



Child Support Act 1991

1991 CHAPTER 48

The basic principles

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

- (1) This subsection applies in any case where [^{F1}the [^{F2}Secretary of State]] would have jurisdiction to make a [^{F3}maintenance calculation] with respect to a qualifying child and [^{F4}a non-resident parent] of his on an application duly made ^{F5}... by a person entitled to apply for such [^{F6}a calculation] with respect to that child.
 - (2) Subsection (1) applies even though the circumstances of the case are such that [^{F1}the [^{F2}Secretary of State]] would not make [^{F6}a calculation] if it were applied for.
 - (3) [^{F7}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 [^{F4}non-resident parent] concerned.
- [^{F8}(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 [^{F4}a non-resident parent] of the child of periodical payments to or for the benefit of the child; and

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- (b) the maintenance order which the court makes is, in all material respects, in the same terms as that agreement.
- [^{F9}(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 [^{F3}maintenance calculation] is in force with respect to the child;
 - [^{F10}(b) the non-resident parent's [^{F11}gross] 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 [^{F4}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 [^{F3}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—
- (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) [^{F12}an allowance under Part 4 of the Welfare Reform Act 2012 (personal independence payment) or] 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 ^{M1}Matrimonial Causes Act 1973;
 - (b) the ^{M2}Domestic Proceedings and Magistrates' Courts Act 1978;
 - (c) Part III of the ^{M3}Matrimonial and Family Proceedings Act 1984;
 - (d) the ^{M4}Family Law (Scotland) Act 1985;

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- (e) Schedule 1 to the ^{M5}Children Act 1989; ^{F13}...
 - [^{F14}(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.

[^{F15}(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 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)
- F2** Words in s. 8(1)(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. 5**
- F3** 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.
- F4** 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.
- F5** Words in s. 8(1) repealed (27.10.2008) by Child Maintenance and Other Payments Act 2008 (c. 6), s. 62(3), **Sch. 8**; S.I. 2008/2548, art. 3(d)(i)
- F6** 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.
- F7** 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.
- F8** 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.
- F9** 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)
- F10** 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.
- F11** Word in s. 8(6)(b) substituted (10.12.2012 for specified purposes) by Child Maintenance and Other Payments Act 2008 (c. 6), s. 62(3), **Sch. 7 para. 1(2)**; S.I. 2012/3042, arts. 2(e), 3 (with arts. 5, 6) (as amended (29.7.2013) by S.I. 2013/1860, art. 6 and (24.6.2014) by S.I. 2014/1635, art. 6)
- F12** Words in s. 8(8)(a) inserted (8.4.2013 for specified purposes, 10.6.2013 in so far as not already in force) by Welfare Reform Act 2012 (c. 5), s. 150(3), **Sch. 9 para. 2**; S.I. 2013/358, art. 7(1)(2)(k), Sch. 3; S.I. 2013/1250, art. 2
- F13** 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)
- F14** 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
- F15** 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)

- C1** S. 8 restricted (5.4.1993) by The Child Maintenance (Written Agreements) Order 1993 (S.I. 1993/620), **art.2**
- C2** 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**

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- C3** S. 8 restricted (2.1.1998) by The Child Support (Written Agreements) (Scotland) Order 1997 (S.I. 1997/2943), arts. 1, 2
- C4** 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)**)
- C5** 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)**)
- C6** 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

- I1** 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

- M1** 1973 c. 18.
M2 1978 c. 22.
M3 1984 c. 42.
M4 1985 c. 37.
M5 1989 c. 41.

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