



# Child Support Act 1991

## 1991 CHAPTER 48

### *[<sup>F1</sup>Cases of error*

#### **[<sup>F1</sup>28ZC Restrictions on liability in certain cases of error**

- (1) Subject to subsection (2), this section applies where—
- (a) the effect of the determination, whenever made, of an appeal to [<sup>F2</sup>the Upper Tribunal] 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 [<sup>F3</sup>Secretary of State] in accordance with that determination (or would, apart from this section, fall to be so made)—
    - (i) with respect to an application for a [<sup>F4</sup>maintenance calculation] (made after the commencement date) <sup>F5</sup>... ;
    - (ii) as to whether to revise, under section 16, [<sup>F6</sup>any decision] (made after the commencement date) referred to in section 16(1A)]; or
    - (iii) on an application under section 17 (made after the commencement date) for [<sup>F7</sup>any decision] (made after the commencement date) referred to in section 17(1)].
- (2) This section does not apply where the decision of the [<sup>F8</sup>Secretary of State] mentioned in subsection (1)(b)—
- (a) is one which, but for section 28ZA(2)(a), would have been made before the date of the relevant determination; or
  - (b) is one made in pursuance of section 28ZB(3) or (5).
- (3) In so far as the decision relates to a person’s liability <sup>F9</sup>... in respect of a period before the date of the relevant determination, it shall be made as if the adjudicating authority’s decision had been found by the [<sup>F10</sup>Upper Tribunal] or court not to have been erroneous in point of law.
- (4) Subsection (1)(a) shall be read as including a case where—

*Status: Point in time view as at 10/02/2015.*

*Changes to legislation: Child Support Act 1991, Section 28ZC is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
  - (b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.
- (5) It is immaterial for the purposes of subsection (1)—
- (a) where such a decision as is mentioned in paragraph (b)(i) falls to be made; or
  - (b) where such a decision as is mentioned in paragraph (b)(ii) or (iii) falls to be made on an application under section 16 or (as the case may be) section 17, whether the application was made before or after the date of the relevant determination.
- (6) In this section—
- “adjudicating authority” means the [<sup>F11</sup>Secretary of State], or a child support officer [<sup>F12</sup>or, in the case of a decision made on a referral under section 28D(1)(b), [<sup>F13</sup>the First-tier Tribunal]];
- “the commencement date” means the date of the coming into force of section 44 of the Social Security Act 1998; and
- “the court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in Northern Ireland, the [<sup>F14</sup>Supreme Court] or the Court of Justice of the European Community.
- (7) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this section in accordance with any regulations made for that purpose.
- (8) Regulations made under subsection (7) may include provision—
- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or [<sup>F15</sup>the Upper Tribunal]; or
  - (b) for a determination of a lower court or [<sup>F16</sup>the Upper Tribunal] to be treated as if it had been made on the date of a determination of a higher court.]

#### Textual Amendments

- F1** Ss. 28ZC, 28ZD and cross-heading inserted (4.3.1999 for specified purposes, 1.6.1999 in so far as not already in force) by [Social Security Act 1998 \(c. 14\), ss. 44, 87\(2\)](#); S.I. 1999/528, art. 2(a), [Sch.](#); S.I. 1999/1510, [art. 2\(d\)](#)
- F2** Words in s. 28ZC(1)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), [Sch. 3 para. 89\(a\)](#)
- F3** Words in s. 28ZC(1)(b) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), [Sch. para. 22](#)
- F4** 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. 28ZC(1)(b)(i) repealed (14.7.2008) by [Child Maintenance and Other Payments Act 2008 \(c. 6\), s. 62\(3\), Sch. 8](#); S.I. 2008/1476, art. 2(2)(c)(i)
- F6** Words in s. 28ZC(1)(b)(ii) 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\(13\)\(b\)](#) (with s. 83(6)); S.I. 2003/192, art. 3, [Sch.](#)
- F7** Words in s. 28ZC(1)(b)(iii) 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\(13\)\(c\)](#) (with s. 83(6)); S.I. 2003/192, art. 3, [Sch.](#)

*Status: Point in time view as at 10/02/2015.*

*Changes to legislation: Child Support Act 1991, Section 28ZC is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F8** Words in s. 28ZC(2) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 22**
- F9** Words in s. 28ZC(3) repealed (14.7.2008) by [Child Maintenance and Other Payments Act 2008 \(c. 6\)](#), s. 62(3), **Sch. 8**; S.I. 2008/1476, art. 2(2)(c)(i)
- F10** Words in s. 28ZC(3) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 89(b)**
- F11** Words in s. 28ZC(6) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 22**
- F12** Words in s. 28ZC(6) 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(13)(e)** (with s. 83(6)); S.I. 2003/192, art. 3, Sch.
- F13** Words in s. 28ZC(6) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 89(c)**
- F14** Words in s. 28ZC(6) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 9 para. 54**; S.I. 2009/1604, art. 2(d)
- F15** Words in s. 28ZC(8)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 89(d)**
- F16** Words in s. 28ZC(8)(b) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 1(1), **Sch. 3 para. 89(d)**

**Status:**

Point in time view as at 10/02/2015.

**Changes to legislation:**

Child Support Act 1991, Section 28ZC is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.