



# Child Support Act 1995

## 1995 CHAPTER 34

### *Application for a departure direction*

#### **1 Applications for departure directions.**

(1) In the 1991 Act, insert after section 28—

*“Departure from usual rules for determining maintenance assessments*

#### **28A Application for a departure direction.**

- (1) Where a maintenance assessment (“the current assessment”) is in force—
  - (a) the person with care, or absent parent, with respect to whom it was made, or
  - (b) where the application for the current assessment was made under section 7, either of those persons or the child concerned,may apply to the Secretary of State for a direction under section 28F (a “departure direction”).
- (2) An application for a departure direction shall state in writing the grounds on which it is made and shall, in particular, state whether it is based on—
  - (a) the effect of the current assessment; or
  - (b) a material change in the circumstances of the case since the current assessment was made.
- (3) In other respects, an application for a departure direction shall be made in such manner as may be prescribed.
- (4) An application may be made under this section even though—
  - (a) an application for a review has been made under section 17 or 18 with respect to the current assessment; or
  - (b) a child support officer is conducting a review of the current assessment under section 16 or 19.

*Status: Point in time view as at 08/09/1998.*

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- (5) If the Secretary of State considers it appropriate to do so, he may by regulations provide for the question whether a change of circumstances is material to be determined in accordance with the regulations.
- (6) Schedule 4A has effect in relation to departure directions.”
- (2) Schedule 1 inserts in the 1991 Act a new Schedule 4A which makes supplemental provision with respect to procedural and other matters.

#### Commencement Information

- II** S. 1 wholly in force at 2.12.1996; s. 1 not in force at Royal Assent see s. 30(4); s. 1(1)(2) in force at 14.10.1996 for certain purposes by S.I. 1996/2630, art. 2(1), **Sch. Pt. I**; S. 1 wholly in force in force at 2.12.1996 by S.I. 1996/2630, art. 2(2), **Sch. Pt. II**

## 2 Preliminary consideration.

In the 1991 Act, insert after section 28A—

### “28B Preliminary consideration of applications.

- (1) Where an application for a departure direction has been duly made to the Secretary of State, he may give the application a preliminary consideration.
- (2) Where the Secretary of State does so he may, on completing the preliminary consideration, reject the application if it appears to him—
- that there are no grounds on which a departure direction could be given in response to the application; or
  - that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Secretary of State for the purposes of this subsection and section 28F(4).
- (3) In subsection (2)—
- “the current amount” means the amount of the child support maintenance fixed by the current assessment; and
- “the revised amount” means the amount of child support maintenance which, but for subsection (2)(b), would be fixed if a fresh maintenance assessment were to be made as a result of a departure direction allowing the departure applied for.
- (4) Before completing any preliminary consideration, the Secretary of State may refer the current assessment to a child support officer for it to be reviewed as if an application for a review had been made under section 17 or 18.
- (5) A review initiated by a reference under subsection (4) shall be conducted as if subsection (4) of section 17, or (as the case may be) subsection (8) of section 18, were omitted.
- (6) Where, as a result of a review of the current assessment under section 16, 17, 18 or 19 (including a review initiated by a reference under subsection (4)), a fresh maintenance assessment is made, the Secretary of State—

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- (a) shall notify the applicant and such other persons as may be prescribed that the fresh maintenance assessment has been made; and
- (b) may direct that the application is to lapse unless, before the end of such period as may be prescribed, the applicant notifies the Secretary of State that he wishes it to stand.”

#### Commencement Information

**I2** S. 2 partly in force; s. 2 not in force at Royal Assent see s. 30(4); s. 2 in force at 14.10.1996 for certain purposes by S.I. 1996/2630, art 2(1), **Sch. Pt. I**; s. 2 in force at 2.12.1996 for certain purposes by S.I. 1996/2630, art. 2(2), **Sch. Pt. II**

### 3 Imposition of a regular payments condition.

In the 1991 Act, insert after section 28B—

#### “28C Imposition of a regular payments condition.

- (1) Where an application for a departure direction is made by an absent parent, the Secretary of State may impose on him one of the conditions mentioned in subsection (2) (“a regular payments condition”).
- (2) The conditions are that—
  - (a) the applicant must make the payments of child support maintenance fixed by the current assessment;
  - (b) the applicant must make such reduced payments of child support maintenance as may be determined in accordance with regulations made by the Secretary of State.
- (3) Where the Secretary of State imposes a regular payments condition, he shall give written notice to the absent parent and person with care concerned of the imposition of the condition and of the effect of failure to comply with it.
- (4) A regular payments condition shall cease to have effect on the failure or determination of the application.
- (5) For the purposes of subsection (4), an application for a departure direction fails if—
  - (a) it lapses or is withdrawn; or
  - (b) the Secretary of State rejects it on completing a preliminary consideration under section 28B.
- (6) Where an absent parent has failed to comply with a regular payments condition—
  - (a) the Secretary of State may refuse to consider the application; and
  - (b) in prescribed circumstances the application shall lapse.
- (7) The question whether an absent parent has failed to comply with a regular payments condition shall be determined by the Secretary of State.
- (8) Where the Secretary of State determines that an absent parent has failed to comply with a regular payments condition he shall give that parent, and the person with care concerned, written notice of his decision.”

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#### Commencement Information

- I3** S. 3 wholly in force at 2.12.1996; s. 3 not in force at Royal Assent see s. 30(4); s. 2 in force at 14.10.1996 for certain purposes by S.I. 1996/2630, art. 2(1), **Sch. Pt. I**; S. 3 wholly in force at 2.12.1996 by S.I. 1996/2630, art. 2(2), **Sch. Pt. II**

#### 4 Determination of applications.

In the 1991 Act, insert after section 28C—

##### “28D Determination of applications.

- (1) Where an application for a departure direction has not failed, the Secretary of State shall—
  - (a) determine the application in accordance with the relevant provisions of, or made under, this Act; or
  - (b) refer the application to a child support appeal tribunal for the tribunal to determine it in accordance with those provisions.
- (2) For the purposes of subsection (1), an application for a departure direction has failed if—
  - (a) it has lapsed or been withdrawn; or
  - (b) the Secretary of State has rejected it on completing a preliminary consideration under section 28B.
- (3) In dealing with an application for a departure direction which has been referred to it under subsection (1)(b), a child support appeal tribunal shall have the same powers, and be subject to the same duties, as would the Secretary of State if he were dealing with the application.”

#### 5 Matters to be taken into account.

In the 1991 Act, insert after section 28D—

##### “28E Matters to be taken into account.

- (1) In determining any application for a departure direction, the Secretary of State shall have regard both to the general principles set out in subsection (2) and to such other considerations as may be prescribed.
- (2) The general principles are that—
  - (a) parents should be responsible for maintaining their children whenever they can afford to do so;
  - (b) where a parent has more than one child, his obligation to maintain any one of them should be no less of an obligation than his obligation to maintain any other of them.
- (3) In determining any application for a departure direction, the Secretary of State shall take into account any representations made to him—
  - (a) by the person with care or absent parent concerned; or

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- (b) where the application for the current assessment was made under section 7, by either of them or the child concerned.
- (4) In determining any application for a departure direction, no account shall be taken of the fact that—
  - (a) any part of the income of the person with care concerned is, or would be if a departure direction were made, derived from any benefit; or
  - (b) some or all of any child support maintenance might be taken into account in any manner in relation to any entitlement to benefit.
- (5) In this section “benefit” has such meaning as may be prescribed.”

#### Commencement Information

- I4** S. 5 wholly in force at 2.12.1996; s. 5 not in force at Royal Assent see s. 30(4); s. 2 in force at 14.10.1996 for certain purposes by S.I. 1996/2630, art. 2(1), Sch. Pt. I; S. 5 wholly in force at 2.12.1996 by 1996/2630, art. 2(2), Sch. Pt.II

## 6 Departure directions.

- (1) In the 1991 Act, insert after section 28E—

### “28F Departure directions.

- (1) The Secretary of State may give a departure direction if—
  - (a) he is satisfied that the case is one which falls within one or more of the cases set out in Part I of Schedule 4B or in regulations made under that Part; and
  - (b) it is his opinion that, in all the circumstances of the case, it would be just and equitable to give a departure direction.
- (2) In considering whether it would be just and equitable in any case to give a departure direction, the Secretary of State shall have regard, in particular, to—
  - (a) the financial circumstances of the absent parent concerned,
  - (b) the financial circumstances of the person with care concerned, and
  - (c) the welfare of any child likely to be affected by the direction.
- (3) The Secretary of State may by regulations make provision—
  - (a) for factors which are to be taken into account in determining whether it would be just and equitable to give a departure direction in any case;
  - (b) for factors which are not to be taken into account in determining such a question.
- (4) The Secretary of State shall not give a departure direction if he is satisfied that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Secretary of State for the purposes of this subsection and section 28B(2).
- (5) In subsection (4)—

“the current amount” means the amount of the child support maintenance fixed by the current assessment, and

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“the revised amount” means the amount of child support maintenance which would be fixed if a fresh maintenance assessment were to be made as a result of the departure direction which the Secretary of State would give in response to the application but for subsection (4).

- (6) A departure direction shall—
    - (a) require a child support officer to make one or more fresh maintenance assessments; and
    - (b) specify the basis on which the amount of child support maintenance is to be fixed by any assessment made in consequence of the direction.
  - (7) In giving a departure direction, the Secretary of State shall comply with the provisions of regulations made under Part II of Schedule 4B.
  - (8) Before the end of such period as may be prescribed, the Secretary of State shall notify the applicant for a departure direction, and such other persons as may be prescribed—
    - (a) of his decision in relation to the application, and
    - (b) of the reasons for his decision.”
- (2) Schedule 2 inserts in the 1991 Act the new Schedule 4B which is referred to in subsections (1)(a) and (7) of the new section 28F inserted by this section.

#### Commencement Information

**I5** S. 6 wholly in force at 2.12.1996; S. 6 not in force at Royal Assent see s. 30(4); s. 6(1)(2) in force at 14.10.1996 for certain purposes by S.I. 1996/2630, art. 2. Sch. Pt. I; s. 6(1)(2) wholly in force at 2.12.1996 by S.I. 1996/2630, art. 2(2), Sch. Pt. II

## 7 Effect and duration.

In the 1991 Act, insert after section 28F—

### “28G Effect and duration of departure directions.

- (1) Where a departure direction is given, it shall be the duty of the child support officer to whom the case is referred to comply with the direction as soon as is reasonably practicable.
- (2) A departure direction may be given so as to have effect—
  - (a) for a specified period; or
  - (b) until the occurrence of a specified event.
- (3) The Secretary of State may by regulations make provision for the cancellation of a departure direction in prescribed circumstances.
- (4) The Secretary of State may by regulations make provision as to when a departure direction is to take effect.
- (5) Regulations under subsection (4) may provide for a departure direction to have effect from a date earlier than that on which the direction is given.”

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### Commencement Information

- I6** S. 7 wholly in force at 2.12.1996; S. 7 not in force at Royal Assent see s. 30(4); s. 7 in force at 14.10.1996 for certain purposes by S.I. 1996/2630, art. 2(1), **Sch. Pt. I**; s. 7 wholly in force at 2.12.1996 by S.I. 1996/2630, art. 2(2), **Sch. Pt. II**

## 8 Appeals.

In the 1991 Act, insert after section 28G—

### “28H Appeals in relation to applications for departure directions.

- (1) Any qualifying person who is aggrieved by any decision of the Secretary of State on an application for a departure direction may appeal to a child support appeal tribunal against that decision.
- (2) In subsection (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.
- (3) Except with leave of the chairman of a child support appeal tribunal, no appeal under this section shall be brought after the end of the period of 28 days beginning with the date on which notification was given of the decision in question.
- (4) On an appeal under this section, the 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.”

## 9 Transitional provisions.

In the 1991 Act, insert after section 28H—

### “28I Transitional provisions.

- (1) In the case of an application for a departure direction relating to a maintenance assessment which was made before the coming into force of section 28A, the period within which the application must be made shall be such period as may be prescribed.

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- (2) The Secretary of State may by regulations make provision for applications for departure directions to be dealt with according to an order determined in accordance with the regulations.
- (3) The regulations may, for example, provide for—
  - (a) applications relating to prescribed descriptions of maintenance assessment, or
  - (b) prescribed descriptions of application,
 to be dealt with before applications relating to other prescribed descriptions of assessment or (as the case may be) other prescribed descriptions of application.
- (4) The Secretary of State may by regulations make provision—
  - (a) enabling applications for departure directions made before the coming into force of section 28A to be considered even though that section is not in force;
  - (b) for the determination of any such application as if section 28A and the other provisions of this Act relating to departure directions were in force; and
  - (c) as to the effect of any departure direction given before the coming into force of section 28A.
- (5) Regulations under section 28G(4) may not provide for a departure direction to have effect from a date earlier than that on which that section came into force.”

#### Commencement Information

- I7** S. 9 partly in force; s. 9 not in force at Royal Assent see s. 30(4); s. 9 in force for certain purposes at 22.1.1996 by S.I. 1995/3262, art. 2(2), Sch. Pt. II; s. 9 in force for certain purposes at 14.10.1996 by S.I. 1996/2630, art. 2(1), Sch. Pt. I

#### *The child maintenance bonus*

### **10 The child maintenance bonus.**

- (1) The Secretary of State may by regulations make provision for the payment, in prescribed circumstances, of sums to persons—
  - (a) who are or have been in receipt of child maintenance; and
  - (b) to or in respect of whom income support or a jobseeker’s allowance is or has been paid.
- (2) A sum payable under the regulations shall be known as “a child maintenance bonus”.
- (3) A child maintenance bonus shall be treated for all purposes as payable by way of income support or (as the case may be) a jobseeker’s allowance.
- (4) Subsection (3) is subject to section 617 of the <sup>M1</sup>Income and Corporation Taxes Act 1988 (which, as amended by paragraph 1 of Schedule 3, provides for a child maintenance bonus not to be taxable).
- (5) The regulations may, in particular, provide for—



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- (a) a child maintenance bonus to be payable only on the occurrence of a prescribed event;
  - (b) a bonus not to be payable unless a claim is made before the end of the prescribed period;
  - (c) the amount of a bonus (subject to any maximum prescribed by virtue of paragraph (f)) to be determined in accordance with the regulations;
  - (d) enabling amounts to be calculated by reference to periods of entitlement to income support and periods of entitlement to a jobseeker's allowance;
  - (e) treating a bonus as payable wholly by way of a jobseeker's allowance or wholly by way of income support, in a case where amounts have been calculated in accordance with provision made by virtue of paragraph (d);
  - (f) the amount of a bonus not to exceed a prescribed maximum;
  - (g) a bonus not to be payable if the amount of the bonus which would otherwise be payable is less than the prescribed minimum;
  - (h) prescribed periods to be disregarded for prescribed purposes;
  - (i) a bonus which has been paid to a person to be treated, in prescribed circumstances and for prescribed purposes, as income or capital of hers or of any other member of her family;
  - (j) treating the whole or a prescribed part of an amount which has accrued towards a person's bonus—
    - (i) as not having accrued towards her bonus; but
    - (ii) as having accrued towards the bonus of another person.
- (6) The Secretary of State may by regulations provide—
- (a) for the whole or a prescribed part of a child maintenance bonus to be paid in such circumstances as may be prescribed to such person, other than the person who is or had been in receipt of child maintenance, as may be determined in accordance with the regulations;
  - (b) for any payments of a prescribed kind which have been collected by the Secretary of State, and retained by him, to be treated for the purposes of this section as having been received by the appropriate person as payments of child maintenance.
- (7) In this section—
- “appropriate person” has such meaning as may be prescribed;
  - “child” means a person under the age of 16;
  - “child maintenance” has such meaning as may be prescribed;
  - “family” means—
    - (a) a married or unmarried couple;
    - (b) a married or unmarried couple and a member of the same household for whom one of them is, or both are, responsible and who is a child or a person of a prescribed description;
    - (c) except in prescribed circumstances, a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;
  - “married couple” means a man and woman who are married to each other and are members of the same household; and

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“unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances.

- (8) For the purposes of this section, the Secretary of State may by regulations make provision as to the circumstances in which—
- (a) persons are to be treated as being or not being members of the same household;
  - (b) one person is to be treated as responsible or not responsible for another.

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

- C1 S. 10 extended (7.4.1997) by S.I. 1997/645, reg. 2(2)(3)  
C2 S. 10 amended (7.4.1997) by S.I. 1997/645, reg. 2(1), Sch. Memorandum

**Marginal Citations**

- M1 1988 c. 1.

*Reviews of maintenance assessments etc.*

**11 Reviews: interim maintenance assessments.**

In section 12 of the 1991 Act (interim maintenance assessments), for subsection (1) substitute—

- “(1) This section applies where a child support officer—
- (a) is required to make a maintenance assessment;
  - (b) is proposing to conduct a review under section 16, 17, 18 or 19; or
  - (c) is conducting such a review.
- (1A) If it appears to the child support officer that he does not have sufficient information to enable him—
- (a) in a case falling within subsection (1)(a), to make the assessment,
  - (b) in a case falling within subsection (1)(b), to conduct the proposed review, or
  - (c) in a case falling within subsection (1)(c), to complete the review,
- he may make an interim maintenance assessment.”

**12 Reviews on change of circumstances.**

- (1) Section 17 of the 1991 Act (reviews on change of circumstances) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) The Secretary of State shall refer to a child support officer any application under this section which is duly made.”
- (3) In subsection (3)—
- (a) after “subsection (6)” insert “, or by virtue of subsection (7), ”; and
  - (b) for “the review applied for” substitute “ a review ”.

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(4) After subsection (4) insert—

“(4A) Where a child support officer is conducting a review under this section, and the original assessment has ceased to have effect, he may continue the review as if the application for a review related to the original assessment and any subsequent assessment.”

(5) For subsection (5) substitute—

“(5) In conducting a review under this section, the child support officer shall take into account a change of circumstance only if—

- (a) he has been notified of it in such manner, and by such person, as may be prescribed; or
- (b) it is one which he knows has taken place.”

(6) In subsection (6)—

- (a) for “any review” substitute “ a review of the original assessment ”; and
- (b) after “maintenance assessment” insert “ by reference to the circumstances of the case as at the date of the application under this section ”.

(7) After subsection (6) add—

“(7) On completing a review of any subsequent assessment under this section, the child support officer concerned shall make a fresh maintenance assessment except in such circumstances as may be prescribed.

(8) In this section “subsequent assessment” means a maintenance assessment made after the original assessment with respect to the same persons as the original assessment.”

#### **Commencement Information**

**18** S. 12 wholly in force at 22.1.1996; s. 12 not in force at Royal Assent see s. 30(4); s. 12(1)(5)(7) in force for certain purposes at 1.10.1995 by S.I. 1995/2302, art. 2(2), **Sch. Pt. II**; s. 12 in force otherwise at 22.1.1996 by S.I. 1995/3262, art. 2(2), **Sch. Pt. II**

### **13 Continuation of reviews under section 18 of 1991 Act.**

In section 18 of the 1991 Act (reviews of decisions of child support officers), after subsection (6) insert—

“(6A) Where a child support officer is conducting a review under this section and the maintenance assessment in question (“the original assessment”) is no longer in force, he may continue the review as if the application for a review related to the original assessment and any maintenance assessment made after the original assessment with respect to the same persons as the original assessment.”

### **14 Cancellation of maintenance assessments on review.**

(1) In section 18 of the 1991 Act (reviews of decisions of child support officers), after subsection (10) insert—

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“(10A) If a child support officer conducting a review under this section is satisfied that the maintenance assessment in question was not validly made he may cancel it with effect from the date on which it took effect.”

(2) In paragraph 16 of Schedule 1 to the 1991 Act (termination of maintenance assessments), insert after sub-paragraph (4)—

“(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.”

(3) In sub-paragraph (7) of paragraph 16 of Schedule 1 to the 1991 Act, after “sub-paragraph” insert “(4A),”.

## 15 **Reviews at instigation of child support officers.**

For section 19 of the 1991 Act substitute—

### **“19 Reviews at instigation of child support officers.**

(1) Where a child support officer is not conducting a review under section 16, 17 or 18, he may nevertheless review—

- (a) a refusal to make a maintenance assessment,
- (b) a refusal to review a maintenance assessment under section 17,
- (c) a maintenance assessment (whether or not in force),
- (d) a cancellation of a maintenance assessment, or
- (e) a refusal to cancel a maintenance assessment,

if he suspects that it may be defective for one or more of the reasons set out in subsection (2).

(2) The reasons are that the refusal, assessment or cancellation—

- (a) was made in ignorance of a material fact;
- (b) was based on a mistake as to a material fact; or
- (c) was wrong in law.

(3) If, on completing such a review, the child support officer is satisfied that the refusal, assessment or cancellation is defective for one or more of those reasons, he may—

- (a) take no further action;
- (b) in the case of a maintenance assessment which has been cancelled, set aside the cancellation;
- (c) make a maintenance assessment;
- (d) make a fresh maintenance assessment;
- (e) cancel the maintenance assessment in question.

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- (4) Where a child support officer sets a cancellation aside under subsection (3), the maintenance assessment in question shall have effect as if it had never been cancelled.
- (5) Any cancellation of a maintenance assessment under this section shall have effect from such date as may be determined by the child support officer.
- (6) Where a child support officer suspects that if an application for a review of a maintenance assessment were to be made under section 17 it would be appropriate to make one or more fresh maintenance assessments, he may review the maintenance assessment even though no application for its review has been made under that section.
- (7) If, on completing a review by virtue of subsection (6), the child support officer is satisfied that it would be appropriate to make one or more fresh maintenance assessments, he may do so.”

### *Appeals*

## **16 Lapse of appeals to child support appeal tribunals.**

In the 1991 Act, insert after section 20—

### **“20A Lapse of appeals.**

- (1) This section applies where—
  - (a) a person has brought an appeal under section 20; and
  - (b) before the appeal is heard, the decision appealed against is reviewed under section 19.
- (2) If the child support officer conducting the review considers that the decision which he has made on the review is the same as that which would have been made on the appeal had every ground of the appeal succeeded, the appeal shall lapse.
- (3) In any other case, the review shall be of no effect and the appeal shall proceed accordingly.”

## **17 Determination of questions other than by Child Support Commissioners.**

- (1) In Schedule 4 to the 1991 Act (Child Support Commissioners), insert after paragraph 4—

### **Determination of questions by other officers**

- “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,
- to determine any question which is determinable by a Child Support Commissioner and which does not involve the

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*Status: Point in time view as at 08/09/1998.*

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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 sub-paragraph (1).”

- (2) In paragraph 7 of that Schedule (consultation with Lord Advocate), for “or 4(1) or (2) (b)” substitute “ 4(1) or (2)(b) or 4A(1) ”.
- (3) In paragraph 8 of that Schedule (application of Schedule to Northern Ireland), in sub-paragraph (e), for “paragraphs 5” substitute “ paragraphs 4A ”.

#### *Miscellaneous*

### **18 Deferral of right to apply for maintenance assessment.**

- (1) In section 4 of the 1991 Act (right of person with care or absent parent to apply for maintenance assessment), insert at the end—

“(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, in respect of that child or those children and the person who is, at that time, the absent parent; 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).”

- (2) In section 7 of the 1991 Act (right of child in Scotland to apply for maintenance assessment), insert at the end—

“(10) No application may be made at any time under this section by a qualifying child if there is in force a written maintenance agreement made before 5th April 1993, or a maintenance order, in respect of that child and the person who is, at that time, the absent parent.”

- (3) In section 8 of the 1991 Act (role of the courts with respect to maintenance for children), after subsection (3) insert—

“(3A) In any case in which section 4(10) or 7(10) prevents the making of an application for a maintenance assessment, and—

- (a) no application has been made for a maintenance assessment under section 6, or
- (b) such an application has been made but no maintenance assessment has been made in response to it,

subsection (3) shall have effect with the omission of the word “vary”.”

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- (4) In section 9 of the 1991 Act (maintenance agreements), at the beginning of subsection (3) insert “ Subject to section 4(10)(a) and section 7(10), ” and after subsection (5) insert—
- “(6) In any case in which section 4(10) or 7(10) prevents the making of an application for a maintenance assessment, and—
- (a) no application has been made for a maintenance assessment under section 6, or
- (b) such an application has been made but no maintenance assessment has been made in response to it,
- subsection (5) shall have effect with the omission of paragraph (b).”
- (5) The Secretary of State may by order repeal any of the provisions of this section.
- (6) Neither section 4(10) nor section 7(10) of the 1991 Act shall apply in relation to a maintenance order made in the circumstances mentioned in subsection (7) or (8) of section 8 of the 1991 Act.
- (7) The Secretary of State may by regulations make provision for section 4(10), or section 7(10), of the 1991 Act not to apply in relation to such other cases as may be prescribed.
- (8) Part I of the Schedule to the <sup>M2</sup>Child Support Act 1991 (Commencement No.3 and Transitional Provisions) Order 1992 (phased take-on of certain cases) is hereby revoked.
- (9) At any time before 7th April 1997, neither section 8(3), nor section 9(5)(b), of the 1991 Act shall apply in relation to any case which fell within paragraph 5(2) of the Schedule to the 1992 order (pending cases during the transitional period set by that order).

**Marginal Citations**

M2 [S.I. 1992/2644](#)

**19 Non-referral of applications for maintenance assessments.**

In section 11 of the 1991 Act, after subsection (1) (referral of application for maintenance assessment to child support officer) insert—

“(1A) Where—

- (a) an application for a maintenance assessment is made under section 6, but
- (b) the Secretary of State becomes aware, before referring the application to a child support officer, that the claim mentioned in subsection (1) of that section has been disallowed or withdrawn,

he shall, subject to subsection (1B), treat the application as if it had not been made.

(1B) If it appears to the Secretary of State that subsection (10) of section 4 would not have prevented the parent with care concerned from making an application for a maintenance assessment under that section he shall—

- (a) notify her of the effect of this subsection, and

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- (b) if, before the end of the period of 28 days beginning with the day on which notice was sent to her, she asks him to do so, treat the application as having been made not under section 6 but under section 4.

(1C) Where the application is not preserved under subsection (1B) (and so is treated as not having been made) the Secretary of State shall notify—

- (a) the parent with care concerned; and
- (b) the absent parent (or alleged absent parent), where it appears to him that that person is aware of the application.”

## 20 Disputed parentage.

(1) Section 27 of the 1991 Act (reference to court for declaration of parentage) is amended as set out in subsections (2) to (4).

(2) For subsection (1) substitute—

“(1) Subsection (1A) applies in any case where—

- (a) an application for a maintenance assessment has been made, or a maintenance assessment is in force, with respect to a person (“the alleged parent”) who denies that he is a parent of a child with respect to whom the application or assessment was made; and
- (b) a child support officer to whom the case is referred is not satisfied that the case falls within one of those set out in section 26(2).

(1A) In any case where this subsection applies, the Secretary of State or the person with care may apply to the court for a declaration as to whether or not the alleged parent is one of the child’s parents.”

(3) In subsection (2), for “(1)” substitute “(1A) ”.

(4) For subsection (3), substitute—

“(3) A declaration under this section shall have effect only for the purposes of—

- (a) this Act; and
- (b) proceedings in which a court is considering whether to make a maintenance order in the circumstances mentioned in subsection (6), (7) or (8) of section 8.”

(5) Section 28 of the 1991 Act (power of Secretary of State to initiate or defend actions of declarator) is amended as set out in subsections (6) and (7).

(6) For subsection (1) substitute—

“(1) Subsection (1A) applies in any case where—

- (a) an application for a maintenance assessment has been made, or a maintenance assessment is in force, with respect to a person (“the alleged parent”) who denies that he is a parent of a child with respect to whom the application or assessment was made; and
- (b) a child support officer to whom the case is referred is not satisfied that the case falls within one of those set out in section 26(2).

(1A) In any case where this subsection applies, the Secretary of State may bring an action for declarator of parentage under section 7 of the Law Reform (Parent and Child) (Scotland) Act 1986.”



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(7) In subsection (2), at the end insert “ or in a maintenance assessment which is in force ”.

## **21 Fees for scientific tests.**

After section 27 of the 1991 Act insert—

### **“27A Recovery of fees for scientific tests.**

- (1) This section applies in any case where—
  - (a) an application for a maintenance assessment has been made or a maintenance assessment is in force;
  - (b) scientific tests have been carried out (otherwise than under a direction or in response to a request) in relation to bodily samples obtained from a person who is alleged to be a parent of a child with respect to whom the application or assessment is made;
  - (c) the results of the tests do not exclude the alleged parent from being one of the child’s parents; and
  - (d) one of the conditions set out in subsection (2) is satisfied.
- (2) The conditions are that—
  - (a) the alleged parent does not deny that he is one of the child’s parents;
  - (b) in proceedings under section 27, a court has made a declaration that the alleged parent is a parent of the child in question; or
  - (c) in an action under section 7 of the Law Reform (Parent and Child) (Scotland) Act 1986, brought by the Secretary of State by virtue of section 28, a court has granted a decree of declarator of parentage to the effect that the alleged parent is a parent of the child in question.
- (3) In any case to which this section applies, any fee paid by the Secretary of State in connection with scientific tests may be recovered by him from the alleged parent as a debt due to the Crown.
- (4) In this section—

“bodily sample” means a sample of bodily fluid or bodily tissue taken for the purpose of scientific tests;

“direction” means a direction given by a court under section 20 of the Family Law Reform Act 1969 (tests to determine paternity);

“request” means a request made by a court under section 70 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (blood and other samples in civil proceedings); and

“scientific tests” means scientific tests made with the object of ascertaining the inheritable characteristics of bodily fluids or bodily tissue.
- (5) Any sum recovered by the Secretary of State under this section shall be paid by him into the Consolidated Fund.”

## **22 Arrears of child support maintenance: alternative to interest payments.**

In the 1991 Act, insert after section 41—

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**“41A Arrears: alternative to interest payments.**

- (1) The Secretary of State may by regulations make provision for the payment by absent parents who are in arrears with payments of child support maintenance of sums determined in accordance with the regulations.
- (2) A sum payable under any such regulations is referred to in this section as an “additional sum”.
- (3) Any liability of an absent parent to pay an additional sum shall not affect any liability of his to pay the arrears of child support maintenance concerned.
- (4) The Secretary of State shall exercise his powers under this section and those under section 41(3) in such a way as to ensure that no absent parent is liable to pay both interest and an additional sum in respect of the same period (except by reference to different maintenance assessments).
- (5) Regulations under subsection (1) may, in particular, make provision—
  - (a) as to the calculation of any additional sum;
  - (b) as to the time at which, and person to whom, any additional sum shall be payable;
  - (c) as to the circumstances in which, in a case where the Secretary of State has been acting under section 6, any additional sum may be retained by him;
  - (d) for the Secretary of State, in a case where he has been acting under section 6 and in such circumstances as may be prescribed, to waive any additional sum (or part of any additional sum).
- (6) The provisions of this Act with respect to—
  - (a) the collection of child support maintenance;
  - (b) the enforcement of any obligation to pay child support maintenance,
 shall apply equally to additional sums payable by virtue of regulations made under this section.
- (7) Any sum retained by the Secretary of State by virtue of this section shall be paid by him into the Consolidated Fund.”

**23 Repayment of overpaid child support maintenance.**

In the 1991 Act, insert after section 41A—

**“41B Repayment of overpaid child support maintenance.**

- (1) This section applies where it appears to the Secretary of State that an absent parent has made a payment by way of child support maintenance which amounts to an overpayment by him of that maintenance and that—
  - (a) it would not be possible for the absent parent to recover the amount of the overpayment by way of an adjustment of the amount payable under a maintenance assessment; or
  - (b) it would be inappropriate to rely on an adjustment of the amount payable under a maintenance assessment as the means of enabling the absent parent to recover the amount of the overpayment.

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- (2) The Secretary of State may make such payment to the absent parent by way of reimbursement, or partial reimbursement, of the overpayment as the Secretary of State considers appropriate.
- (3) Where the Secretary of State has made a payment under this section he may, in such circumstances as may be prescribed, require the relevant person to pay to him the whole, or a specified proportion, of the amount of that payment.
- (4) Any such requirement shall be imposed by giving the relevant person a written demand for the amount which the Secretary of State wishes to recover from him.
- (5) Any sum which a person is required to pay to the Secretary of State under this section shall be recoverable from him by the Secretary of State as a debt due to the Crown.
- (6) The Secretary of State may by regulations make provision in relation to any case in which—
  - (a) one or more overpayments of child support maintenance are being reimbursed to the Secretary of State by the relevant person; and
  - (b) child support maintenance has continued to be payable by the absent parent concerned to the person with care concerned, or again becomes so payable.
- (7) For the purposes of this section any payments made by a person under a maintenance assessment which was not validly made shall be treated as overpayments of child support maintenance made by an absent parent.
- (8) In this section “relevant person”, in relation to an overpayment, means the person with care to whom the overpayment was made.
- (9) Any sum recovered by the Secretary of State under this section shall be paid by him into the Consolidated Fund.”

#### **Commencement Information**

**19** S. 23 wholly in force at 1.10.1995; s. 23 not in force at Royal Assent; s. 23 in force for certain purposes at 4.9.1995 and in so far as not already in force at 1.10.1995 by S.I. 1995/2302, art. 2, Sch.

## **24 Compensation payments.**

- (1) The Secretary of State may by regulations make provision for the payment by him, in prescribed circumstances and to or in respect of qualifying persons, of sums by way of compensation or partial compensation for any reduction which is attributable to one or more prescribed changes in child support legislation.
- (2) For the purposes of this section—

“child support legislation” means—

  - (a) the provisions of the 1991 Act and this Act;
  - (b) any provision made under that Act or this Act; and
  - (c) such other provisions (if any) of primary or subordinate legislation with respect to child support maintenance as may be prescribed;

“compensation payment” means any sum payable under the regulations;

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“qualifying person” means a person with care—

- (a) with respect to whom a maintenance assessment (“the revised assessment”) is in force or was made after the change or changes took effect;
- (b) to or in respect of whom family credit or disability working allowance is or has been paid; and
- (c) with respect to whom an earlier maintenance assessment was in force at the relevant time;

“reduction” means a reduction in the amount of child support maintenance payable under the revised assessment when compared with the amount payable under the earlier assessment; and

“relevant time” has such meaning as may be prescribed.

(3) The regulations may include provision—

- (a) as to the calculation of the amount of any compensation payment;
- (b) for any compensation payment to be made in instalments or as a lump sum;
- (c) as to the manner in which any compensation payment is to be made;
- (d) for a compensation payment which would otherwise be made under the regulations not to be made if the amount of the payment would be less than the prescribed minimum.

(4) The Secretary of State may by order provide that, for the purposes of specified provisions of the <sup>M3</sup>Social Security Administration Act 1992, a compensation payment is to be treated as if it were a payment of a benefit (as defined by section 191 of that Act) or of a benefit of a prescribed kind.

#### Marginal Citations

M3 1992 c. 5.

## 25 Payment of benefit where maintenance payments collected by Secretary of State.

In the Social Security Administration Act 1992, insert after section 74—

### “74A Payment of benefit where maintenance payments collected by Secretary of State.

(1) This section applies where—

- (a) a person (“the claimant”) is entitled to a benefit to which this section applies;
- (b) the Secretary of State is collecting periodical payments of child or spousal maintenance made in respect of the claimant or a member of the claimant’s family; and
- (c) the inclusion of any such periodical payment in the claimant’s relevant income would, apart from this section, have the effect of reducing the amount of the benefit to which the claimant is entitled.

(2) The Secretary of State may, to such extent as he considers appropriate, treat any such periodical payment as not being relevant income for the purposes of calculating the amount of benefit to which the claimant is entitled.

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- (3) The Secretary of State may, to the extent that any periodical payment collected by him is treated as not being relevant income for those purposes, retain the whole or any part of that payment.
- (4) Any sum retained by the Secretary of State under subsection (3) shall be paid by him into the Consolidated Fund.
- (5) In this section—
  - “child” means a person under the age of 16;
  - “child maintenance”, “spousal maintenance” and “relevant income” have such meaning as may be prescribed;
  - “family” means—
    - (a) a married or unmarried couple;
    - (b) a married or unmarried couple and a member of the same household for whom one of them is, or both are, responsible and who is a child or a person of a prescribed description;
    - (c) except in prescribed circumstances, a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;
      - “married couple” means a man and woman who are married to each other and are members of the same household; and
      - “unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances.
- (6) For the purposes of this section, the Secretary of State may by regulations make provision as to the circumstances in which—
  - (a) persons are to be treated as being or not being members of the same household;
  - (b) one person is to be treated as responsible or not responsible for another.
- (7) The benefits to which this section applies are income support, an income-based jobseeker’s allowance and such other benefits (if any) as may be prescribed.”

### *Supplemental*

## **26 Regulations and orders.**

- (1) Any power under this Act to make regulations or orders shall be exercisable by statutory instrument.
- (2) Any such power may be exercised to make different provision for different cases, including different provision for different areas.
- (3) Any such power includes power—
  - (a) to make such incidental, supplemental, consequential or transitional provision as appears to the Secretary of State to be expedient; and
  - (b) to provide for a person to exercise a discretion in dealing with any matter.
- (4) Subsection (5) applies to—
  - (a) the first regulations made under section 10;

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- (b) any order made under section 18(5);
  - (c) the first regulations made under section 24.
- (5) No regulations or order to which this subsection applies shall be made unless a draft of the statutory instrument containing the regulations or order has been laid before Parliament and approved by a resolution of each House.
- (6) Any other statutory instrument made under this Act, other than one made under section 30(4), shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I10** S. 26 wholly in force at 14.10.1996; s. 26 not in force at Royal Assent see s. 30(4); s. 26(1)(2)(3)(4)(b)(5)(6) in force at 4.9.1995 by S.I. 1995/2302, art. 2, **Sch. Pt. I**; s. 26(4)(c) in force at 1.10.1995 by S.I. 1995/2302, art. 2, **Sch. Pt. II**; s. 26 in force at 14.10.1996 in so far as not already in force by S.I. 1996/2630, art. 2(1), **Sch. Pt. I**

#### 27 Interpretation.

- (1) In this Act “the 1991 Act” means the <sup>M4</sup>Child Support Act 1991.
- (2) Expressions in this Act which are used in the 1991 Act have the same meaning in this Act as they have in that Act.

#### Marginal Citations

**M4** 1991 c. 48.

#### 28 Financial provisions.

There shall be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State under or by virtue of this Act;
- (b) any increase attributable to this Act in the sums payable out of money so provided under or by virtue of any other enactment.

#### 29 Provision for Northern Ireland.

- (1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M5</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act—
- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) The Secretary of State may make arrangements with the Department of Health and Social Services for Northern Ireland with a view to securing, to the extent allowed for in the arrangements, that—

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- (a) the provision made by or under sections 10 and 24 (“the provision made for Great Britain”); and
  - (b) the provision made by or under any corresponding enactment having effect with respect to Northern Ireland (“the provision made for Northern Ireland”),provide for a single system within the United Kingdom.
- (3) The Secretary of State may make regulations for giving effect to any such arrangements.
- (4) The regulations may, in particular—
  - (a) adapt legislation (including subordinate legislation) for the time being in force in Great Britain so as to secure its reciprocal operation with the provision made for Northern Ireland; and
  - (b) make provision to secure that acts, omissions and events which have any effect for the purposes of the provision made for Northern Ireland have a corresponding effect for the purposes of the provision made for Great Britain.

#### Marginal Citations

M5 1974 c. 28.

### 30 Short title, commencement, extent etc.

- (1) This Act may be cited as the Child Support Act 1995.
- (2) This Act and the 1991 Act may be cited together as the Child Support Acts 1991 and 1995.
- (3) Section 29 and this section (apart from subsection (5)) come into force on the passing of this Act.
- (4) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different purposes.
- (5) Schedule 3 makes minor and consequential amendments.
- (6) This Act, except for—
  - (a) sections 17, 27 and 29,
  - (b) this section, and
  - (c) paragraphs 1, 18, 19 and 20 of Schedule 3,does not extend to Northern Ireland.

#### Subordinate Legislation Made

- P1** S. 30(4) power partly exercised (14.10.1996): 14.10.1996 and 2.12.1996 appointed for specified provisions by [S.I. 1996/2630, art. 2, Sch.](#)
- P2** S. 30(4) power partly exercised (15.12.1995): 18.12.1995 and 22.1.1996 appointed for specified provisions by [S.I. 1995/3262, art. 2, Sch.](#)
- P3** S. 30(4) power partly exercised (4.9.1995): 4.9.1995 appointed for specified provisions and 1.10.1995 appointed for specified provisions by [S.I. 1995/2302, art. 2, Sch.](#)

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#### Commencement Information

- III** S. 30 partly in force; s. 30(1)-(4)(6) in force at Royal Assent by s. 30(3); s. 30(5) in force for certain purposes at 4.9.1995 by S.I. 1995/2302, art. 2, **Sch.**; s. 30(5) in force for certain purposes at 18.12.1995 by S.I. 1995/3262, art. 2(1), **Sch. Pt. I**; s. 30(5) in force for certain purposes at 14.10.1996 and 2.12.1996 by S.I. 1996/2630, art. 2, **Sch.**



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