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DRAFT STATUTORY INSTRUMENTS

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**1999 No.**

**The Child Support (Miscellaneous  
Amendments) (No. 2) Regulations 1999**

**PART II**

**Amendment of the Departure Direction Regulations**

**Amendment of regulation 1**

- 34.** In regulation 1(2) (citation, commencement and interpretation)–
- (a) in the definition of “application” after the word “means” there shall be inserted the words “, except in regulations 32A to 32G,”;
  - (b) after the definition of “non-applicant” there shall be inserted the following definition–  
““official error” means an error made by an officer of the Department of Social Security acting as such which no person outside the Department caused or to which no person outside the Department materially contributed;”.

**Amendment of regulation 4**

- 35.** Paragraphs (11) to (14) of regulation 4 (application for departure direction) shall be omitted.

**Amendment of regulation 6**

- 36.** In regulation 6(2) (provision of information) for the words “14 days” there shall be substituted the words “one month, or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case,”.

**Amendment of regulation 8**

- 37.** In regulation 8 (procedure in relation to the determination of an application)–
- (a) in paragraph (3)(b) the words “of 14 days” shall be omitted;
  - (b) in paragraph (8)(b)(i)–
    - (i) the words “or by a child support officer,” shall be omitted;
    - (ii) for the words “for a review of” there shall be substituted the words “for a revision or a supersession of”;
  - (c) in paragraph (9)(b), for the words “refer the case to a child support officer” there shall be substituted the words “make a decision in accordance with regulation 17(2) or 20(2)(c) of the Maintenance Assessment Procedure Regulations”;
  - (d) paragraph (11) shall be omitted.

## Insertion of regulation 8A

38. After regulation 8 there shall be inserted the following regulation—

### **“Procedure in relation to determination of an application for a revision or a supersession of a decision with respect to a departure direction**

**8A.**—(1) Subject to the modifications described in paragraph (2), regulation 8 shall apply to any application for a revision or a supersession of a decision with respect to a departure direction as it applies to an application for a departure direction.

(2) The modifications described in this paragraph are—

(a) for paragraph (1) there shall be substituted the following paragraphs—

“(1) Except where paragraph (1A) applies, the Secretary of State shall—

- (a) give notice of an application for a revision or a supersession of a decision with respect to a departure direction to the relevant persons other than the applicant;
- (b) inform them of the grounds on which the application has been made and any relevant information or evidence the applicant has given, except details, information or evidence falling within paragraph (2);
- (c) invite representations from the relevant persons other than the applicant on any matter relating to that application; and
- (d) explain the provisions of paragraphs (2), (5) and (6) in relation to such representations.

(1A) This paragraph applies where an application for a revision or a supersession has been made and the Secretary of State is satisfied on the information or evidence available to him that either—

- (a) a revision or supersession of a departure direction is unlikely to be made; or
- (b) in a case where the applicant was the applicant for the decision which is to be revised or superseded, a ground on which the decision to be revised or superseded was made no longer applies.”;

(b) paragraphs (3), (4) and (7) shall be omitted;

(c) in paragraph (4A) for the words from “that a departure direction” to the words “in that case” there shall be substituted the words “that a decision revising or superseding a decision with respect to a departure direction was unlikely to be made, but on further consideration of the application he is minded to make such a decision”;

(d) in paragraph (5)—

- (i) for the words “(1), (6) or (7)” there shall be substituted the words “(1) or (6)”;
- (ii) after the word “application” there shall be added the words “for a decision revising or superseding a decision”;

(e) in paragraph (8)—

- (i) for the words “In deciding whether to give a departure direction” there shall be substituted the words “Before deciding whether or not to make a decision revising or, as the case may be, superseding a decision as to a departure direction in consequence of an application for such a decision”; and

- (ii) in sub-paragraph (a), for the words “by the applicant for that direction” there shall be substituted the words “in connection with the application”;
- (f) for paragraphs (9) and (10) there shall be substituted the following paragraph—
  - “(9) Where the Secretary of State has determined an application made for the purpose of revising or superseding a decision he shall, as soon as is reasonably practicable, notify the relevant persons of—
    - (a) that determination;
    - (b) the reasons for it; and
    - (c) where appropriate, the basis on which the amount of child support maintenance is to be fixed by any fresh assessment made in consequence of that determination.”.

#### **Revocation of regulation 11**

**39.** Regulation 11 (departure application and review under section 17 of the Act) is hereby revoked.

#### **Substitution of regulation 11A**

**40.** For regulation 11A(1) (meaning of “current assessment” for the purposes of the Act) there shall be substituted—

“**11A.** Where—

- (a) an application under section 28A of the Act has been made in respect of a current assessment; and
- (b) after the making of that application, a fresh maintenance assessment has been made upon a revision of a decision as to a maintenance assessment under section 16 of the Act,

references to the current assessment in sections 28B(3), 28C(2)(a) and 28F(5) of, and in paragraph 8 of Schedule 4A and paragraphs 2, 3 and 4 of Schedule 4B to, the Act shall have effect as if they were references to the fresh maintenance assessment.”.

#### **Amendment of regulation 14**

**41.** After regulation 14(7) (contact costs) there shall be added the following paragraph—

“(8) This regulation shall apply in relation to an application made for the purpose of superseding a decision with respect to a departure direction as though—

- (a) for the words “at the time a departure direction is applied for” in paragraphs (1) and (7) there were substituted the words “at the time an application is made for a decision superseding a decision with respect to a departure direction”;
- (b) in paragraph (5), after the words “an application” there were inserted the words “for the supersession of a decision with respect to a departure direction.””.

### Amendment of regulation 15

42. In regulation 15(4)(a)(2) (illness or disability), for the words, “adjudicating authority” there shall be substituted the words “Secretary of State”.

### Amendment of regulation 32

43. In regulation 32(3) (effective date of a departure direction)–

- (a) in paragraphs (1) and (2), for the words “28 days” in each place where they occur there shall be substituted the words “one month”;
- (b) in paragraph (3A), for the word “where” there shall be substituted the words “subject to paragraph (3B), where”;
- (c) after paragraph (3A) there shall be inserted the following paragraph–  
 “(3B) For the purposes of paragraph (3A), paragraph (8) of regulation 14 shall not apply.”;
- (d) paragraphs (7) and (8) shall be omitted.

### Insertion of regulations 32A to 32G

44. After regulation 32 there shall be inserted the following regulations–

#### “Revision of decisions

**32A.**—(1) Subject to paragraphs (2) and (3), a decision of the Secretary of State or any decision upon referral under section 28D(1)(b) of an appeal tribunal with respect to a departure direction may be revised by the Secretary of State under section 16 of the Act as extended by paragraph 1 of Schedule 4C to the Act–

- (a) if the Secretary of State receives an application for the revision of a decision under section 16 of the Act as extended within one month of the date of notification of the decision or within such longer time as may be allowed by regulation 32B;
- (b) if–
  - (i) the Secretary of State notifies a person, who applied for a decision to be revised within the period specified in sub-paragraph (a), that the application is unsuccessful because the Secretary of State is not in possession of all of the information or evidence needed to make a decision; and
  - (ii) that person reapplies for a decision to be revised within one month of the notification described in head (i) above or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case, and provides in that application sufficient information or evidence to enable a decision to be made;
- (c) if the decision arose from an official error;
- (d) if the Secretary of State is satisfied that the original decision was erroneous due to a misrepresentation of, or failure to disclose, a material fact and that the decision was more advantageous to the person who

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(2) Regulation 15 was amended by S.I. 1998/58.

(3) Regulation 32 was amended by S.I. 1998/58.

- misrepresented or failed to disclose that fact than it would otherwise have been but for that error;
- (e) where a departure direction takes effect in the circumstances described in regulation 35(3); or
  - (f) if the Secretary of State commences action leading to the revision of a decision within one month of the date of notification of the decision.
- (2) Paragraph (1) shall apply neither—
- (a) in respect of a material change of circumstances which—
    - (i) occurred since the date from which the decision had effect; or
    - (ii) is expected, according to information or evidence which the Secretary of State has, to occur; nor
  - (b) where—
    - (i) an appeal against the original decision has been brought but not determined; and
    - (ii) from the point of view of the appellant, a revision, if made, would be less to his advantage than the original decision.

#### **Late applications for a revision**

**32B.—**(1) The period of one month specified in regulation 32A(1)(a) may be extended where the requirements specified in the following provisions of this regulation are met.

(2) An application for an extension of time shall be made by a relevant person or a person acting on his behalf.

- (3) An application for an extension of time under this regulation shall—
- (a) be made within 13 months of the date on which notification of the decision which it is sought to have revised was given or sent; and
  - (b) contain particulars of the grounds on which the extension of time is sought and shall contain sufficient details of the decision which it is sought to have revised to enable that decision to be identified.

(4) The application for an extension of time shall not be granted unless the person making the application, or any person acting for him, satisfies the Secretary of State that—

- (a) it is reasonable to grant that application;
- (b) the application for the decision to be revised has merit; and
- (c) special circumstances are relevant to the application for an extension of time,

and as a result of those special circumstances, it was not practicable for the application for a decision to be revised to be made within one month of the date of notification of the decision which it is sought to have revised.

(5) In determining whether it is reasonable to grant an application for an extension of time, the Secretary of State shall have regard to the principle that the greater the time that has elapsed between the expiration of the period of one month described in regulation 32A(1)(a) from the date of notification of the decision which it is sought to have revised and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(6) In determining whether it is reasonable to grant an application for an extension of time, no account shall be taken of the following—

- (a) that the person making the application for an extension of time or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations);
- (b) that a Child Support Commissioner or a court has taken a different view of the law from that previously understood and applied.

(7) An application under this regulation for an extension of time which has been refused may not be renewed.

#### **Date from which a revision of a decision takes effect**

**32C.** Where the date from which a decision took effect is found to be erroneous on a revision, the revision shall take effect from the date on which the revised decision would have taken effect had the error not been made.

#### **Supersession of decisions**

**32D.—**(1) For the purposes of section 17 of the Act as it applies in relation to decisions with respect to departure directions by virtue of paragraph 2 of Schedule 4C to the Act and subject to paragraphs (6), (9) and (10), the cases and circumstances in which a decision with respect to a departure direction may be made under that section are set out in paragraphs (2) to (5).

(2) A decision may be superseded by a decision made by the Secretary of State acting on his own initiative where he is satisfied that—

- (a) there has been a material change of circumstances since the decision was made; or
- (b) the decision was made in ignorance of, or was based upon a mistake as to, some material fact.

(3) A decision may be superseded by a decision made by the Secretary of State where—

- (a) an application is made on the basis that—
  - (i) there has been a change of circumstances since the decision was made; or
  - (ii) it is expected that a change of circumstances will occur; and
- (b) the Secretary of State is satisfied that the change of circumstances is or would be material.

(4) A decision may be superseded by a decision made by the Secretary of State where—

- (a) an application is made on the basis that the decision was made in ignorance of, or was based upon a mistake as to, a fact; and
- (b) the Secretary of State is satisfied that the fact is or would be material.

(5) A decision, other than a decision given on appeal, may be superseded by a decision made by the Secretary of State—

- (a) where an application is made on the basis that the decision was erroneous in point of law; or

(b) acting on his own initiative where he is satisfied that the decision was erroneous in point of law.

(6) Subject to paragraph (7), paragraphs (2)(a) and (3) shall not apply where, if a decision were to be superseded in accordance with section 17 of the Act, the difference between the current amount and the revised amount would be less than £1.00 per week.

(7) Paragraph (6) shall not apply where the Secretary of State is satisfied on the information or evidence available to him that a ground on which the decision to be superseded was made no longer applies.

(8) In paragraph (6) “revised amount” means the amount of child support maintenance which would be fixed if a decision with respect to a maintenance assessment were to be superseded by a decision made by the Secretary of State in accordance with paragraphs (2)(a) and (3) but for the operation of paragraph (6).

(9) The cases and circumstances in which a decision may be superseded by a decision made by the Secretary of State shall not include any case or circumstance in which a decision may be revised.

(10) Subject to paragraph (11), paragraphs (2) to (5) shall apply in respect of neither—

- (a) a decision to reject or refuse an application for a departure direction; nor
- (b) a decision to cancel a departure direction.

(11) Paragraph (10) above shall not apply in a case to which either paragraph (2) or (3) of regulation 35 applies.

#### **Date from which a superseding decision takes effect**

**32E.**—(1) This regulation contains exceptions to the provisions of section 17(4) of the Act, as it applies in relation to decisions with respect to departure directions by virtue of paragraph 2 of Schedule 4C to the Act, as to the date from which decisions which supersede earlier decisions are to take effect.

(2) Subject to paragraphs (3) and (5), where—

- (a) a decision is made by the Secretary of State which supersedes an earlier decision in consequence of an application having been made under section 17 of the Act as it applies in relation to decisions with respect to departure directions by virtue of paragraph 2 of Schedule 4C to the Act; and
- (b) the date on which the application is made is not the first day in a maintenance period,

the decision shall take effect as from the first day of the maintenance period in which the application is made.

(3) Where a decision is superseded by a decision made by the Secretary of State in a case to which regulation 32D(2)(a) applies on the basis of evidence or information which was also the basis of a decision made under section 9 or 10 of the Social Security Act 1998 the superseding decision under section 17 of the Act as extended by paragraph 2 of Schedule 7 to the Act shall take effect as from the first day of the maintenance period in which that evidence or information was first brought to the attention of an officer exercising the functions of the Secretary of State under the Act.

(4) Where a decision is superseded by a decision made by the Secretary of State under regulation 32D(3) in consequence of an application made on the basis that a material change of circumstances is expected to occur, the superseding decision shall take effect as from the first day of the maintenance period which immediately succeeds the maintenance period in which the material change of circumstances is expected to occur.

(5) Where the Secretary of State makes, on his own initiative, a decision superseding a decision in consequence of evidence or information contained in an unsuccessful application for a revision of that decision, the superseding decision shall take effect as from the first day of the maintenance period in which that application was made.

(6) Where—

- (a) a decision made by an appeal tribunal under section 20 of the Act as extended by paragraph 3 of Schedule 4C to the Act is superseded on the ground that it was erroneous due to a misrepresentation of, or that there was a failure to disclose, a material fact; and
- (b) the Secretary of State is satisfied that the decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would otherwise have been but for that error,

the superseding decision shall take effect as from the date the decision it superseded took, or was to take, effect.

(7) Any decision given under section 17 of the Act as extended by paragraph 2 of Schedule 4C to the Act in consequence of a decision which is a relevant determination for the purposes of section 28ZC of the Act<sup>(4)</sup> (restrictions on liability in certain cases of error) shall take effect as from the date of the relevant determination.

(8) Where a decision with respect to a departure direction is superseded by a decision under section 17 of the Act as extended by paragraph 2 of Schedule 4C to the Act because the departure direction ceases to have effect in accordance with regulation 35(1), the superseding decision shall have effect as from the date on which the decision that the maintenance assessment is cancelled or ceases to have effect, takes or took effect.

(9) Where the superseding decision referred to in paragraph (8) above is itself superseded by a further decision made under section 17 of the Act as extended by paragraph 2 of Schedule 4C to the Act in the circumstances described in regulation 35(2), that further decision shall have effect as from the effective date of the fresh maintenance assessment.

(10) Where a decision with respect to a departure direction is superseded by a decision under section 17 of the Act as extended by paragraph 2 of Schedule 4C to the Act because the departure direction is suspended in accordance with regulation 35(4), the superseding decision shall have effect as from the effective date of the later interim maintenance assessment or, as the case may be, the interim maintenance assessment which replaces a maintenance assessment.

(11) Where the superseding decision referred to in paragraph (10) above is itself superseded by a further decision under section 17 as extended because the interim maintenance assessment referred to in regulation 35(4)(c) is followed by a maintenance assessment made in accordance with the provisions of Part I of Schedule 1 to the Act or by an interim maintenance assessment to which

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(4) Section 28ZC was inserted by section 44 of the Social Security Act 1998 (c. 14).



regulation 10 does not apply, that further decision shall have effect as from the effective date of the fresh maintenance assessment or, as the case may be, interim maintenance assessment.

### **Cancellation of departure directions**

- 32F.** The Secretary of State may cancel a departure direction where—
- (a) regulation 32A(1) applies and he is satisfied that it was not appropriate to have given it; or
  - (b) regulation 32D applies and he is satisfied that it is no longer appropriate for it to continue to have effect.

### **Notification of right of appeal, decision and reasons for decision**

**32G.—(1)** The Secretary of State shall notify a person with a right of appeal under the Act against the decision under section 16 or 17 of the Act as those sections apply in relation to decisions with respect to departure directions by virtue of paragraphs 1 and 2 of Schedule 4C to the Act with respect to a departure direction of—

- (a) that right;
  - (b) that decision; and
  - (c) the reasons for that decision.
- (2) A written notice provided under paragraph (1)—
- (a) shall also contain sufficient information to enable a relevant person to exercise a right of appeal; and
  - (b) shall not contain any information which it is not necessary for a person to have in order to understand how the decision was reached.”.

### **Revocation of regulations 33 and 34**

**45.** Regulations 33(5) (cancellation of a departure direction following a review under section 16, 17, 18 or 19 of the Child Support Act) and 34 (cancellation of a departure direction on recognition of an error) are hereby revoked.

### **Amendment of regulation 34A**

**46.** In regulation 34A(3)(6) (correction of accidental errors in departure directions), for the words “section 28H(3) of the Act” there shall be substituted the words “regulation 31(1) (time within which an appeal is to be brought) or, as the case may be, regulation 32(1) (late appeals) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(7)”.

### **Amendment of regulation 35**

- 47.** In regulation 35 (termination and suspension of departure directions)—
- (a) in paragraph (2)—

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(5) Regulation 33 was amended by S.I. [1998/2799](#).  
(6) Regulation 34A was inserted by S.I. [1998/58](#).  
(7) S.I. 1999/XXXX.

- (i) for the words “a child support officer” there shall be substituted the words “the Secretary of State”;
- (ii) the words from “from the effective date” to the end shall be omitted;
- (b) in paragraph (3), the words “from the date that maintenance assessment was cancelled or ceased to have effect” shall be omitted;
- (c) in paragraph (4), for the words from “from the effective date” to the end there shall be substituted the words “where the interim maintenance assessment referred to in sub-paragraph (c) is followed by a maintenance assessment made in accordance with the provisions of Part I of Schedule 1 to the Act or by an interim maintenance assessment to which regulation 10 does not apply”.

#### **Amendment of regulation 41**

**48.** In regulation 41(8) (child support maintenance payable where effect of a departure direction would be to decrease an absent parent’s assessable income but case still fell within paragraph 2(3) of Schedule 1 to the Act)–

- (a) in paragraph (5), for the words “the child support officer” there shall be substituted the words “the Secretary of State”;
- (b) in paragraph (6), for the words “a review under section 16 of the Act by a child support officer of a maintenance assessment the effective date of which is on or before 8th December 1996 or a revision by the Secretary of State under that section after 6th December 1998, or a review under section 17, 18 or 19 of the Act”, there shall be substituted the words “a decision under section 16 of the Act revising a decision as to a maintenance assessment or a decision under section 17 of the Act superseding a decision as to a maintenance assessment”.

#### **Amendment of regulation 42**

**49.** In regulation 42(4)(9) (application of regulation 41 where there is a transfer of property falling within paragraph 3 of Schedule 4B to the Act) for the words “the child support officer” there shall be substituted the words “the Secretary of State”.

#### **Amendment of regulation 44**

**50.** In regulation 44(5)(10) (maintenance assessment following a departure direction where there is a phased maintenance assessment)–

- (a) for the words from the beginning to “of the Act” there shall be substituted the words “Where the Secretary of State is satisfied that, were a decision as to a fresh maintenance assessment to be made under section 16 or, as the case may be, section 17 of the Act”;
- (b) for the words “the reviewed unadjusted departure amount” in each place they occur there shall be substituted the words “the fresh unadjusted departure amount”.

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(8) Regulation 41 was amended by S.I. 1998/58 and S.I. 1998/2799.

(9) Regulation 42 was amended by S.I. 1998/58.

(10) Regulation 45 was amended by S.I. 1998/58.

**Amendment of regulation 46A**

**51.** In regulation 46A(1)(11) (cases to which regulation 11A applies), for the words “to (c)” there shall be substituted the words “and (b)”.

**Amendment of regulation 47**

**52.** In regulation 47 (transitional provisions—application before 2nd December 1996), in paragraph (6)(a), for the words “to (11)” there shall be substituted the words “to (10)”.

**Amendment of regulation 50**

**53.** In regulation 50 (transitional provisions—new maintenance assessment made before 2nd December 1996 whose effective date is on or after 2nd December 1996), for the words “28 days” in each place where they occur there shall be substituted the words “one month”.

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(11) Regulation 46A was inserted by S.I. [1998/58](#).