



Child Support Act 1995

1995 CHAPTER 34

Miscellaneous

18 Deferral of right to apply for maintenance assessment

- (1) In section 4 of the 1991 Act (right of person with care or absent parent to apply for maintenance assessment), insert at the end—

“(10) No application may be made at any time under this section with respect to a qualifying child or any qualifying children if—

- (a) there is in force a written maintenance agreement made before 5th April 1993, or a maintenance order, in respect of that child or those children and the person who is, at that time, the absent parent; or
- (b) benefit is being paid to, or in respect of, a parent with care of that child or those children.

(11) In subsection (10) “benefit” means any benefit which is mentioned in, or prescribed by regulations under, section 6(1).”

- (2) In section 7 of the 1991 Act (right of child in Scotland to apply for maintenance assessment), insert at the end—

“(10) No application may be made at any time under this section by a qualifying child if there is in force a written maintenance agreement made before 5th April 1993, or a maintenance order, in respect of that child and the person who is, at that time, the absent parent.”

- (3) In section 8 of the 1991 Act (role of the courts with respect to maintenance for children), after subsection (3) insert—

“(3A) In any case in which section 4(10) or 7(10) prevents the making of an application for a maintenance assessment, and—

- (a) no application has been made for a maintenance assessment under section 6, or
- (b) such an application has been made but no maintenance assessment has been made in response to it,

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subsection (3) shall have effect with the omission of the word “vary”.”

- (4) In section 9 of the 1991 Act (maintenance agreements), at the beginning of subsection (3) insert “Subject to section 4(10)(a) and section 7(10),” and after subsection (5) insert—

“(6) In any case in which section 4(10) or 7(10) prevents the making of an application for a maintenance assessment, and—

- (a) no application has been made for a maintenance assessment under section 6, or
- (b) such an application has been made but no maintenance assessment has been made in response to it,

subsection (5) shall have effect with the omission of paragraph (b).”

- (5) The Secretary of State may by order repeal any of the provisions of this section.
- (6) Neither section 4(10) nor section 7(10) of the 1991 Act shall apply in relation to a maintenance order made in the circumstances mentioned in subsection (7) or (8) of section 8 of the 1991 Act.
- (7) The Secretary of State may by regulations make provision for section 4(10), or section 7(10), of the 1991 Act not to apply in relation to such other cases as may be prescribed.
- (8) Part I of the Schedule to the Child Support Act 1991 (Commencement No.3 and Transitional Provisions) Order 1992 (phased take-on of certain cases) is hereby revoked.
- (9) At any time before 7th April 1997, neither section 8(3), nor section 9(5)(b), of the 1991 Act shall apply in relation to any case which fell within paragraph 5(2) of the Schedule to the 1992 order (pending cases during the transitional period set by that order).

19 Non-referral of applications for maintenance assessments

In section 11 of the 1991 Act, after subsection (1) (referral of application for maintenance assessment to child support officer) insert—

“(1A) Where—

- (a) an application for a maintenance assessment is made under section 6, but
- (b) the Secretary of State becomes aware, before referring the application to a child support officer, that the claim mentioned in subsection (1) of that section has been disallowed or withdrawn,

he shall, subject to subsection (1B), treat the application as if it had not been made.

- (1B) If it appears to the Secretary of State that subsection (10) of section 4 would not have prevented the parent with care concerned from making an application for a maintenance assessment under that section he shall—

- (a) notify her of the effect of this subsection, and
- (b) if, before the end of the period of 28 days beginning with the day on which notice was sent to her, she asks him to do so, treat the application as having been made not under section 6 but under section 4.

(1C) Where the application is not preserved under subsection (1B) (and so is treated as not having been made) the Secretary of State shall notify—

- (a) the parent with care concerned; and
- (b) the absent parent (or alleged absent parent), where it appears to him that that person is aware of the application.”

20 Disputed parentage

(1) Section 27 of the 1991 Act (reference to court for declaration of parentage) is amended as set out in subsections (2) to (4).

(2) For subsection (1) substitute—

“(1) Subsection (1A) applies in any case where—

- (a) an application for a maintenance assessment has been made, or a maintenance assessment is in force, with respect to a person (“the alleged parent”) who denies that he is a parent of a child with respect to whom the application or assessment was made; and
- (b) a child support officer to whom the case is referred is not satisfied that the case falls within one of those set out in section 26(2).

(1A) In any case where this subsection applies, the Secretary of State or the person with care may apply to the court for a declaration as to whether or not the alleged parent is one of the child’s parents.”

(3) In subsection (2), for “(1)” substitute “(1A)”.

(4) For subsection (3), substitute—

“(3) A declaration under this section shall have effect only for the purposes of—

- (a) this Act; and
- (b) proceedings in which a court is considering whether to make a maintenance order in the circumstances mentioned in subsection (6), (7) or (8) of section 8.”

(5) Section 28 of the 1991 Act (power of Secretary of State to initiate or defend actions of declarator) is amended as set out in subsections (6) and (7).

(6) For subsection (1) substitute—

“(1) Subsection (1A) applies in any case where—

- (a) an application for a maintenance assessment has been made, or a maintenance assessment is in force, with respect to a person (“the alleged parent”) who denies that he is a parent of a child with respect to whom the application or assessment was made; and
- (b) a child support officer to whom the case is referred is not satisfied that the case falls within one of those set out in section 26(2).

(1A) In any case where this subsection applies, the Secretary of State may bring an action for declarator of parentage under section 7 of the Law Reform (Parent and Child) (Scotland) Act 1986.”

(7) In subsection (2), at the end insert “or in a maintenance assessment which is in force”.

21 Fees for scientific tests

After section 27 of the 1991 Act insert—

“27A Recovery of fees for scientific tests

- (1) This section applies in any case where—
- (a) an application for a maintenance assessment has been made or a maintenance assessment is in force;
 - (b) scientific tests have been carried out (otherwise than under a direction or in response to a request) in relation to bodily samples obtained from a person who is alleged to be a parent of a child with respect to whom the application or assessment is made;
 - (c) the results of the tests do not exclude the alleged parent from being one of the child’s parents; and
 - (d) one of the conditions set out in subsection (2) is satisfied.
- (2) The conditions are that—
- (a) the alleged parent does not deny that he is one of the child’s parents;
 - (b) in proceedings under section 27, a court has made a declaration that the alleged parent is a parent of the child in question; or
 - (c) in an action under section 7 of the Law Reform (Parent and Child) (Scotland) Act 1986, brought by the Secretary of State by virtue of section 28, a court has granted a decree of declarator of parentage to the effect that the alleged parent is a parent of the child in question.
- (3) In any case to which this section applies, any fee paid by the Secretary of State in connection with scientific tests may be recovered by him from the alleged parent as a debt due to the Crown.
- (4) In this section—
- “bodily sample” means a sample of bodily fluid or bodily tissue taken for the purpose of scientific tests;
- “direction” means a direction given by a court under section 20 of the Family Law Reform Act 1969 (tests to determine paternity);
- “request” means a request made by a court under section 70 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (blood and other samples in civil proceedings); and
- “scientific tests” means scientific tests made with the object of ascertaining the inheritable characteristics of bodily fluids or bodily tissue.
- (5) Any sum recovered by the Secretary of State under this section shall be paid by him into the Consolidated Fund.”

22 Arrears of child support maintenance: alternative to interest payments

In the 1991 Act, insert after section 41—

“41A Arrears: alternative to interest payments

- (1) The Secretary of State may by regulations make provision for the payment by absent parents who are in arrears with payments of child support maintenance of sums determined in accordance with the regulations.
- (2) A sum payable under any such regulations is referred to in this section as an “additional sum”.
- (3) Any liability of an absent parent to pay an additional sum shall not affect any liability of his to pay the arrears of child support maintenance concerned.
- (4) The Secretary of State shall exercise his powers under this section and those under section 41(3) in such a way as to ensure that no absent parent is liable to pay both interest and an additional sum in respect of the same period (except by reference to different maintenance assessments).
- (5) Regulations under subsection (1) may, in particular, make provision—
 - (a) as to the calculation of any additional sum;
 - (b) as to the time at which, and person to whom, any additional sum shall be payable;
 - (c) as to the circumstances in which, in a case where the Secretary of State has been acting under section 6, any additional sum may be retained by him;
 - (d) for the Secretary of State, in a case where he has been acting under section 6 and in such circumstances as may be prescribed, to waive any additional sum (or part of any additional sum).
- (6) The provisions of this Act with respect to—
 - (a) the collection of child support maintenance;
 - (b) the enforcement of any obligation to pay child support maintenance,shall apply equally to additional sums payable by virtue of regulations made under this section.
- (7) Any sum retained by the Secretary of State by virtue of this section shall be paid by him into the Consolidated Fund.”

23 Repayment of overpaid child support maintenance

In the 1991 Act, insert after section 41A—

“41B Repayment of overpaid child support maintenance

- (1) This section applies where it appears to the Secretary of State that an absent parent has made a payment by way of child support maintenance which amounts to an overpayment by him of that maintenance and that—
 - (a) it would not be possible for the absent parent to recover the amount of the overpayment by way of an adjustment of the amount payable under a maintenance assessment; or
 - (b) it would be inappropriate to rely on an adjustment of the amount payable under a maintenance assessment as the means of enabling the absent parent to recover the amount of the overpayment.

- (2) The Secretary of State may make such payment to the absent parent by way of reimbursement, or partial reimbursement, of the overpayment as the Secretary of State considers appropriate.
- (3) Where the Secretary of State has made a payment under this section he may, in such circumstances as may be prescribed, require the relevant person to pay to him the whole, or a specified proportion, of the amount of that payment.
- (4) Any such requirement shall be imposed by giving the relevant person a written demand for the amount which the Secretary of State wishes to recover from him.
- (5) Any sum which a person is required to pay to the Secretary of State under this section shall be recoverable from him by the Secretary of State as a debt due to the Crown.
- (6) The Secretary of State may by regulations make provision in relation to any case in which—
 - (a) one or more overpayments of child support maintenance are being reimbursed to the Secretary of State by the relevant person; and
 - (b) child support maintenance has continued to be payable by the absent parent concerned to the person with care concerned, or again becomes so payable.
- (7) For the purposes of this section any payments made by a person under a maintenance assessment which was not validly made shall be treated as overpayments of child support maintenance made by an absent parent.
- (8) In this section “relevant person”, in relation to an overpayment, means the person with care to whom the overpayment was made.
- (9) Any sum recovered by the Secretary of State under this section shall be paid by him into the Consolidated Fund.”

24 Compensation payments

- (1) The Secretary of State may by regulations make provision for the payment by him, in prescribed circumstances and to or in respect of qualifying persons, of sums by way of compensation or partial compensation for any reduction which is attributable to one or more prescribed changes in child support legislation.
- (2) For the purposes of this section—

“child support legislation” means—

 - (a) the provisions of the 1991 Act and this Act;
 - (b) any provision made under that Act or this Act; and
 - (c) such other provisions (if any) of primary or subordinate legislation with respect to child support maintenance as may be prescribed;

“compensation payment” means any sum payable under the regulations;

“qualifying person” means a person with care—

 - (a) with respect to whom a maintenance assessment (“the revised assessment”) is in force or was made after the change or changes took effect;

- (b) to or in respect of whom family credit or disability working allowance is or has been paid; and
- (c) with respect to whom an earlier maintenance assessment was in force at the relevant time;

“reduction” means a reduction in the amount of child support maintenance payable under the revised assessment when compared with the amount payable under the earlier assessment; and

“relevant time” has such meaning as may be prescribed.

- (3) The regulations may include provision—
 - (a) as to the calculation of the amount of any compensation payment;
 - (b) for any compensation payment to be made in instalments or as a lump sum;
 - (c) as to the manner in which any compensation payment is to be made;
 - (d) for a compensation payment which would otherwise be made under the regulations not to be made if the amount of the payment would be less than the prescribed minimum.
- (4) The Secretary of State may by order provide that, for the purposes of specified provisions of the Social Security Administration Act 1992, a compensation payment is to be treated as if it were a payment of a benefit (as defined by section 191 of that Act) or of a benefit of a prescribed kind.

25 Payment of benefit where maintenance payments collected by Secretary of State

In the Social Security Administration Act 1992, insert after section 74—

“74A Payment of benefit where maintenance payments collected by Secretary of State

- (1) This section applies where—
 - (a) a person (“the claimant”) is entitled to a benefit to which this section applies;
 - (b) the Secretary of State is collecting periodical payments of child or spousal maintenance made in respect of the claimant or a member of the claimant’s family; and
 - (c) the inclusion of any such periodical payment in the claimant’s relevant income would, apart from this section, have the effect of reducing the amount of the benefit to which the claimant is entitled.
- (2) The Secretary of State may, to such extent as he considers appropriate, treat any such periodical payment as not being relevant income for the purposes of calculating the amount of benefit to which the claimant is entitled.
- (3) The Secretary of State may, to the extent that any periodical payment collected by him is treated as not being relevant income for those purposes, retain the whole or any part of that payment.
- (4) Any sum retained by the Secretary of State under subsection (3) shall be paid by him into the Consolidated Fund.
- (5) In this section—

“child” means a person under the age of 16;

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“child maintenance”, “spousal maintenance” and “relevant income” have such meaning as may be prescribed;

“family” means—

- (a) a married or unmarried couple;
- (b) a married or unmarried couple and a member of the same household for whom one of them is, or both are, responsible and who is a child or a person of a prescribed description;
- (c) except in prescribed circumstances, a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;

“married couple” means a man and woman who are married to each other and are members of the same household; and

“unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances.

- (6) For the purposes of this section, the Secretary of State may by regulations make provision as to the circumstances in which—
 - (a) persons are to be treated as being or not being members of the same household;
 - (b) one person is to be treated as responsible or not responsible for another.
- (7) The benefits to which this section applies are income support, an income-based jobseeker’s allowance and such other benefits (if any) as may be prescribed.”