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## SCHEDULES

### SCHEDULE 1

Section 11.

#### MAINTENANCE ASSESSMENTS

#### PART I

#### CALCULATION OF CHILD SUPPORT MAINTENANCE

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

- C1** Sch. 1 Pt. 1 excluded by [The Child Support \(Maintenance Assessment Procedure\) Regulations 1992 \(S.I. 1992/1813\)](#), **reg. 8A** (as substituted (22.1.1996) by [S.I. 1995/3261](#), **regs. 1(2), 16**)

#### *The maintenance requirement*

- 1 (1) In this Schedule “the maintenance requirement” means the amount, calculated in accordance with the formula set out in sub-paragraph (2), which is to be taken as the minimum amount necessary for the maintenance of the qualifying child or, where there is more than one qualifying child, all of them.
- (2) The formula is—
- where—
- MR is the amount of the maintenance requirement;
- AG is the aggregate of the amounts to be taken into account under sub-paragraph (3); and
- CB is the amount payable by way of child benefit (or which would be so payable if the person with care of the qualifying child were an individual) or, where there is more than one qualifying child, the aggregate of the amounts so payable with respect to each of them.
- (3) The amounts to be taken into account for the purpose of calculating AG are—
- (a) such amount or amounts (if any), with respect to each qualifying child, as may be prescribed;
- (b) such amount or amounts (if any), with respect to the person with care of the qualifying child or qualifying children, as may be prescribed; and
- (c) such further amount or amounts (if any) as may be prescribed.
- (4) For the purposes of calculating CB it shall be assumed that child benefit is payable with respect to any qualifying child at the basic rate.
- (5) In sub-paragraph (4) “basic rate” has the meaning for the time being prescribed.

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**Commencement Information**

- II** Sch. 1 para. 1 wholly in force; para. 1 not in force at Royal Assent see s. 58(2); para. 1(3)(5) in force at 17.6.1992 by [S.I. 1992/1431](#), [art. 2](#), [Sch.](#); para. 1 in force in so far as not already in force at 5.4.1993 by [S.I. 1992/2644](#), [art. 2](#)

*The general rule*

- 2 (1) In order to determine the amount of any maintenance assessment, first calculate—  

$$(A + C) \times P$$

where—

A is the absent parent's assessable income;

C is the assessable income of the other parent, where that parent is the person with care, and otherwise has such value (if any) as may be prescribed; and

P is such number greater than zero but less than 1 as may be prescribed.

- (2) Where the result of the calculation made under sub-paragraph (1) is an amount which is equal to, or less than, the amount of the maintenance requirement for the qualifying child or qualifying children, the amount of maintenance payable by the absent parent for that child or those children shall be an amount equal to—

$$A \times P$$

where A and P have the same values as in the calculation made under sub-paragraph (1)

- (3) Where the result of the calculation made under sub-paragraph (1) is an amount which exceeds the amount of the maintenance requirement for the qualifying child or qualifying children, the amount of maintenance payable by the absent parent for that child or those children shall consist of—

- (a) a basic element calculated in accordance with the provisions of paragraph 3; and  
 (b) an additional element calculated in accordance with the provisions of paragraph 4.

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

- C2** Sch. 1 para. 2(1) modified (5.4.1993) by [S.I. 1992/1815](#), [reg. 23\(4\)](#)

**Commencement Information**

- I2** Sch. 1 para. 2 wholly in force; para. 2 not in force at Royal Assent see s. 58(2); para. 2(1) in force at 17.6.1992 by [S.I. 1992/1431](#), [art. 2](#), [Sch.](#); para. 2 in force in so far as not already in force at 5.4.1993 by [S.I. 1992/2644](#), [art. 2](#).

*The basic element*

- 3 (1) The basic element shall be calculated by applying the formula—

where—

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BE is the amount of the basic element;  
A and P have the same values as in the calculation made under paragraph 2(1);  
and  
G has the value determined under sub-paragraph (2).

(2) The value of G shall be determined by applying the formula—

$$G = \frac{MR}{(A + C) \times P}$$

where—

MR is the amount of the maintenance requirement for the qualifying child or qualifying children; and  
A, C and P have the same values as in the calculation made under paragraph 2(1).

*The additional element*

4 (1) Subject to sub-paragraph (2), the additional element shall be calculated by applying the formula—

$$AE = (1 - G) \times A \times R$$

where—

AE is the amount of the additional element;  
A has the same value as in the calculation made under paragraph 2(1);  
G has the value determined under paragraph 3(2); and  
R is such number greater than zero but less than 1 as may be prescribed.

(2) Where applying the alternative formula set out in sub-paragraph (3) would result in a lower amount for the additional element, that formula shall be applied in place of the formula set out in sub-paragraph (1).

(3) The alternative formula is—

$$AE = Z \times Q \times \left( \frac{A}{A + C} \right)$$

where—

A and C have the same values as in the calculation made under paragraph 2(1);  
Z is such number as may be prescribed; and  
Q is the aggregate of—

- (a) any amount taken into account by virtue of paragraph 1(3)(a) in calculating the maintenance requirement; and
- (b) any amount which is both taken into account by virtue of paragraph 1(3)(c) in making that calculation and is an amount prescribed for the purposes of this paragraph.

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### Commencement Information

- I3** Sch. 1 para. 4 wholly in force; para. 4 not in force at Royal Assent see s. 58(2); para. 4(1)(3) in force at 17.6.1992 by S.I. 1992/1431, art. 2, Sch.; para. 4 in force in so far as not already in force at 5.4.1993 by S.I. 1992/2644, art. 2

### *Assessable income*

- 5 (1) The assessable income of an absent parent shall be calculated by applying the formula—

where—

A is the amount of that parent's assessable income;

N is the amount of that parent's net income, calculated or estimated in accordance with regulations made by the Secretary of State for the purposes of this sub-paragraph; and

E is the amount of that parent's exempt income, calculated or estimated in accordance with regulations made by the Secretary of State for those purposes.

- (2) The assessable income of a parent who is a person with care of the qualifying child or children shall be calculated by applying the formula—

where—

C is the amount of that parent's assessable income;

M is the amount of that parent's net income, calculated or estimated in accordance with regulations made by the Secretary of State for the purposes of this sub-paragraph; and

F is the amount of that parent's exempt income, calculated or estimated in accordance with regulations made by the Secretary of State for those purposes.

- (3) Where the preceding provisions of this paragraph would otherwise result in a person's assessable income being taken to be a negative amount his assessable income shall be taken to be nil.

- (4) Where income support<sup>F1</sup>, an income-based jobseeker's allowance] or any other benefit of a prescribed kind is paid to or in respect of a parent who is an absent parent or a person with care that parent shall, for the purposes of this Schedule, be taken to have no assessable income.

### Textual Amendments

- F1** Words in Sch. 1 para. 5(4) inserted (7.10.1996) by Jobseekers Act 1995 (c. 18), s. 41(2), Sch. 2 para. 20(7); S.I. 1996/2208, art. 2(b)

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#### **Commencement Information**

- 14** Sch. 1 para. 5 wholly in force; para. 5 not in force at Royal Assent see s. 58(2); para. 5(1)(2)(4) in force at 17.6.1992 by S.I. 1992/1431, art. 2, Sch.; para. 5 in force in so far as not already in force at 5.4.1993 by S.I. 1992/2644, art. 2

#### *Protected income*

- 6 (1) This paragraph applies where—
- (a) one or more maintenance assessments have been made with respect to an absent parent; and
  - (b) payment by him of the amount, or the aggregate of the amounts, so assessed would otherwise reduce his disposable income below his protected income level.
- (2) The amount of the assessment, or (as the case may be) of each assessment, shall be adjusted in accordance with such provisions as may be prescribed with a view to securing so far as is reasonably practicable that payment by the absent parent of the amount, or (as the case may be) aggregate of the amounts, so assessed will not reduce his disposable income below his protected income level.
- (3) Regulations made under sub-paragraph (2) shall secure that, where the prescribed minimum amount fixed by regulations made under paragraph 7 applies, no maintenance assessment is adjusted so as to provide for the amount payable by an absent parent in accordance with that assessment to be less than that amount.
- (4) The amount which is to be taken for the purposes of this paragraph as an absent parent's disposable income shall be calculated, or estimated, in accordance with regulations made by the Secretary of State.
- (5) Regulations made under sub-paragraph (4) may, in particular, provide that, in such circumstances and to such extent as may be prescribed—
- (a) income of any child who is living in the same household with the absent parent; and
  - (b) where the absent parent is living together in the same household with another adult of the opposite sex (regardless of whether or not they are married), income of that other adult,
- is to be treated as the absent parent's income for the purposes of calculating his disposable income.
- (6) In this paragraph the “protected income level” of a particular absent parent means an amount of income calculated, by reference to the circumstances of that parent, in accordance with regulations made by the Secretary of State.

#### **Commencement Information**

- 15** Sch. 1 para. 6 wholly in force; para. 6 not in force at Royal Assent see s. 58(2); para. 6(2)-(6) in force at 17.6.1992 by S.I. 1992/1431, art. 2, Sch.; para. 6 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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*The minimum amount of child support maintenance*

- 7 (1) The Secretary of State may prescribe a minimum amount for the purposes of this paragraph.
- (2) Where the amount of child support maintenance which would be fixed by a maintenance assessment but for this paragraph is nil, or less than the prescribed minimum amount, the amount to be fixed by the assessment shall be the prescribed minimum amount.
- (3) In any case to which section 43 applies, and in such other cases (if any) as may be prescribed, sub-paragraph (2) shall not apply.

*Housing costs*

- 8 Where regulations under this Schedule require a child support officer to take account of the housing costs of any person in calculating, or estimating, his assessable income or disposable income, those regulations may make provision—
- (a) as to the costs which are to be treated as housing costs for the purpose of the regulations;
  - (b) for the apportionment of housing costs; and
  - (c) for the amount of housing costs to be taken into account for prescribed purposes not to exceed such amount (if any) as may be prescribed by, or determined in accordance with, the regulations.

*Regulations about income and capital*

- 9 The Secretary of State may by regulations provide that, in such circumstances and to such extent as may be prescribed—
- (a) income of a child shall be treated as income of a parent of his;
  - (b) where the child support officer concerned is satisfied that a person has intentionally deprived himself of a source of income with a view to reducing the amount of his assessable income, his net income shall be taken to include income from that source of an amount estimated by the child support officer;
  - (c) a person is to be treated as possessing capital or income which he does not possess;
  - (d) capital or income which a person does possess is to be disregarded;
  - (e) income is to be treated as capital;
  - (f) capital is to be treated as income.

*References to qualifying children*

- 10 References in this Part of this Schedule to “qualifying children” are to those qualifying children with respect to whom the maintenance assessment falls to be made.

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## PART II

### GENERAL PROVISIONS ABOUT MAINTENANCE ASSESSMENTS

#### *Effective date of assessment*

- 11 (1) A maintenance assessment shall take effect on such date as may be determined in accordance with regulations made by the Secretary of State.
- (2) That date may be earlier than the date on which the assessment is made.

#### *Form of assessment*

- 12 Every maintenance assessment shall be made in such form and contain such information as the Secretary of State may direct.

#### *Assessments where amount of child support is nil*

- 13 A child support officer shall not decline to make a maintenance assessment only on the ground that the amount of the assessment is nil.

#### *Consolidated applications and assessments*

- 14 The Secretary of State may by regulations provide—
- (a) for two or more applications for maintenance assessments to be treated, in prescribed circumstances, as a single application; and
  - (b) for the replacement, in prescribed circumstances, of a maintenance assessment made on the application of one person by a later maintenance assessment made on the application of that or any other person.

#### *Separate assessments for different periods*

- 15 Where a child support officer is satisfied that the circumstances of a case require different amounts of child support maintenance to be assessed in respect of different periods, he may make separate maintenance assessments each expressed to have effect in relation to a different specified period.

#### *Termination of assessments*

- 16 (1) A maintenance assessment shall cease to have effect—
- (a) on the death of the absent parent, or of the person with care, with respect to whom it was made;
  - (b) on there no longer being any qualifying child with respect to whom it would have effect;
  - (c) on the absent parent with respect to whom it was made ceasing to be a parent of—
    - (i) the qualifying child with respect to whom it was made; or
    - (ii) where it was made with respect to more than one qualifying child, all of the qualifying children with respect to whom it was made;
  - (d) where the absent parent and the person with care with respect to whom it was made have been living together for a continuous period of six months;

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- (e) where a new maintenance assessment is made with respect to any qualifying child with respect to whom the assessment in question was in force immediately before the making of the new assessment.
- (2) A maintenance assessment made in response to an application under section 4 or 7 shall be cancelled by a child support officer if the person on whose application the assessment was made asks him to do so.
- (3) A maintenance assessment made in response to an application under section 6 shall be cancelled by a child support officer if—
  - (a) the person on whose application the assessment was made (“the applicant”) asks him to do so; and
  - (b) he is satisfied that the applicant has ceased to fall within subsection (1) of that section.
- (4) Where a child support officer is satisfied that the person with care with respect to whom a maintenance assessment was made has ceased to be a person with care in relation to the qualifying child, or any of the qualifying children, with respect to whom the assessment was made, he may cancel the assessment with effect from the date on which, in his opinion, the change of circumstances took place.
- [<sup>F2</sup>(4A) A maintenance assessment may be cancelled by a child support officer if he is conducting a review under section 16, 17, 18 or 19 and it appears to him—
  - (a) that the person with care with respect to whom the maintenance assessment in question was made has failed to provide him with sufficient information to enable him to complete the review; and
  - (b) where the maintenance assessment in question was made in response to an application under section 6, that the person with care with respect to whom the assessment was made has ceased to fall within subsection (1) of that section.]
- (5) Where—
  - (a) at any time a maintenance assessment is in force but a child support officer would no longer have jurisdiction to make it if it were to be applied for at that time; and
  - (b) the assessment has not been cancelled, or has not ceased to have effect, under or by virtue of any other provision made by or under this Act,
 it shall be taken to have continuing effect unless cancelled by a child support officer in accordance with such prescribed provision (including provision as to the effective date of cancellation) as the Secretary of State considers it appropriate to make.
- (6) Where both the absent parent and the person with care with respect to whom a maintenance assessment was made request a child support officer to cancel the assessment, he may do so if he is satisfied that they are living together.
- (7) Any cancellation of a maintenance assessment under sub-paragraph [<sup>F3</sup>(4A),] (5) or (6) shall have effect from such date as may be determined by the child support officer.
- (8) Where a child support officer cancels a maintenance assessment, he shall immediately notify the absent parent and person with care, so far as that is reasonably practicable.
- (9) Any notice under sub-paragraph (8) shall specify the date with effect from which the cancellation took effect.



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- (10) A person with care with respect to whom a maintenance assessment is in force shall provide the Secretary of State with such information, in such circumstances, as may be prescribed, with a view to assisting the Secretary of State or a child support officer in determining whether the assessment has ceased to have effect, or should be cancelled.
- (11) The Secretary of State may by regulations make such supplemental, incidental or transitional provision as he thinks necessary or expedient in consequence of the provisions of this paragraph.

#### Textual Amendments

- F2** Sch. 1 para. 16(4A) inserted (22.1.1996) by [Child Support Act 1995 \(c. 34\), ss. 14\(2\), 30\(4\); S.I. 1995/3262, art. 2, Sch. Pt. 2](#)
- F3** Word in Sch. 1 para. 16(7) inserted (22.1.1996) by [Child Support Act 1995 \(c. 34\), ss. 14\(3\), 30\(4\); S.I. 1995/3262, art. 2, Sch. Pt. 2](#)

#### Commencement Information

- I6** Sch. 1 para. 16 wholly in force; para. 16 not in force at Royal Assent see s. 58(2); para. 16(5)(10)(11) in force at 17.6.1992 by [S.I. 1992/1431, art. 2, Sch.](#); para. 16 in force in so far as not already in force at 5.4.1993 by [S.I. 1992/2644, art. 2](#)

## SCHEDULE 2

Section 14(4).

### PROVISION OF INFORMATION TO SECRETARY OF STATE

#### *Inland Revenue records*

- 1 (1) This paragraph applies where the Secretary of State or the Department of Health and Social Services for Northern Ireland requires information for the purpose of tracing—
- the current address of an absent parent; or
  - the current employer of an absent parent.
- (2) In such a case, no obligation as to secrecy imposed by statute or otherwise on a person employed in relation to the Inland Revenue shall prevent any information obtained or held in connection with the assessment or collection of income tax from being disclosed to—
- the Secretary of State;
  - the Department of Health and Social Services for Northern Ireland; or
  - an officer of either of them authorised to receive such information in connection with the operation of this Act or of any corresponding Northern Ireland legislation.
- (3) This paragraph extends only to disclosure by or under the authority of the Commissioners of Inland Revenue.
- (4) Information which is the subject of disclosure to any person by virtue of this paragraph shall not be further disclosed to any person except where the further disclosure is made—

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- (a) to a person to whom disclosure could be made by virtue of sub-paragraph (2);  
or
- (b) for the purposes of any proceedings (civil or criminal) in connection with the operation of this Act or of any corresponding Northern Ireland legislation.

*Local authority records*

F42 .....

**Textual Amendments**

**F4** Sch. 2 para. 2 repealed (8.9.1998) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), Sch. 7 para. 49, [Sch. 8](#); [S.I. 1998/2209](#), art. 2, Sch. Pt. 1

SCHEDULE 3

Section 21(4).

CHILD SUPPORT APPEAL TRIBUNALS

*The President*

- 1
- (1) The person appointed <sup>F5</sup> . . . as President of the social security appeal tribunals, medical appeal tribunals and disability appeal tribunals shall, by virtue of that appointment, also be President of the child support appeal tribunals.
  - (2) It shall be the duty of the President to arrange such meetings of the chairmen and members of child support appeal tribunals, and such training for them, as he considers appropriate.
  - (3) The President may, with the consent of the Secretary of State as to numbers, remuneration and other terms and conditions of service, appoint such officers and staff as he thinks fit for the child support appeal tribunals and their full-time chairmen.

**Textual Amendments**

**F5** Words in [Sch. 3 para. 1\(1\)](#) repealed (1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), ss. 3(1), 7(2), [Sch.1](#) (subject as mentioned (6.3.1992) in [Local Government Finance Act 1992 \(c. 14\)](#), s. [118\(5\)\(7\)](#) (with s. [118\(1\)\(2\)\(4\)](#))).

*Membership of child support appeal tribunals*

- 2
- (1) A child support appeal tribunal shall consist of a chairman and two other persons.
  - (2) The chairman and the other members of the tribunal must not all be of the same sex.
  - (3) Sub-paragraph (2) shall not apply to any proceedings before a child support appeal tribunal if the chairman of the tribunal rules that it is not reasonably practicable to comply with that sub-paragraph in those proceedings.

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[<sup>F6</sup>(4) This paragraph is subject to the provisions of any regulations made under paragraph 9 of Schedule 4A.]

#### Textual Amendments

**F6** Sch. 3 para. 2(4) added (2.12.1996) by [Child Support Act 1995 \(c. 34\)](#), s. 30(4), [Sch. 3 para. 17](#); [S.I. 1996/2630](#), art. 2, [Sch. Pt. 2](#)

#### *The chairmen*

- 3 (1) The chairman of a child support appeal tribunal shall be nominated by the President.
- (2) The President may nominate himself or a person drawn—
- (a) from the appropriate panel appointed by the Lord Chancellor, or (as the case may be) the Lord President of the Court of Session, under section 7 of the <sup>M1</sup>Tribunals and Inquiries Act 1971;
  - (b) from among those appointed under paragraph 4; or
  - (c) from among those appointed <sup>F7</sup>. . . to act as full-time chairmen of social security appeal tribunals.
- (3) Subject to any regulations made by the Lord Chancellor, no person shall be nominated as a chairman of a child support appeal tribunal by virtue of sub-paragraph (2)(a) unless he has a 5 year general qualification or is an advocate or solicitor in Scotland of 5 years' standing.

#### Textual Amendments

**F7** Words in [Sch. 3 para. 3\(2\)\(c\)](#) repealed (1.7.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), ss. 3(1), 7(2), [Sch.1](#) (subject as mentioned (6.3.1992) in [Local Government Finance Act 1992 \(c. 14\)](#)), [s. 118\(5\)\(7\)](#) (with [s. 118\(1\)\(2\)\(4\)](#))).

#### Commencement Information

**I7** [Sch. 3 para. 3](#) wholly in force; [para. 3](#) not in force at Royal Assent see [s. 58\(2\)](#); [para. 3\(3\)](#) in force at 17.6.1992 by [S.I. 1992/1431](#), art. 2, [Sch.](#); [para. 3](#) in force in so far as not already in force at 1.9.1992 by [S.I. 1992/1938](#), art. 2

#### Marginal Citations

**M1** 1971 c. 62.

- 4 (1) The Lord Chancellor may appoint regional and other full-time chairmen for child support appeal tribunals.
- (2) A person is qualified to be appointed as a full-time chairman if he has a 7 year general qualification or is an advocate or solicitor in Scotland of 7 years' standing.
- (3) A person appointed to act as a full-time chairman shall hold and vacate office in accordance with the terms of his appointment, except that he must vacate his office [<sup>F8</sup>on the date on which he reaches the age of 70; but this sub-paragraph is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75)].

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- <sup>F9</sup>(4) .....
- (5) A person appointed as a full-time chairman may be removed from office by the Lord Chancellor, on the ground of misbehaviour or incapacity.
- (6) Section 75 of the <sup>M2</sup>Courts and Legal Services Act 1990 (judges etc. barred from legal practice) shall apply to any person appointed as a full-time chairman under this Schedule as it applies to any person holding as a full-time appointment any of the offices listed in Schedule 11 to that Act.
- (7) The Secretary of State may pay, or make such payments towards the provision of, such remuneration, pensions, allowances or gratuities to or in respect of persons appointed as full-time chairmen under this paragraph as, with the consent of the Treasury, he may determine.
- [<sup>F10</sup>(8) Sub-paragraph (7), so far as relating to pensions, allowances or gratuities, shall not have effect in relation to any person to whom Part I of the Judicial Pensions and Retirement Act 1993 applies, except to the extent provided by or under that Act.]

#### Textual Amendments

- F8** Words in Sch. 3 para. 4(3) substituted (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), **Sch. 6 para. 23(1)(a)** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, art. 2
- F9** Sch. 3 para. 4(4) repealed (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), Sch. 6 para. 23(1)(b), **Sch. 9** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, art. 2
- F10** Sch. 3 para. 4(8) added (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), **Sch. 8 para. 21(1)**; S.I. 1995/631, art. 2

#### Marginal Citations

- M2** 1990 c. 41.

#### *Other members of child support appeal tribunals*

- 5 (1) The members of a child support appeal tribunal other than the chairman shall be drawn from the appropriate panel constituted under this paragraph.
- (2) The panels shall be constituted by the President for the whole of Great Britain, and shall—
- (a) act for such areas; and
  - (b) be composed of such persons,
- as the President thinks fit.
- (3) The panel for an area shall be composed of persons appearing to the President to have knowledge or experience of conditions in the area and to be representative of persons living or working in the area.
- (4) Before appointing members of a panel, the President shall take into consideration any recommendations from such organisations or persons as he considers appropriate.
- (5) The members of the panels shall hold office for such period as the President may direct.
- (6) The President may at any time terminate the appointment of any member of a panel.

*Status: Point in time view as at 19/05/1999.*

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*Clerks of tribunals*

- 6 (1) Each child support appeal tribunal shall be serviced by a clerk appointed by the President.
- (2) The duty of summoning members of a panel to serve on a child support appeal tribunal shall be performed by the clerk to the tribunal.

*Expenses of tribunal members and others*

- 7 (1) The Secretary of State may pay—
- (a) to any member of a child support appeal tribunal, such remuneration and travelling and other allowances as the Secretary of State may determine with the consent of the Treasury;
  - (b) to any person required to attend at any proceedings before a child support appeal tribunal, such travelling and other allowances as may be so determined; and
  - (c) such other expenses in connection with the work of any child support appeal tribunal as may be so determined.
- (2) In sub-paragraph (1), references to travelling and other allowances include references to compensation for loss of remunerative time.
- (3) No compensation for loss of remunerative time shall be paid to any person under this paragraph in respect of any time during which he is in receipt of other remuneration so paid.

*Consultation with Lord Advocate*

- 8 Before exercising any of his powers under paragraph 3(3) or 4(1), <sup>F11</sup>... or (5), the Lord Chancellor shall consult the Lord Advocate.

**Textual Amendments**

**F11** Word in [Sch. 3 para. 8](#) repealed (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), [Sch. 9](#); S.I. 1995/631, art. 2

SCHEDULE 4

Section 22(5).

CHILD SUPPORT COMMISSIONERS

*Tenure of office*

- 1 (1) Every Child Support Commissioner shall vacate his office [<sup>F12</sup>on the date on which he reaches the age of 70; but this sub-paragraph is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75)].

<sup>F13</sup>(2) .....

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- (3) A Child Support Commissioner may be removed from office by the Lord Chancellor on the ground of misbehaviour or incapacity.

**Textual Amendments**

- F12** Words in Sch. 4 para. 1(1) substituted (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), **Sch. 6 para. 23(2)(a)** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, art. 2
- F13** Sch. 4 para. 1(2) repealed (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), Sch. 6 para. 23(2)(b), **Sch. 9** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, art. 2

*Commissioners' remuneration and their pensions*

- 2 (1) The Lord Chancellor may pay, or make such payments towards the provision of such remuneration, pensions, allowances or gratuities to or in respect of persons appointed as Child Support Commissioners as, with the consent of the Treasury, he may determine.
- (2) The Lord Chancellor shall pay to a Child Support Commissioner such expenses incurred in connection with his work as such a Commissioner as may be determined by the Treasury.
- [<sup>F14</sup>(3) Sub-paragraph (1), so far as relating to pensions, allowances or gratuities, shall not have effect in relation to any person to whom Part I of the Judicial Pensions and Retirement Act 1993 applies, except to the extent provided by or under that Act.]

**Textual Amendments**

- F14** Sch. 4 para. 2(3) added (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), **Sch. 8 para. 21(2)**; S.I. 1995/631, art. 2

*[<sup>F15</sup>Expenses of other persons*

**Textual Amendments**

- F15** Sch. 4 para. 2A and cross-heading inserted (18.12.1995) by [Child Support Act 1995 \(c. 34\)](#), s. 30(4), **Sch. 3 para. 18(1)**; S.I. 1995/3262, art. 2, Sch. Pt. 1

- 2A (1) The Secretary of State may pay to any person required to attend at any proceedings before a Child Support Commissioner such travelling and other allowances as, with the consent of the Treasury, the Secretary of State may determine.
- (2) In sub-paragraph (1), references to travelling and other allowances include references to compensation for loss of remunerative time.
- (3) No compensation for loss of remunerative time shall be paid to any person under this paragraph in respect of any time during which he is in receipt of other remuneration so paid.]

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### *Commissioners barred from legal practice*

- 3 Section 75 of the <sup>M3</sup>Courts and Legal Services Act 1990 (judges etc. barred from legal practice) shall apply to any person appointed as a Child Support Commissioner as it applies to any person holding as a full-time appointment any of the offices listed in Schedule 11 to that Act.

#### **Marginal Citations**

**M3** 1990 c. 41.

### *Deputy Child Support Commissioners*

- 4 (1) The Lord Chancellor may appoint persons to act as Child Support Commissioners (but to be known as deputy Child Support Commissioners) in order to facilitate the disposal of the business of Child Support Commissioners.
- (2) A deputy Child Support Commissioner shall be appointed—
- (a) from among persons who have a 10 year general qualification or are advocates or solicitors in Scotland of 10 years' standing; and
  - (b) [<sup>F16</sup>subject to sub-paragraph (2A)] for such period or on such occasions as the Lord Chancellor thinks fit.
- [<sup>F17</sup>(2A) No appointment of a person to be a deputy Child Support Commissioner shall be such as to extend beyond the date on which he reaches the age of 70; but this sub-paragraph is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).]
- (3) Paragraph 2 applies to deputy Child Support Commissioners as if the reference to pensions were omitted and paragraph 3 does not apply to them.

#### **Textual Amendments**

- F16** Words in Sch. 4 para. 4(2)(b) inserted (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), [Sch. 6 para. 23\(3\)](#) (with [Sch. 7 paras. 2\(2\), 3\(2\), 4](#)); S.I. 1995/631, art. 2
- F17** Sch. 4 para. 4(2A) inserted (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), [Sch. 6 para. 23\(3\)](#) (with [Sch. 7 paras. 2\(2\), 3\(2\), 4](#)); S.I. 1995/631, art. 2

### *[<sup>F18</sup>Determination of questions by other officers*

#### **Textual Amendments**

- F18** [Sch. 4 para. 4A](#) and cross-heading inserted (18.12.1995) by [Child Support Act 1995 \(c. 34\)](#), [ss. 17\(1\), 30\(4\)](#); S.I. 1995/3262, art. 2, [Sch. Pt. 1](#)

- 4A (1) The Lord Chancellor may by regulations provide—
- (a) for officers authorised—
    - (i) by the Lord Chancellor; or
    - (ii) in Scotland, by the Secretary of State,

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- to determine any question which is determinable by a Child Support Commissioner and which does not involve the determination of any appeal, application for leave to appeal or reference;
- (b) for the procedure to be followed by any such officer in determining any such question;
- (c) for the manner in which determinations of such questions by such officers may be called in question.
- (2) A determination which would have the effect of preventing an appeal, application for leave to appeal or reference being determined by a Child Support Commissioner is not a determination of the appeal, application or reference for the purposes of subparagraph (1).]

#### *Tribunals of Commissioners*

- 5 (1) If it appears to the Chief Child Support Commissioner (or, in the case of his inability to act, to such other of the Child Support Commissioners as he may have nominated to act for the purpose) that an appeal falling to be heard by one of the Child Support Commissioners involves a question of law of special difficulty, he may direct that the appeal be dealt with by a tribunal consisting of any three of the Child Support Commissioners.
- (2) If the decision of such a tribunal is not unanimous, the decision of the majority shall be the decision of the tribunal.

#### *Finality of decisions*

- 6 (1) Subject to section 25, the decision of any Child Support Commissioner shall be final.
- [<sup>F19</sup>(2) If and to the extent that regulations so provide, any finding of fact or other determination which is embodied in or necessary to a decision, or on which a decision is based, shall be conclusive for the purposes of any further decision.]

#### **Textual Amendments**

**F19** Sch. 4 para. 6(2) substituted (4.3.1999 for specified purposes) by [Social Security Act 1998 \(c. 14\)](#), s. 87(2), [Sch. 7 para. 52\(4\)](#); S.I. 1999/528, art. 2(a), Sch.; S.I. 1999/1510, art. 2(g)(v)

#### *Consultation with Lord Advocate*

- 7 Before exercising any of his powers under [<sup>F20</sup>paragraph 1(3)], [<sup>F21</sup>4(1) or (2)(b) or 4A(1)], the Lord Chancellor shall consult the Lord Advocate.

#### **Textual Amendments**

**F20** Words in Sch. 4 para. 7 substituted (31.3.1995) by [Judicial Pensions and Retirement Act 1993 \(c. 8\)](#), s. 31(2), [Sch. 6 para. 23\(4\)](#) (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, art. 2

**F21** Words in Sch. 4 para. 7 substituted (18.12.1995) by [Child Support Act 1995 \(c. 34\)](#), ss. 17(2), 30(4); S.I. 1995/3262, art. 2, Sch. Pt. 1



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

- C3** Sch. 4 para. 7: transfer of functions (19.5.1999) by [The Transfer of Functions \(Lord Advocate and Secretary of State\) Order 1999 \(S.I. 1999/678\)](#), arts. 1, 2(1), [Sch.](#)

*Northern Ireland*

- 8 In its application to Northern Ireland this Schedule shall have effect as if—
- (a) for any reference to a Child Support Commissioner (however expressed) there were substituted a corresponding reference to a Child Support Commissioner for Northern Ireland;
  - (b) in paragraph 2(1), the word “pensions” were omitted;
  - [<sup>F22</sup>(bb) paragraph 2A were omitted;]
  - (c) for paragraph 3, there were substituted—
    - “3 A Child Support Commissioner for Northern Ireland, so long as he holds office as such, shall not practise as a barrister or act for any remuneration to himself as arbitrator or referee or be directly or indirectly concerned in any matter as a conveyancer, notary public or solicitor.”;
  - (d) in paragraph 4—
    - (i) for paragraph (a) of sub-paragraph (2) there were substituted—
      - “(a) from among persons who are barristers or solicitors of not less than 10 years’ standing; and”;
    - (ii) for sub-paragraph (3) there were substituted—
      - “(3) Paragraph 2 applies to deputy Child Support Commissioners for Northern Ireland, but paragraph 3 does not apply to them.”; and
  - (e) [<sup>F23</sup>paragraphs 4A] to 7 were omitted.

**Textual Amendments**

- F22** Sch. 4 para. 8(bb) inserted (18.12.1995) by [Child Support Act 1995 \(c. 34\)](#), s. 30(4), [Sch. 3 para. 18\(2\)](#); S.I. 1995/3262, art. 2, Sch. Pt. 1
- F23** Words in Sch. 4 para. 8(e) substituted (18.12.1995) by [Child Support Act 1995 \(c. 34\)](#), ss. 17(3), 30(4); S.I. 1995/3262, art. 2, Sch. Pt. 1

[<sup>F24</sup>SCHEDULE 4A

DEPARTURE DIRECTIONS

**Textual Amendments**

- F24** Sch. 4A 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. 1(2), 30(4), [Sch. 1](#); S.I. 1996/2630, art. 2, Sch. Pts. 1, 2

*Status: Point in time view as at 19/05/1999.*

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### *Interpretation*

- 1 In this Schedule—
- “departure application” means an application for a departure direction;
  - “regulations” means regulations made by the Secretary of State;
  - “review” means a review under section 16, 17, 18 or 19.

### *Applications for departure directions*

- 2 Regulations may make provision—
- (a) as to the procedure to be followed in considering a departure application;
  - (b) as to the procedure to be followed when a departure application is referred to a child support appeal tribunal under section 28D(1)(b);
  - (c) for the giving of a direction by the Secretary of State as to the order in which, in a particular case, a departure application and a review are to be dealt with;
  - (d) for the reconsideration of a departure application in a case where further information becomes available to the Secretary of State after the application has been determined.

### *Completion of preliminary consideration*

- 3 Regulations may provide for determining when the preliminary consideration of a departure application is to be taken to have been completed.

### *Information*

- 4 (1) Regulations may make provision for the use for any purpose of this Act of—
- (a) information acquired by the Secretary of State in connection with an application for, or the making of, a departure direction;
  - (b) information acquired by a child support officer or the Secretary of State in connection with an application for, or the making of, a maintenance assessment.
- (2) If any information which is required (by regulations under this Act) to be furnished to the Secretary of State in connection with a departure application has not been furnished within such period as may be prescribed, the Secretary of State may nevertheless proceed to determine the application.

### *Anticipation of change of circumstances*

- 5 (1) A departure direction may be given so as to provide that if the circumstances of the case change in such manner as may be specified in the direction a fresh maintenance assessment is to be made.
- (2) Where any such provision is made, the departure direction may provide for the basis on which the amount of child support maintenance is to be fixed by the fresh maintenance assessment to differ from the basis on which the amount of child support maintenance was fixed by any earlier maintenance assessment made as a result of the direction.

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*Reviews and departure directions*

- 6 Regulations may make provision—
- (a) with respect to cases in which a child support officer is conducting a review of a maintenance assessment which was made as a result of a departure direction;
  - (b) with respect to cases in which a departure direction is made at a time when a child support officer is conducting a review.

*Subsequent departure directions*

- 7 (1) Regulations may make provision with respect to any departure application made with respect to a maintenance assessment which was made as a result of a departure direction.
- (2) The regulations may, in particular, provide for the application to be considered by reference to the maintenance assessment which would have been made had the departure direction not been given.

*Joint consideration of departure applications and appeals*

- 8 (1) Regulations may provide for two or more departure applications with respect to the same current assessment to be considered together.
- (2) [<sup>F25</sup>An appeal tribunal] considering—
- (a) a departure application referred to it under section 28D(1)(b), or
  - (b) an appeal under section 28H,
- may consider it at the same time as hearing an appeal under section 20 in respect of the current assessment, if it considers that to be appropriate.

**Textual Amendments**

**F25** Words in [Sch. 4A para. 8](#) substituted (4.3.1999 for specified purposes) by [Social Security Act 1998](#) (c. 14), s. 87(2), [Sch. 7 para. 53\(5\)](#); S.I. 1999/528, art. 2(a), Sch.; S.I. 1999/1510, art. 2(g)(v)

*Child support appeal tribunals*

- 9 (1) Regulations may provide that, in prescribed circumstances, where—
- (a) a departure application is referred to a child support appeal tribunal under section 28D(1)(b), or
  - (b) an appeal is brought under section 28H,
- the application or appeal may be dealt with by a tribunal constituted by the chairman sitting alone.
- (2) Sub-paragraph (1) does not apply in relation to any appeal which is being heard together with an appeal under section 20.

*Current assessments which are replaced by fresh assessments*

- 10 Regulations may make provision as to the circumstances in which prescribed references in this Act to a current assessment are to have effect as if they were

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references to any later maintenance assessment made with respect to the same persons as the current assessment.]

## [<sup>F26</sup>SCHEDULE 4B

### DEPARTURE DIRECTIONS: THE CASES AND CONTROLS

#### Textual Amendments

**F26** Sch. 4B 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. 6(2), 30(4), Sch. 2; S.I. 1996/2630, art. 2, Sch. Pts. 1, 2

### PART I

#### THE CASES

##### *General*

- 1 (1) The cases in which a departure direction may be given are those set out in this Part of this Schedule or in regulations made under this Part.
- (2) In this Schedule “applicant” means the person whose application for a departure direction is being considered.

##### *Special expenses*

- 2 (1) A departure direction may be given with respect to special expenses of the applicant which were not, and could not have been, taken into account in determining the current assessment in accordance with the provisions of, or made under, Part I of Schedule 1.
- (2) In this paragraph “special expenses” means the whole, or any prescribed part, of expenses which fall within a prescribed description of expenses.
- (3) In prescribing descriptions of expenses for the purposes of this paragraph, the Secretary of State may, in particular, make provision with respect to—
- (a) costs incurred in travelling to work;
  - (b) costs incurred by an absent parent in maintaining contact with the child, or with any of the children, with respect to whom he is liable to pay child support maintenance under the current assessment;
  - (c) costs attributable to a long-term illness or disability of the applicant or of a dependant of the applicant;
  - (d) debts incurred, before the absent parent became an absent parent in relation to a child with respect to whom the current assessment was made—
    - (i) for the joint benefit of both parents;
    - (ii) for the benefit of any child with respect to whom the current assessment was made; or
    - (iii) for the benefit of any other child falling within a prescribed category;

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- (e) pre-1993 financial commitments from which it is impossible for the parent concerned to withdraw or from which it would be unreasonable to expect that parent to have to withdraw;
  - (f) costs incurred by a parent in supporting a child who is not his child but who is part of his family.
- (4) For the purposes of sub-paragraph (3)(c)—
- (a) the question whether one person is a dependant of another shall be determined in accordance with regulations made by the Secretary of State;
  - (b) “disability” and “illness” have such meaning as may be prescribed; and
  - (c) the question whether an illness or disability is long-term shall be determined in accordance with regulations made by the Secretary of State.
- (5) For the purposes of sub-paragraph (3)(e), “pre-1993 financial commitments” means financial commitments of a prescribed kind entered into before 5th April 1993 in any case where—
- (a) a court order of a prescribed kind was in force with respect to the absent parent and the person with care concerned at the time when they were entered into; or
  - (b) an agreement between them of a prescribed kind was in force at that time.
- (6) For the purposes of sub-paragraph (3)(f), a child who is not the child of a particular person is a part of that person’s family in such circumstances as may be prescribed.

#### *Property or capital transfers*

- 3 (1) A departure direction may be given if—
- (a) before 5th April 1993—
    - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made, or
    - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;
  - (b) in consequence of one or more transfers of property of a prescribed kind—
    - (i) the amount payable by the absent parent by way of maintenance was less than would have been the case had that transfer or those transfers not been made; or
    - (ii) no amount was payable by the absent parent by way of maintenance; and
  - (c) the effect of that transfer, or those transfers, is not properly reflected in the current assessment.
- (2) For the purposes of sub-paragraph (1)(b), “maintenance” means periodical payments of maintenance made (otherwise than under this Act) with respect to the child, or any of the children, with respect to whom the current assessment was made.
- (3) For the purposes of sub-paragraph (1)(c), the question whether the effect of one or more transfers of property is properly reflected in the current assessment shall be determined in accordance with regulations made by the Secretary of State.
- 4 (1) A departure direction may be given if—

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- (a) before 5th April 1993—
    - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made, or
    - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;
  - (b) in pursuance of the court order or agreement, the absent parent has made one or more transfers of property of a prescribed kind;
  - (c) the amount payable by the absent parent by way of maintenance was not reduced as a result of that transfer or those transfers;
  - (d) the amount payable by the absent parent by way of child support maintenance under the current assessment has been reduced as a result of that transfer or those transfers, in accordance with provisions of or made under this Act; and
  - (e) it is nevertheless inappropriate, having regard to the purposes for which the transfer or transfers was or were made, for that reduction to have been made.
- (2) For the purposes of sub-paragraph (1)(c), “maintenance” means periodical payments of maintenance made (otherwise than under this Act) with respect to the child, or any of the children, with respect to whom the current assessment was made.

#### *Additional cases*

- 5
- (1) The Secretary of State may by regulations prescribe other cases in which a departure direction may be given.
  - (2) Regulations under this paragraph may, for example, make provision with respect to cases where—
    - (a) assets which do not produce income are capable of producing income;
    - (b) a person’s life-style is inconsistent with the level of his income;
    - (c) housing costs are unreasonably high;
    - (d) housing costs are in part attributable to housing persons whose circumstances are such as to justify disregarding a part of those costs;
    - (e) travel costs are unreasonably high; or
    - (f) travel costs should be disregarded.

## PART II

### REGULATORY CONTROLS

- 6
- (1) The Secretary of State may by regulations make provision with respect to the directions which may be given in a departure direction.
  - (2) No directions may be given other than those which are permitted by the regulations.
  - (3) Regulations under this paragraph may, in particular, make provision for a departure direction to require—
    - (a) the substitution, for any formula set out in Part I of Schedule 1, of such other formula as may be prescribed;

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- (b) any prescribed amount by reference to which any calculation is to be made in fixing the amount of child support maintenance to be increased or reduced in accordance with the regulations;
  - (c) the substitution, for any provision in accordance with which any such calculation is to be made, of such other provision as may be prescribed.
- (4) Regulations may limit the extent to which the amount of the child support maintenance fixed by a maintenance assessment made as a result of a departure direction may differ from the amount of the child support maintenance which would be fixed by a maintenance assessment made otherwise than as a result of the direction.
- (5) Regulations may provide for the amount of any special expenses to be taken into account in a case falling within paragraph 2, for the purposes of a departure direction, not to exceed such amount as may be prescribed or as may be determined in accordance with the regulations.
- (6) No departure direction may be given so as to have the effect of denying to an absent parent the protection of paragraph 6 of Schedule 1.
- (7) Sub-paragraph (6) does not prevent the modification of the provisions of, or made under, paragraph 6 of Schedule 1 to the extent permitted by regulations under this paragraph.
- (8) Any regulations under this paragraph may make different provision with respect to different levels of income.]

[<sup>F27</sup>SCHEDULE 4C

Section 83.

DECISIONS AND APPEALS: DEPARTURE DIRECTIONS  
AND REDUCED BENEFIT DIRECTIONS ETC.

**Textual Amendments**

**F27** Sch. 4C inserted (4.3.1999 for specified purposes, 1.6.1999 in so far as not already in force) by [Social Security Act 1998 \(c. 14\), s. 87\(2\)](#), [Sch. 7 para. 54](#); [S.I. 1999/528, art. 2\(a\)](#), [Sch.](#); [S.I. 1999/1510, art. 2\(g\)\(v\)](#)

*Revision of decisions*

- 1 Section 16 shall apply in relation to—
- (a) any decision of the Secretary of State with respect to a departure direction, a reduced benefit direction or a person's liability under section 43;
  - (b) any decision of the Secretary of State under section 17 as extended by paragraph 2; and
  - (c) any decision of an appeal tribunal on a referral under section 28D(1)(b), as it applies in relation to any decision of the Secretary of State under section 11, 12 or 17.

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*Decisions superseding earlier decisions*

- 2 (1) Section 17 shall apply in relation to—
- (a) any decision of the Secretary of State with respect to a departure direction, a reduced benefit direction or a person’s liability under section 43;
  - (b) any decision of the Secretary of State under section 17 as extended by this sub-paragraph; and
  - (c) any decision of an appeal tribunal on a referral under section 28D(1)(b), whether as originally made or as revised under section 16 as extended by paragraph 1, as it applies in relation to any decision of the Secretary of State under section 11, 12 or 17, whether as originally made or as revised under section 16.
- (2) Section 17 shall apply in relation to any decision of an appeal tribunal under section 20 as extended by paragraph 3 as it applies in relation to any decision of an appeal tribunal under section 20.

*Appeals to appeal tribunals*

- 3 (1) Subject to sub-paragraphs (2) and (3), section 20 shall apply—
- (a) in relation to a qualifying person who is aggrieved by any decision of the Secretary of State with respect to a departure direction; and
  - (b) in relation to any person who is aggrieved by a decision of the Secretary of State—
    - (i) with respect to a reduced benefit direction; or
    - (ii) with respect to a person’s liability under section 43,
 as it applies in relation to a person whose application for a maintenance assessment is refused or to such a person as is mentioned in subsection (2) of section 20.
- (2) On an appeal under section 20 as extended by sub-paragraph (1)(a), the appeal tribunal shall—
- (a) consider the matter—
    - (i) as if it were exercising the powers of the Secretary of State in relation to the application in question; and
    - (ii) as if it were subject to the duties imposed on him in relation to that application;
  - (b) have regard to any representations made to it by the Secretary of State; and
  - (c) confirm the decision or replace it with such decision as the tribunal considers appropriate.
- (3) No appeal shall lie under section 20 as extended by sub-paragraph (1)(b)(i) unless the amount of the person’s benefit is reduced in accordance with the reduced benefit direction; and the time within which such an appeal may be brought shall run from the date of the notification of the reduction.
- (4) In sub-paragraph (1) “qualifying person” means—
- (a) the person with care, or absent parent, with respect to whom the current assessment was made; or
  - (b) where the application for the current assessment was made under section 7, either of those persons or the child concerned.



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*Decisions and appeals dependent on other cases*

- 4 (1) Section 28ZA shall also apply where—
- (a) a decision falls to be made—
    - (i) with respect to a departure direction, a reduced benefit direction or a person’s liability under section 43, by the Secretary of State; or
    - (ii) with respect to a departure direction, by an appeal tribunal on a referral under section 28D(1)(b); and
  - (b) an appeal is pending against a decision given with respect to a different direction by a Child Support Commissioner or a court.
- (2) Section 28ZA as it applies by virtue of sub-paragraph (1) shall have effect as if the reference in subsection (3) to section 16 were a reference to that section as extended by paragraph 1.
- (3) Section 28ZA as it applies by virtue of sub-paragraph (1)(a)(ii) shall have effect as if—
- (a) in subsection (2)—
    - (i) for the words “the Secretary of State” there were substituted the words “the appeal tribunal”; and
    - (ii) for the word “he”, in both places where it occurs, there were substituted the word “it”; and
  - (b) in subsection (3)—
    - (i) for the words “the Secretary of State” there were substituted the words “the appeal tribunal”;
    - (ii) for the word “he” there were substituted the words “the Secretary of State”; and
    - (iii) for the word “his” there were substituted the words “the tribunal’s”.
- 5 (1) Section 28ZB shall also apply where—
- (a) an appeal is made to an appeal tribunal under section 20 as extended by paragraph 3; and
  - (b) an appeal is pending against a decision given in a different case by a Child Support Commissioner or a court.
- (2) Section 28ZB as it applies by virtue of sub-paragraph (1) shall have effect as if any reference to section 16 or section 17 were a reference to that section as extended by paragraph 1 or, as the case may be, paragraph 2.

*Cases of error*

- 6 (1) Subject to sub-paragraph (2) below, section 28ZC shall also apply where—
- (a) the effect of the determination, whenever made, of an appeal to a Child Support Commissioner or the court (“the relevant determination”) is that the adjudicating authority’s decision out of which the appeal arose was erroneous in point of law; and
  - (b) after the date of the relevant determination a decision falls to be made by the Secretary of State in accordance with that determination (or would, apart from this paragraph, fall to be so made)—
    - (i) in relation to an application for a departure direction (made after the commencement date);

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- (ii) as to whether to revise, under section 16 as extended by paragraph 1, a decision (made after the commencement date) in relation to a departure direction, a reduced benefit direction or a person’s liability under section 43; or
  - (iii) on an application made under section 17 as extended by paragraph 2 before the date of the relevant determination (but after the commencement date) for a decision in relation to a departure direction, a reduced benefit direction or a person’s liability under section 43 to be superseded.
- (2) Section 28ZC shall not apply where the decision of the Secretary of State mentioned in sub-paragraph (1)(b) above—
- (a) is one which, but for section 28ZA(2)(a) as it applies by virtue of paragraph 4(1), would have been made before the date of the relevant determination; or
  - (b) is one made in pursuance of section 28ZB(3) or (5) as it applies by virtue of paragraph 5(1).
- (3) Section 28ZC as it applies by virtue of sub-paragraph (1) shall have effect as if in subsection (4), in the definition of “adjudicating authority”, at the end there were inserted the words “or, in the case of a decision made on a referral under section 28D(1)(b), an appeal tribunal”.
- (4) In this paragraph “adjudicating authority”, “the commencement date” and “the court” have the same meanings as in section 28ZC.]

SCHEDULE 5

Section 58(13).

CONSEQUENTIAL AMENDMENTS

*The Tribunals and Inquiries Act 1971 (c.62)*

F28 1 .....

**Textual Amendments**

**F28** Sch. 5 para. 1 repealed (1.10.1992) by *Tribunals and Inquiries Act 1992 (c. 53)*, s. 18(2), 19(2), **Sch. 4 Pt.I**

*The Northern Ireland Constitution Act 1973 (c. 36)*

- 2 In paragraph 9 of Schedule 2 to the Northern Ireland Constitution Act 1973 (certain judicial appointments to be an excepted matter), after the words “for Northern Ireland”, where they first occur, there shall be inserted “ the Chief and other Child Support Commissioners for Northern Ireland ”.

*The House of Commons Disqualification Act 1975 (c.24)*

- 3 (1) The House of Commons Disqualification Act 1975 shall be amended as follows.
- (2) In Part I [F29 of Schedule 1] (disqualifying judicial offices), the following entries shall be inserted at the appropriate places— “ Chief or other Child Support Commissioner

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(excluding a person appointed under paragraph 4 of Schedule 4 to the Child Support Act 1991). ”“ Chief or other Child Support Commissioner for Northern Ireland (excluding a person appointed under paragraph 4 of Schedule 4 to the Child Support Act 1991). ”

- (3) In Part III [<sup>F30</sup>of Schedule 1] (other disqualifying offices), the following entry shall be inserted at the appropriate place— “ Regional or other full-time chairman of a child support appeal tribunal established under section 21 of the Child Support Act 1991 ”.

#### Textual Amendments

- F29** Words in Sch. 5 para. 3(2) inserted (4.9.1995) by Child Support Act 1995 (c. 34), s. 30(4), Sch. 3 para. 19(1); S.I. 1995/2302, art. 2, Sch. Pt. 1
- F30** Words in Sch. 5 para. 3(3) inserted (4.9.1995) by Child Support Act 1995 (c. 34), s. 30(4), Sch. 3 para. 19(2); S.I. 1995/2302, art. 2, Sch. Pt. 1

#### *The Northern Ireland Assembly Disqualification Act 1975 (c.25)*

- 4 (1) In Part I of [<sup>F31</sup>Schedule 1 to] the Northern Ireland Assembly Disqualification Act 1975 (disqualifying judicial offices), the following entries shall be inserted at the appropriate places— “ Chief or other Child Support Commissioner (excluding a person appointed under paragraph 4 of Schedule 4 to the Child Support Act 1991). ”“ Chief or other Child Support Commissioner for Northern Ireland (excluding a person appointed under paragraph 4 of Schedule 4 to the Child Support Act 1991). ”

#### Textual Amendments

- F31** Words in Sch. 5 para. 4(1) inserted (4.9.1995) by Child Support Act 1995 (c. 34), s. 30(4), Sch. 3 para. 19(3); S.I. 1995/2302, art. 2, Sch. Pt. 1

#### *The Family Law (Scotland) Act 1985 (c.37)*

- 5 In section 4 (amount of aliment) of the Family Law (Scotland) Act 1985, at the end there shall be added—

“(4) Where a court makes an award of aliment in an action brought by or on behalf of a child under the age of 16 years, it may include in that award such provision as it considers to be in all the circumstances reasonable in respect of the expenses incurred wholly or partly by the person having care of the child for the purpose of caring for the child.”

#### *Bankruptcy (Scotland) Act 1985 (c.66)*

- 6 (1) The Bankruptcy (Scotland) Act 1985 shall be amended as follows.
- (2) In section 32 (vesting of estate and dealings of debtor after sequestration)—
- (a) in subsection (3)—
- (i) after paragraph (b) there shall be inserted—
- “(c) any obligation of his to pay child support maintenance under the Child Support Act 1991,”;

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- (ii) after “relevant obligations” where second occurring there shall be inserted “ referred to in paragraphs (a) and (b) above ”;
- (b) in subsection (5) after “Diligence” there shall be inserted “ (which, for the purposes of this section, includes the making of a deduction from earnings order under the Child Support Act 1991) ”.
- (3) In section 37 (effect of sequestration on diligence), in subsection (5A) for “or a conjoined arrestment order” there is substituted “ , a conjoined arrestment order or a deduction from earnings order under the Child Support Act 1991 ”.
- (4) In section 55 (effect of discharge under section 54), in subsection (2)(d)—
  - (a) after “being” there shall be inserted “ (i) ”;
  - (b) at the end there shall be inserted—

“or

- (ii) child support maintenance within the meaning of the Child Support Act 1991 which was unpaid in respect of any period before the date of sequestration of—
  - (aa) any person by whom it was due to be paid;  
or
  - (bb) any employer by whom it was, or was due to be, deducted under section 31(5) of that Act.”.

*The Insolvency Act 1986 (c.45)*

- 7 In section 281(5)(b) of the Insolvency Act 1986 (effect of discharge of bankrupt), after “family proceedings” there shall be inserted “ or under a maintenance assessment made under the Child Support Act 1991 ”.

*The Debtors (Scotland) Act 1987 (c.18)*

- 8 (1) The Debtors (Scotland) Act 1987 shall be amended as follows.
- (2) In section 1(5) (time to pay directions not competent in certain cases) after paragraph (c) there shall be inserted—
  - “(cc) in connection with a liability order within the meaning of the Child Support Act 1991;”.
- (3) In section 15(3) (interpretation of Part I), in the definition of “decree or other document”, after “maintenance order” there shall be inserted “ , a liability order within the meaning of the Child Support Act 1991 ”.
- (4) In section 54(1) (maintenance arrestment to be preceded by default) in paragraph (c) for “the aggregate of 3 instalments” there shall be substituted “ one instalment ”.
- (5) In section 72 (effect of sequestration on diligence against earnings)—
  - (a) in subsection (2) after “order” there shall be inserted “ or deduction from earnings order under the Child Support Act 1991 ”;
  - (b) after subsection (3) there shall be inserted—

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- “(3A) Any sum deducted by the employer under such a deduction from earnings order made before the date of sequestration shall be paid to the Secretary of State, notwithstanding that the date of payment will be after the date of sequestration.”;
- (c) after subsection (4) there shall be inserted—
- “(4A) A deduction from earnings order under the said Act shall not be competent after the date of sequestration to secure the payment of any amount due by the debtor under a maintenance assessment within the meaning of that Act in respect of which a claim could be made in the sequestration.”.
- (6) In section 73(1) (interpretation of Part III), in the definition of “net earnings”,
- (a) in paragraph (c) for “within the meaning of the Wages Councils Act 1979” there shall be substituted “, namely any enactment, rules, deed or other instrument providing for the payment of annuities or lump sums—
- (i) to the persons with respect to whom the instrument has effect on their retirement at a specified age or on becoming incapacitated at some earlier age, or
- (ii) to the personal representatives or the widows, relatives or dependants of such persons on their death or otherwise,
- whether with or without any further or other benefit; ”; and
- (b) at the end there shall be added—
- “(d) any amount deductible by virtue of a deduction from earnings order which, in terms of regulations made under section 32(4)(c) of the Child Support Act 1991, is to have priority over diligences against earnings.”
- (7) In section 106 (interpretation) in the definition of “maintenance order”—
- (a) the word “or” where it appears after paragraph (g), shall be omitted; and
- (b) at the end there shall be inserted “or
- (j) a maintenance assessment within the meaning of the Child Support Act 1991.”.

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