



# Child Support Act 1991

## 1991 CHAPTER 48

### *The basic principles*

#### **1 The duty to maintain.**

- (1) For the purposes of this Act, each parent of a qualifying child is responsible for maintaining him.
- (2) For the purposes of this Act, [<sup>F1</sup>a non-resident parent] shall be taken to have met his responsibility to maintain any qualifying child of his by making periodical payments of maintenance with respect to the child of such amount, and at such intervals, as may be determined in accordance with the provisions of this Act.
- (3) Where a [<sup>F2</sup>maintenance calculation] made under this Act requires the making of periodical payments, it shall be the duty of the [<sup>F1</sup>non-resident parent] with respect to whom the [<sup>F3</sup>calculation] was made to make those payments.

#### **Textual Amendments**

- F1** 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.
- F2** Words in Act substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [ss. 1\(2\)\(a\)](#), 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2003/192, art. 3, Sch.
- F3** 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.

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

- C1** S. 1 amended (5.4.1993) by [The Child Support \(Northern Ireland Reciprocal Arrangements\) Regulations 1993 \(S.I. 1993/584\)](#), reg. 2(2), [Sch.2](#)

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## 2 Welfare of children: the general principle.

Where, in any case which falls to be dealt with under this Act, the Secretary of State<sup>F4</sup> ... is considering the exercise of any discretionary power conferred by this Act, he shall have regard to the welfare of any child likely to be affected by his decision.

### Textual Amendments

**F4** Words in s. 2 repealed (1.6.1999) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), Sch. 7 para. 18, **Sch. 8**; [S.I. 1999/1510](#), art. 2(f)(iii)(g)(iii)

### Modifications etc. (not altering text)

**C2** S. 2 amended (5.4.1993) by [The Child Support \(Northern Ireland Reciprocal Arrangements\) Regulations 1993 \(S.I. 1993/584\)](#), reg. 2(2), **Sch.2**

## 3 Meaning of certain terms used in this Act.

- (1) A child is a “qualifying child” if—
  - (a) one of his parents is, in relation to him, [<sup>F1</sup>a non-resident parent]; or
  - (b) both of his parents are, in relation to him, [<sup>F1</sup>non-resident parents].
- (2) The parent of any child is [<sup>F1</sup>a “non-resident parent”], in relation to him, if—
  - (a) that parent is not living in the same household with the child; and
  - (b) the child has his home with a person who is, in relation to him, a person with care.
- (3) A person is a “person with care”, in relation to any child, if he is a person—
  - (a) with whom the child has his home;
  - (b) who usually provides day to day care for the child (whether exclusively or in conjunction with any other person); and
  - (c) who does not fall within a prescribed category of person.
- (4) The Secretary of State shall not, under subsection (3)(c), prescribe as a category—
  - (a) parents;
  - (b) guardians;
  - (c) persons in whose favour residence orders under section 8 of the <sup>M1</sup>Children Act 1989 are in force;
  - (d) in Scotland, persons [<sup>F5</sup>with whom a child is to live by virtue of a residence order under section 11 of the Children (Scotland) Act 1995.]
- (5) For the purposes of this Act there may be more than one person with care in relation to the same qualifying child.
- (6) Periodical payments which are required to be paid in accordance with a [<sup>F2</sup>maintenance calculation] are referred to in this Act as “child support maintenance”.
- (7) Expressions are defined in this section only for the purposes of this Act.

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#### Textual Amendments

- F1** 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.
- F2** Words in Act substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [ss. 1\(2\)\(a\)](#), 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2003/192, art. 3, Sch.
- F5** Words in s. 3(4)(d) substituted (1.11.1996) by [Children \(Scotland\) Act 1995 \(c. 36\)](#), s. 105(1)(b), [Sch. 4 para. 52\(2\)](#); S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7)

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

- C3** S. 3(3)(b) modified (3.3.2003 for specified purposes) by [The Child Support \(Maintenance Calculations and Special Cases\) Regulations 2000 2001 \(S.I. 2001/155\)](#), regs. 1(4), [12\(2\)](#); S.I. 2003/192, art. 3(1), Sch.
- C4** S. 3(3)(b) modified (3.3.2003 for specified purposes) by [The Child Support \(Maintenance Calculations and Special Cases\) Regulations 2000 2001 \(S.I. 2001/155\)](#), regs. 1(4), [13\(2\)](#); S.I. 2003/192, art. 3(1), Sch.

#### Commencement Information

- I1** S. 3 wholly in force; s. 3 not in force at Royal Assent see s. 58(2); s. 3(3)(c) in force at 17.6.1992 by [S.I. 1992/1431](#), art. 2, [Sch.](#); s. 3 in force in so far as not already in force at 5.4.1993 by [S.I. 1992/2644](#), art. 2

#### Marginal Citations

- M1** 1989 c. 41.

## 4 Child support maintenance.

- (1) A person who is, in relation to any qualifying child or any qualifying children, either the person with care or the [<sup>F1</sup>non-resident parent] may apply to the Secretary of State for a [<sup>F2</sup>maintenance calculation] to be made under this Act with respect to that child, or any of those children.
- (2) Where a [<sup>F2</sup>maintenance calculation] has been made in response to an application under this section the Secretary of State may, if the person with care or [<sup>F1</sup>non-resident parent] with respect to whom the [<sup>F3</sup>calculation] was made applies to him under this subsection, arrange for—
  - (a) the collection of the child support maintenance payable in accordance with the [<sup>F3</sup>calculation];
  - (b) the enforcement of the obligation to pay child support maintenance in accordance with the [<sup>F3</sup>calculation].
- (3) Where an application under subsection (2) for the enforcement of the obligation mentioned in subsection (2)(b) authorises the Secretary of State to take steps to enforce that obligation whenever he considers it necessary to do so, the Secretary of State may act accordingly.
- (4) A person who applies to the Secretary of State under this section shall, so far as that person reasonably can, comply with such regulations as may be made by the Secretary of State with a view to the Secretary of State <sup>F6</sup>... being provided with the information which is required to enable—

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- (a) the [<sup>F1</sup>non-resident parent] to be [<sup>F7</sup>identified or] traced (where that is necessary);
  - (b) the amount of child support maintenance payable by the [<sup>F1</sup>non-resident parent] to be assessed; and
  - (c) that amount to be recovered from the [<sup>F1</sup>non-resident parent].
- (5) Any person who has applied to the Secretary of State under this section may at any time request him to cease acting under this section.
- (6) It shall be the duty of the Secretary of State to comply with any request made under subsection (5) (but subject to any regulations made under subsection (8)).
- (7) The obligation to provide information which is imposed by subsection (4)—
- (a) shall not apply in such circumstances as may be prescribed; and
  - (b) may, in such circumstances as may be prescribed, be waived by the Secretary of State.
- (8) The Secretary of State may by regulations make such incidental, supplemental or transitional provision as he thinks appropriate with respect to cases in which he is requested to cease to act under this section.
- (9) No application may be made under this section if there is in force with respect to the person with care and [<sup>F1</sup>non-resident parent] in question a [<sup>F2</sup>maintenance calculation] made in response to an application [<sup>F8</sup>treated as made] under section 6.
- [<sup>F9</sup>(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 [<sup>F10</sup>made before a prescribed date], in respect of that child or those children and the person who is, at that time, the [<sup>F1</sup>non-resident parent]; or
  - [<sup>F11</sup>(aa) a maintenance order made on or after the date prescribed for the purposes of paragraph (a) is in force in respect of them, but has been so for less than the period of one year beginning with the date on which it was made; 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).]

### Textual Amendments

- F1** 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.
- F2** Words in Act substituted (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 1(2)(a)**, 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2003/192, art. 3, Sch.
- F3** 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.
- F6** Words in s. 4(4) repealed (1.6.1999) by Social Security Act 1998 (c. 14), s. 87(2), Sch. 7 para. 19, **Sch. 8**; S.I. 1999/1510, art. 2(f)(iii)(g)(iii)
- F7** Words in s. 4(4)(a) inserted (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(3)(a)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

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- F8** Words in s. 4(9) inserted (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(3)(b)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F9** S. 4(10)(11) inserted (4.9.1995) by [Child Support Act 1995 \(c. 34\)](#), **ss. 18(1)**, 30(4); S.I. 1995/2302, art. 2, Sch. Pt. 1
- F10** Words in s. 4(10)(a) inserted (4.2.2003 for specified purposes, 3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 2(2)**, 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2003/192, arts. 2(a), 3, Sch.
- F11** S. 4(10)(aa) inserted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 2(3)**, 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2003/192, art. 3, Sch.

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

- C5** S. 4(6) modified (5.4.1993) by [The Child Support \(Maintenance Assessment Procedure\) Regulations 1992 \(S.I. 1992/1813\)](#), **reg. 52(8)**
- C6** S. 4(10): power to exclude conferred (4.9.1995) by [Child Support Act 1995 \(c. 34\)](#), **ss. 18(7)**, 30(4); S.I. 1995/2302, art. 2, Sch. Pt. 1

#### Commencement Information

- I2** S. 4 wholly in force; s. 4 not in force at Royal Assent see s. 58(2); s. 4(4)(7)(8) in force at 17.6.1992 by S.I. 1992/1431, art. 2, **Sch.**; s. 4 in force in so far as not already in force at 5.4.1993 by S.I. 1992/2644, art. 2

## 5 Child support maintenance: supplemental provisions.

- (1) Where—
- there is more than one person with care of a qualifying child; and
  - one or more, but not all, of them have parental responsibility for <sup>F12</sup>... the child; no application may be made for a [<sup>F2</sup>maintenance calculation] with respect to the child by any of those persons who do not have parental responsibility for <sup>F12</sup>... the child.
- (2) Where more than one application for a [<sup>F2</sup>maintenance calculation] is made with respect to the child concerned, only one of them may be proceeded with.
- (3) The Secretary of State may by regulations make provision as to which of two or more applications for a [<sup>F2</sup>maintenance calculation] with respect to the same child is to be proceeded with.

#### Textual Amendments

- F2** Words in Act substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 1(2)(a)**, 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2003/192, art. 3, Sch.
- F12** Words in s. 5(1) repealed (1.11.1996) by [Children \(Scotland\) Act 1995 \(c. 36\)](#), s. 105(1)(b), Sch. 4 para. 52(3), **Sch. 5**; S.I. 1996/2203, art. 3(3), Sch. (with arts. 4-7)

#### Commencement Information

- I3** S. 5 wholly in force; s. 5 not in force at Royal Assent see s. 58(2); S. 5(3) in force at 17.6.1992 by S.I. 1992/1431, art. 2, **Sch.**; s. 5 in force in so far as not already in force at 5.4.1993 by S.I. 1992/2644, art. 2

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**[<sup>F13</sup>6 Applications by those claiming or receiving benefit.**

- (1) This section applies where income support, an income-based jobseeker's allowance or any other benefit of a prescribed kind is claimed by or in respect of, or paid to or in respect of, the parent of a qualifying child who is also a person with care of the child.
- (2) In this section, that person is referred to as "the parent".
- (3) The Secretary of State may—
  - (a) treat the parent as having applied for a maintenance calculation with respect to the qualifying child and all other children of the non-resident parent in relation to whom the parent is also a person with care; and
  - (b) take action under this Act to recover from the non-resident parent, on the parent's behalf, the child support maintenance so determined.
- (4) Before doing what is mentioned in subsection (3), the Secretary of State must notify the parent in writing of the effect of subsections (3) and (5) and section 46.
- (5) The Secretary of State may not act under subsection (3) if the parent asks him not to (a request which need not be in writing).
- (6) Subsection (1) has effect regardless of whether any of the benefits mentioned there is payable with respect to any qualifying child.
- (7) Unless she has made a request under subsection (5), the parent shall, so far as she reasonably can, comply with such regulations as may be made by the Secretary of State with a view to the Secretary of State's being provided with the information which is required to enable—
  - (a) the non-resident parent to be identified or traced;
  - (b) the amount of child support maintenance payable by him to be calculated; and
  - (c) that amount to be recovered from him.
- (8) The obligation to provide information which is imposed by subsection (7)—
  - (a) does not apply in such circumstances as may be prescribed; and
  - (b) may, in such circumstances as may be prescribed, be waived by the Secretary of State.
- (9) If the parent ceases to fall within subsection (1), she may ask the Secretary of State to cease acting under this section, but until then he may continue to do so.
- (10) The Secretary of State must comply with any request under subsection (9) (but subject to any regulations made under subsection (11)).
- (11) The Secretary of State may by regulations make such incidental or transitional provision as he thinks appropriate with respect to cases in which he is asked under subsection (9) to cease to act under this section.
- (12) The fact that a maintenance calculation is in force with respect to a person with care does not prevent the making of a new maintenance calculation with respect to her as a result of the Secretary of State's acting under subsection (3).]

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### Textual Amendments

**F13** S. 6 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. 3, 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2000/2994, art. 2, Sch. Pt. 1; S.I. 2003/192, art. 4

## 7 **Right of child in Scotland to apply for [F<sup>3</sup> calculation].**

- (1) A qualifying child who has attained the age of 12 years and who is habitually resident in Scotland may apply to the Secretary of State for a [F<sup>2</sup> maintenance calculation] to be made with respect to him if—
  - (a) no such application has been made by a person who is, with respect to that child, a person with care or [F<sup>1</sup> a non-resident parent]; or
  - [F<sup>14</sup>(b) no parent has been treated under section 6(3) as having applied for a maintenance calculation with respect to the child.]
- (2) An application made under subsection (1) shall authorise the Secretary of State to make a [F<sup>2</sup> maintenance calculation] with respect to any other children of the [F<sup>1</sup> non-resident parent] who are qualifying children in the care of the same person as the child making the application.
- (3) Where a [F<sup>2</sup> maintenance calculation] has been made in response to an application under this section the Secretary of State may, if the person with care, the [F<sup>1</sup> non-resident parent] with respect to whom the [F<sup>3</sup> calculation] was made or the child concerned applies to him under this subsection, arrange for—
  - (a) the collection of the child support maintenance payable in accordance with the [F<sup>3</sup> calculation];
  - (b) the enforcement of the obligation to pay child support maintenance in accordance with the [F<sup>3</sup> calculation].
- (4) Where an application under subsection (3) for the enforcement of the obligation mentioned in subsection (3)(b) authorises the Secretary of State to take steps to enforce that obligation whenever he considers it necessary to do so, the Secretary of State may act accordingly.
- (5) Where a child has asked the Secretary of State to proceed under this section, the person with care of the child, the [F<sup>1</sup> non-resident parent] and the child concerned shall, so far as they reasonably can, comply with such regulations as may be made by the Secretary of State with a view to the Secretary of State [F<sup>15</sup>... being provided with the information which is required to enable—
  - (a) the [F<sup>1</sup> non-resident parent] to be traced (where that is necessary);
  - (b) the amount of child support maintenance payable by the [F<sup>1</sup> non-resident parent] to be assessed; and
  - (c) that amount to be recovered from the [F<sup>1</sup> non-resident parent].
- (6) The child who has made the application (but not the person having care of him) may at any time request the Secretary of State to cease acting under this section.
- (7) It shall be the duty of the Secretary of State to comply with any request made under subsection (6) (but subject to any regulations made under subsection (9)).
- (8) The obligation to provide information which is imposed by subsection (5)—



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- (a) shall not apply in such circumstances as may be prescribed by the Secretary of State; and
  - (b) may, in such circumstances as may be so prescribed, be waived by the Secretary of State.
- (9) The Secretary of State may by regulations make such incidental, supplemental or transitional provision as he thinks appropriate with respect to cases in which he is requested to cease to act under this section.

[<sup>F16</sup>(10) No application may be made at any time under this section by a qualifying child if

- [<sup>F17</sup>(a)] there is in force a written maintenance agreement made before 5th April 1993, or a maintenance order [<sup>F18</sup>made before a prescribed date], in respect of that child and the person who is, at that time, the [<sup>F1</sup>non-resident parent][<sup>F19</sup>or
- (b) a maintenance order made on or after the date prescribed for the purposes of paragraph (a) is in force in respect of them, but has been so for less than the period of one year beginning with the date on which it was made.]]

#### Textual Amendments

- F1** 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.
- F2** Words in Act substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 1(2)(a)**, 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2003/192, art. 3, Sch.
- F3** 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.
- F14** S. 7(1)(b) substituted (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(4)(a)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F15** Words in s. 7(5) repealed (1.6.1999) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), Sch. 7 para. 21, **Sch. 8**; S.I. 1999/1510, art. 2(f)(iii)(g)(iii)
- F16** S. 7(10) inserted (4.9.1995) by [Child Support Act 1995 \(c. 34\)](#), **ss. 18(2)**, 30(4); S.I. 1995/2302, art. 2, Sch. Pt. 1
- F17** Word in s. 7(10) inserted (4.2.2003 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(4)(b)(i)** (with s. 83(6)); S.I. 2003/192, arts. 2(b), 3, Sch.
- F18** Words in s. 7(10) inserted (4.2.2003 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(4)(b)(ii)** (with s. 83(6)); S.I. 2003/192, arts. 2(b), 3, Sch.
- F19** S. 7(10)(b) and preceding word inserted (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(4)(b)(iii)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

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

- C7** S. 7(10): power to exclude conferred (4.9.1995) by [Child Support Act 1995 \(c. 34\)](#), **ss. 18(7)**, 30(4); S.I. 1995/2302, art. 2, Sch. Pt. 1

#### Commencement Information

- I4** S. 7 wholly in force; s. 7 not in force at Royal Assent see s. 58(2); s. 7(5)(8)(9) in force at 17.6.1992 by S.I. 1992/1431, art. 2, **Sch.**; s. 7 in force in so far as not already in force at 5.4.1993 by S.I. 1992/2644, art. 2



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## 8 Role of the courts with respect to maintenance for children.

- (1) This subsection applies in any case where [<sup>F20</sup>the Secretary of State] would have jurisdiction to make a [<sup>F2</sup>maintenance calculation] with respect to a qualifying child and [<sup>F1</sup>a non-resident parent] of his on an application duly made [<sup>F21</sup>(or treated as made)] by a person entitled to apply for such [<sup>F3</sup>a calculation] with respect to that child.
- (2) Subsection (1) applies even though the circumstances of the case are such that [<sup>F20</sup>the Secretary of State] would not make [<sup>F3</sup>a calculation] if it were applied for.
- (3) [<sup>F22</sup>Except as provided in subsection (3A),] in any case where subsection (1) applies, no court shall exercise any power which it would otherwise have to make, vary or revive any maintenance order in relation to the child and [<sup>F1</sup>non-resident parent] concerned.
- [<sup>F23</sup>(3A) Unless a maintenance calculation has been made with respect to the child concerned, subsection (3) does not prevent a court from varying a maintenance order in relation to that child and the non-resident parent concerned—
  - (a) if the maintenance order was made on or after the date prescribed for the purposes of section 4(10)(a) or 7(10)(a); or
  - (b) where the order was made before then, in any case in which section 4(10) or 7(10) prevents the making of an application for a maintenance calculation with respect to or by that child.]
- (4) Subsection (3) does not prevent a court from revoking a maintenance order.
- (5) The Lord Chancellor or in relation to Scotland the Lord Advocate may by order provide that, in such circumstances as may be specified by the order, this section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—
  - (a) a written agreement (whether or not enforceable) provides for the making, or securing, by [<sup>F1</sup>a non-resident parent] of the child of periodical payments to or for the benefit of the child; and
  - (b) the maintenance order which the court makes is, in all material respects, in the same terms as that agreement.
- [<sup>F24</sup>(5A) The Lord Chancellor may make an order under subsection (5) only with the concurrence of the Lord Chief Justice.]
- (6) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—
  - (a) a [<sup>F2</sup>maintenance calculation] is in force with respect to the child;
  - [<sup>F25</sup>(b) the non-resident parent's net weekly income exceeds the figure referred to in paragraph 10(3) of Schedule 1 (as it has effect from time to time pursuant to regulations made under paragraph 10A(1)(b)); and]
  - (c) the court is satisfied that the circumstances of the case make it appropriate for the [<sup>F1</sup>non-resident parent] to make or secure the making of periodical payments under a maintenance order in addition to the child support maintenance payable by him in accordance with the [<sup>F2</sup>maintenance calculation].
- (7) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

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- (a) the child is, will be or (if the order were to be made) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation (whether or not while in gainful employment); and
  - (b) the order is made solely for the purposes of requiring the person making or securing the making of periodical payments fixed by the order to meet some or all of the expenses incurred in connection with the provision of the instruction or training.
- (8) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—
- (a) a disability living allowance is paid to or in respect of him; or
  - (b) no such allowance is paid but he is disabled,
- and the order is made solely for the purpose of requiring the person making or securing the making of periodical payments fixed by the order to meet some or all of any expenses attributable to the child's disability.
- (9) For the purposes of subsection (8), a child is disabled if he is blind, deaf or dumb or is substantially and permanently handicapped by illness, injury, mental disorder or congenital deformity or such other disability as may be prescribed.
- (10) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if the order is made against a person with care of the child.
- (11) In this Act “maintenance order”, in relation to any child, means an order which requires the making or securing of periodical payments to or for the benefit of the child and which is made under—
- (a) Part II of the <sup>M2</sup>Matrimonial Causes Act 1973;
  - (b) the <sup>M3</sup>Domestic Proceedings and Magistrates' Courts Act 1978;
  - (c) Part III of the <sup>M4</sup>Matrimonial and Family Proceedings Act 1984;
  - (d) the <sup>M5</sup>Family Law (Scotland) Act 1985;
  - (e) Schedule 1 to the <sup>M6</sup>Children Act 1989; <sup>F26</sup> ...
  - <sup>F27</sup>(ea) Schedule 5, 6 or 7 to the Civil Partnership Act 2004; or]
  - (f) any other prescribed enactment,
- and includes any order varying or reviving such an order.
- <sup>F28</sup>(12) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]

#### Textual Amendments

- F1** 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.
- F2** Words in Act substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [ss. 1\(2\)\(a\)](#), 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2003/192, art. 3, Sch.
- F3** 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.
- F20** Words in s. 8(1)(2) substituted (1.6.1999) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), [Sch. 7 para. 22](#); S.I. 1999/1510, art. 2(g)(iii)

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- F21** Words in s. 8(1) inserted (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(5)(a)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F22** Words in s. 8(3) inserted (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(5)(b)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F23** S. 8(3A) substituted (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(5)(c)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F24** S. 8(5A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 219(2)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(u)
- F25** S. 8(6)(b) substituted (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(5)(d)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F26** Word in s. 8(11)(e) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b)(d), **Sch. 30**; S.I. 2005/3175, art. 2(6)
- F27** S. 8(11)(ea) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 1**; S.I. 2005/3175, art. 2(1), Sch. 1
- F28** S. 8(12) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 4 para. 219(3)**; S.I. 2006/1014, art. 2(a), Sch. 1 para. 11(u)

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

- C8** S. 8 restricted (5.4.1993) by The Child Maintenance (Written Agreements) Order 1993 (S.I. 1993/620), **art.2**
- C9** S. 8 amended (5.4.1993) by The Child Support (Northern Ireland Reciprocal Arrangements) Regulations 1993 (S.I. 1993/584), reg. 2(2), **Sch.2**
- C10** S. 8 restricted (2.1.1998) by The Child Support (Written Agreements) (Scotland) Order 1997 (S.I. 1997/2943), arts. 1, 2
- C11** S. 8(3) modified (31.3.1993) by The Child Support Act 1991 (Commencement No.3 and Transitional Provisions) Order 1992 (S.I. 1992/2644), **Sch. Pt. I para. 5(1)** (as substituted (31.3.1993) by S.I. 1993/966, **art. 2(1)**)
- C12** S. 8(3) excluded (31.3.1993) by The Child Support Act 1991 (Commencement No.3 and Transitional Provisions) Order 1992 (S.I. 1992/2644), **Sch. Pt. I para. 5(2)** (as substituted (31.3.1993) by S.I. 1993/966, **art. 2(1)**)
- C13** S. 8(3) restricted (4.9.1995) by Child Support Act 1995 (c. 34), **ss. 18(9)**, 30(4); S.I. 1995/2302, art. 2, Sch. Pt. 1

#### Commencement Information

- I5** S. 8 wholly in force; s. 8 not in force at Royal Assent see s. 58(2); s. 8(5)(9)(11)(f) in force at 17.6.1992 by S.I. 1992/1431, **art. 2, Sch.**; s. 8 in force in so far as not already in force at 5.4.1993 by S.I. 1992/2644, **art. 2**

#### Marginal Citations

- M2** 1973 c. 18.  
**M3** 1978 c. 22.  
**M4** 1984 c. 42.  
**M5** 1985 c. 37.  
**M6** 1989 c. 41.

## 9 Agreements about maintenance.

- (1) In this section “maintenance agreement” means any agreement for the making, or for securing the making, of periodical payments by way of maintenance, or in Scotland aliment, to or for the benefit of any child.

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- (2) Nothing in this Act shall be taken to prevent any person from entering into a maintenance agreement.
- (3) [<sup>F29</sup>Subject to section 4(10)(a) and section 7(10),] the existence of a maintenance agreement shall not prevent any party to the agreement, or any other person, from applying for a [<sup>F2</sup>maintenance calculation] with respect to any child to or for whose benefit periodical payments are to be made or secured under the agreement.
- (4) Where any agreement contains a provision which purports to restrict the right of any person to apply for a [<sup>F2</sup>maintenance calculation], that provision shall be void.
- (5) Where section 8 would prevent any court from making a maintenance order in relation to a child and [<sup>F1</sup>a non-resident parent] of his, no court shall exercise any power that it has to vary any agreement so as—
- (a) to insert a provision requiring that [<sup>F1</sup>non-resident parent] to make or secure the making of periodical payments by way of maintenance, or in Scotland aliment, to or for the benefit of that child; or
  - (b) to increase the amount payable under such a provision.
- [<sup>F30</sup>(6) In any case in which section 4(10) or 7(10) prevents the making of an application for a [<sup>F2</sup>maintenance calculation], and—
- [<sup>F31</sup>(a) no parent has been treated under section 6(3) as having applied for a maintenance calculation with respect to the child; or]
  - [<sup>F31</sup>(b) a parent has been so treated but no maintenance calculation has been made,] subsection (5) shall have effect with the omission of paragraph (b).]

#### Textual Amendments

- F1** 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.
- F2** Words in Act substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 1(2)(a)**, 86(1)(a)(2) (with ss. 28, 83(6)); S.I. 2003/192, art. 3, Sch.
- F29** Words in s. 9(3) inserted (4.9.1995) by [Child Support Act 1995 \(c. 34\)](#), **ss. 18(4)**, 30(4); S.I. 1995/2302, art. 2, Sch. Pt. 1
- F30** S. 9(6) inserted (4.9.1995) by [Child Support Act 1995 \(c. 34\)](#), **ss. 18(4)**, 30(4); S.I. 1995/2302, art. 2, Sch. Pt. 1
- F31** S. 9(6)(a)(b) substituted (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(6)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

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

- C14** S. 9 amended (5.4.1993) by [The Child Support \(Northern Ireland Reciprocal Arrangements\) Regulations 1993 \(S.I. 1993/584\)](#), reg. 2(2), **Sch. 2**
- C15** S. 9(3) excluded (31.3.1993) by [The Child Support Act 1991 \(Commencement No.3 and Transitional Provisions\) Order 1992 \(S.I. 1992/2644\)](#), **Sch. Pt. I para. 5(1)** (as substituted (31.3.1993) by S.I. 1993/966, **art. 2(1)**)
- C16** S. 9(5) modified (31.3.1993) by [The Child Support Act 1991 \(Commencement No.3 and Transitional Provisions\) Order 1992 \(S.I. 1992/2644\)](#), **Sch. Pt. I para. 5(1)** (as substituted (31.3.1993) by S.I. 1993/966, **art. 2(1)**)
- C17** S. 9(5)(b) excluded (31.3.1993) by [The Child Support Act 1991 \(Commencement No.3 and Transitional Provisions\) Order 1992 \(S.I. 1992/2644\)](#), **Sch. Pt. I para. 5(2)** (as substituted (31.3.1993) by S.I. 1993/966, **art. 2(1)**)

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**C18** S. 9(5)(b) restricted (4.9.1995) by [Child Support Act 1995 \(c. 34\)](#), **ss. 18(9)**, 30(4); S.I. 1995/2302, art. 2, Sch. Pt. 1

## **10 Relationship between maintenance [<sup>F3</sup>calculations] and certain court orders and related matters.**

- (1) Where an order of a kind prescribed for the purposes of this subsection is in force with respect to any qualifying child with respect to whom a [<sup>F2</sup>maintenance calculation] is made, the order—
  - (a) shall, so far as it relates to the making or securing of periodical payments, cease to have effect to such extent as may be determined in accordance with regulations made by the Secretary of State; or
  - (b) where the regulations so provide, shall, so far as it so relates, have effect subject to such modifications as may be so determined.
- (2) Where an agreement of a kind prescribed for the purposes of this subsection is in force with respect to any qualifying child with respect to whom a [<sup>F2</sup>maintenance calculation] is made, the agreement—
  - (a) shall, so far as it relates to the making or securing of periodical payments, be unenforceable to such extent as may be determined in accordance with regulations made by the Secretary of State; or
  - (b) where the regulations so provide, shall, so far as it so relates, have effect subject to such modifications as may be so determined.
- (3) Any regulations under this section may, in particular, make such provision with respect to—
  - (a) any case where any person with respect to whom an order or agreement of a kind prescribed for the purposes of subsection (1) or (2) has effect applies to the prescribed court, before the end of the prescribed period, for the order or agreement to be varied in the light of the [<sup>F2</sup>maintenance calculation] and of the provisions of this Act;
  - (b) the recovery of any arrears under the order or agreement which fell due before the coming into force of the [<sup>F2</sup>maintenance calculation],  
as the Secretary of State considers appropriate and may provide that, in prescribed circumstances, an application to any court which is made with respect to an order of a prescribed kind relating to the making or securing of periodical payments to or for the benefit of a child shall be treated by the court as an application for the order to be revoked.
- (4) The Secretary of State may by regulations make provision for—
  - (a) notification to be given by [<sup>F32</sup>the Secretary of State] to the prescribed person in any case where [<sup>F33</sup>he] considers that the making of a [<sup>F2</sup>maintenance calculation] has affected, or is likely to affect, any order of a kind prescribed for the purposes of this subsection;
  - (b) notification to be given by the prescribed person to the Secretary of State in any case where a court makes an order which it considers has affected, or is likely to affect, a [<sup>F2</sup>maintenance calculation].
- (5) Rules may be made under section 144 of the <sup>M7</sup>Magistrates' Courts Act 1980 (rules of procedure) requiring any person who, in prescribed circumstances, makes an application to a magistrates' court for a maintenance order to furnish the court with a statement in a prescribed form, and signed by [<sup>F34</sup>an officer of the Secretary of State],

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as to whether or not, at the time when the statement is made, there is a [<sup>F2</sup>maintenance calculation] in force with respect to that person or the child concerned.

In this subsection—

“maintenance order” means an order of a prescribed kind for the making or securing of periodical payments to or for the benefit of a child; and  
“prescribed” means prescribed by the rules.

#### Textual Amendments

- F2** Words in Act substituted (3.3.2003 for specified purposes) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), [ss. 1\(2\)\(a\)](#), [86\(1\)\(a\)\(2\)](#) (with [ss. 28, 83\(6\)](#)); S.I. 2003/192, art. 3, Sch.
- F3** 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.
- F32** Words in s. 10(4) substituted (1.6.1999) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), [Sch. 7 para. 23\(1\)\(a\)](#); S.I. 1999/1510, art. 2(g)(iii)
- F33** Word in s. 10(4) substituted (1.6.1999) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), [Sch. 7 para. 23\(1\)\(b\)](#); S.I. 1999/1510, art. 2(g)(iii)
- F34** Words in s. 10(5) substituted (1.6.1999) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), [Sch. 7 para. 23\(2\)](#); S.I. 1999/1510, art. 2(g)(iii)

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

- C19** S. 10 amended (5.4.1993) by [The Child Support \(Northern Ireland Reciprocal Arrangements\) Regulations 1993 \(S.I. 1993/584\)](#), reg. 2(2), [Sch.2](#)

#### Marginal Citations

- M7** 1980 c. 43.

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