that there are no grounds on which he could agree to a variation;
  - (b) that he has insufficient information to make a decision on the application for the maintenance calculation under section 11 (apart from any information needed in relation to the application for a variation), and therefore that his decision would be made under section 12(1); or
  - (c) that other prescribed circumstances apply.]

**Modifications etc. (not altering text)**

- C2** S. 28B modified (31.1.2001) by [The Child Support \(Variations\) \(Modification of Statutory Provisions\) Regulations 2000 \(S.I. 2000/3173\)](#), regs. 1(1), 2, 4

**[<sup>F1</sup>28C Imposition of regular payments condition.**

- (1) Where—
  - (a) an application for a variation is made by the non-resident parent; and
  - (b) the Secretary of State makes an interim maintenance decision,
 the Secretary of State may also, if he has completed his preliminary consideration (under section 28B) of the application for a variation and has not rejected it under that section, impose on the non-resident parent one of the conditions mentioned in subsection (2) (a “regular payments condition”).
- (2) The conditions are that—
  - (a) the non-resident parent must make the payments of child support maintenance specified in the interim maintenance decision;
  - (b) the non-resident parent must make such lesser payments of child support maintenance as may be determined in accordance with regulations made by the Secretary of State.
- (3) Where the Secretary of State imposes a regular payments condition, he shall give written notice of the imposition of the condition and of the effect of failure to comply with it to—
  - (a) the non-resident parent;
  - (b) all the persons with care concerned; and
  - (c) if the application for the maintenance calculation was made under section 7, the child who made the application.

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- (4) A regular payments condition shall cease to have effect—
  - (a) when the Secretary of State has made a decision on the application for a maintenance calculation under section 11 (whether he agrees to a variation or not);
  - (b) on the withdrawal of the application for a variation.
- (5) Where a non-resident parent has failed to comply with a regular payments condition, the Secretary of State may in prescribed circumstances refuse to consider the application for a variation, and instead reach his decision under section 11 as if no such application had been made.
- (6) The question whether a non-resident parent has failed to comply with a regular payments condition is to be determined by the Secretary of State.
- (7) Where the Secretary of State determines that a non-resident parent has failed to comply with a regular payments condition he shall give written notice of his determination to—
  - (a) that parent;
  - (b) all the persons with care concerned; and
  - (c) if the application for the maintenance calculation was made under section 7, the child who made the application.]

**Modifications etc. (not altering text)**

C3 S. 28C modified (31.1.2001) by [The Child Support \(Variations\) \(Modification of Statutory Provisions\) Regulations 2000 \(S.I. 2000/3173\)](#), regs. 1(1), 2, 5

**[<sup>F2</sup>28D Determination of applications.**

- [<sup>F3</sup>(1) Where an application for a variation has not failed, the Secretary of State shall, in accordance with the relevant provisions of, or made under, this Act—
  - (a) either agree or not to a variation, and make a decision under section 11 or 12(1); or
  - (b) refer the application to an appeal tribunal for the tribunal to determine what variation, if any, is to be made.]
- (2) For the purposes of subsection (1), [<sup>F4</sup>an application for a variation] has failed if—
  - (a) it has <sup>F5</sup>... been withdrawn; or
  - (b) the Secretary of State has rejected it on completing a preliminary consideration under section 28B; [<sup>F6</sup>or]  
[<sup>F6</sup>(c) the Secretary of State has refused to consider it under section 28C(5).]
- (3) In dealing with [<sup>F4</sup>an application for a variation] which has been referred to it under subsection (1)(b), [<sup>F7</sup>an appeal tribunal] shall have the same powers, and be subject to the same duties, as would the Secretary of State if he were dealing with the application.]

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### Textual Amendments

- F2** S. 28D inserted (2.12.1996) by [Child Support Act 1995 \(c. 34\)](#), **ss. 4**, 30(4); S.I. 1996/2630, art. 2, Sch. Pt. 2
- F3** S. 28D(1) substituted (10.11.2000 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 5(3)(a)**, 86(1)(a)(2) (with **ss. 28**, 83(6)); S.I. 2000/2994, art. 2, Sch. Pt. 1; S.I. 2003/192, art. 3, Sch.
- F4** Words in s. 28D(2)(3) substituted (10.11.2000 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 5(3)(b)**, 86(1)(a)(2) (with **ss. 28**, 83(6)); S.I. 2000/2994, art. 2, Sch. Pt. 1; S.I. 2003/192, art. 3, Sch.
- F5** Words in s. 28D(2)(a) repealed (10.11.2000 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 5(3)(c)**, 86(1)(a)(2), **Sch. 9 Pt. I** (with s. 83(6)); S.I. 2000/2994, art. 2, Sch. Pt. 1; S.I. 2003/192, art. 3, Sch.
- F6** S. 28D(2)(c) and preceding word inserted (10.11.2000 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 5(3)(c)**, 86(1)(a)(2) (with **ss. 28**, 83(6)); S.I. 2000/2994, art. 2, Sch. Pt. 1; S.I. 2003/192, art. 3, Sch.
- F7** Words in s. 28D(1)(3) substituted (1.6.1999) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), **Sch. 7 para. 36**; S.I. 1999/1510, art. 2(g)(iii)

### Modifications etc. (not altering text)

- C4** S. 28D modified (31.1.2001) by [The Child Support \(Variations\) \(Modification of Statutory Provisions\) Regulations 2000 \(S.I. 2000/3173\)](#), regs. 1(1), 2, **6(1)**

### [<sup>F8</sup>28E Matters to be taken into account.

- (1) In determining [<sup>F9</sup>whether to agree to a variation], the Secretary of State shall have regard both to the general principles set out in subsection (2) and to such other considerations as may be prescribed.
- (2) The general principles are that—
  - (a) parents should be responsible for maintaining their children whenever they can afford to do so;
  - (b) where a parent has more than one child, his obligation to maintain any one of them should be no less of an obligation than his obligation to maintain any other of them.
- (3) In determining [<sup>F9</sup>whether to agree to a variation], the Secretary of State shall take into account any representations made to him—
  - (a) by the person with care or [<sup>F10</sup>non-resident parent] concerned; or
  - (b) where the application for the current [<sup>F11</sup>calculation] was made under section 7, by either of them or the child concerned.
- (4) In determining [<sup>F9</sup>whether to agree to a variation], no account shall be taken of the fact that—
  - (a) any part of the income of the person with care concerned is, or would be if [<sup>F12</sup>the Secretary of State agreed to a variation], derived from any benefit; or
  - (b) some or all of any child support maintenance might be taken into account in any manner in relation to any entitlement to benefit.
- (5) In this section “benefit” has such meaning as may be prescribed.]

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#### Textual Amendments

- F8** S. 28E inserted (14.10.1996 for specified purposes, 2.12.1996 in so far as not already in force) by [Child Support Act 1995 \(c. 34\)](#), **ss. 5, 30(4)**; S.I. 1996/2630, art. 2, Sch. Pts. 1, 2
- F9** Words in s. 28E(1)(3)(4) substituted (10.11.2000 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 5(4)(a)**, 86(1)(a)(2) (with **ss. 28, 83(6)**); S.I. 2000/2994, art. 2, Sch. Pt. 1; S.I. 2003/192, art. 3, Sch.
- F10** Words in Act substituted (31.1.2001 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(a)(2), **Sch. 3 para. 11(2)** (with s. 83(6)); S.I. 2000/3354, art. 2(1)(b); S.I. 2003/192, art. 3, Sch.
- F11** Word in Act substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 1(2)(b)**, 86(1)(a)(2) (with **ss. 28, 83(6)**); S.I. 2003/192, art. 3, Sch.
- F12** Words in s. 28E(4)(a) substituted (10.11.2000 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 5(4)(b)**, 86(1)(a)(2) (with **ss. 28, 83(6)**); S.I. 2000/2994, art. 2, Sch. Pt. 1; S.I. 2003/192, art. 3, Sch.

#### Modifications etc. (not altering text)

- C5** S. 28E modified (31.1.2001) by [The Child Support \(Variations\) \(Modification of Statutory Provisions\) Regulations 2000 \(S.I. 2000/3173\)](#), regs. 1(1), 2, **6(2)**

#### [<sup>F13</sup>28F Agreement to a variation.

- (1) The Secretary of State may agree to a variation if—
  - (a) he is satisfied that the case is one which falls within one or more of the cases set out in Part I of Schedule 4B or in regulations made under that Part; and
  - (b) it is his opinion that, in all the circumstances of the case, it would be just and equitable to agree to a variation.
- (2) In considering whether it would be just and equitable in any case to agree to a variation, the Secretary of State—
  - (a) must have regard, in particular, to the welfare of any child likely to be affected if he did agree to a variation; and
  - (b) must, or as the case may be must not, take any prescribed factors into account, or must take them into account (or not) in prescribed circumstances.
- (3) The Secretary of State shall not agree to a variation (and shall proceed to make his decision on the application for a maintenance calculation without any variation) if he is satisfied that—
  - (a) he has insufficient information to make a decision on the application for the maintenance calculation under section 11, and therefore that his decision would be made under section 12(1); or
  - (b) other prescribed circumstances apply.
- (4) Where the Secretary of State agrees to a variation, he shall—
  - (a) determine the basis on which the amount of child support maintenance is to be calculated in response to the application for a maintenance calculation (including an application treated as having been made); and
  - (b) make a decision under section 11 on that basis.

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- (5) If the Secretary of State has made an interim maintenance decision, it is to be treated as having been replaced by his decision under section 11, and except in prescribed circumstances any appeal connected with it (under section 20) shall lapse.
- (6) In determining whether or not to agree to a variation, the Secretary of State shall comply with regulations made under Part II of Schedule 4B.]

#### Textual Amendments

**F13** S. 28F substituted (10.11.2000 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 5(5)**, 86(1)(a)(2) (with **ss. 28**, 83(6)); S.I. 2000/2994, art. 2, Sch. Pt. 1; S.I. 2003/192, art. 3, Sch.

#### Modifications etc. (not altering text)

**C6** S. 28F modified (31.1.2001) by [The Child Support \(Variations\) \(Modification of Statutory Provisions\) Regulations 2000 \(S.I. 2000/3173\)](#), regs. 1(1), 2, 7

### [<sup>F14</sup>28G Variations: revision and supersession.

- (1) An application for a variation may also be made when a maintenance calculation is in force.
- (2) The Secretary of State may by regulations provide for—
- (a) sections 16, 17 and 20; and
  - (b) sections 28A to 28F and Schedules 4A and 4B,
- to apply with prescribed modifications in relation to such applications.
- (3) The Secretary of State may by regulations provide that, in prescribed cases (or except in prescribed cases), a decision under section 17 made otherwise than pursuant to an application for a variation may be made on the basis of a variation agreed to for the purposes of an earlier decision without a new application for a variation having to be made.]

#### Textual Amendments

**F14** S. 28G substituted (10.11.2000 for specified purposes, 1.1.2001 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 7**, 86(1)(a)(2) (with **ss. 28**, 83(6)); S.I. 2000/2994, art. 2, Sch. Pts. 1, 2; S.I. 2003/192, art. 3, Sch.

### [<sup>F15</sup>28H Departure directions: decisions and appeals

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#### Textual Amendments

**F15** S. 28H repealed (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(a)(2), Sch. 3 para. 11(14), **Sch. 9 Pt. 1** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

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**F16 28I Transitional provisions.**

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**Textual Amendments**

**F16** S. 28I repealed (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), s. 86(1)(a)(2), Sch. 3 para. 11(14), **Sch. 9 Pt. 1** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

**Status:**

Point in time view as at 14/07/2008.

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