

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

EXPLANATORY NOTES

Part 1: Child Support

Commentary on Sections

Financial penalties

Section 18: Financial Penalties

224. Early attempts to implement interest charges on arrears of child support maintenance were abandoned from April 1995. The calculations were complex and difficult to explain to clients. An alternative provision to interest was introduced by the Child Support Act 1995 but did not come into force. Neither of these provisions will have effect in the new scheme.
225. Instead, a simpler, discretionary financial penalty will be introduced. The intention is for the Secretary of State to have discretion to impose a financial penalty of up to 25 per cent of the amount owed. This will be levied for each week in which payment was not made, but will not be compounded. The charge will not be child support maintenance but will be an administrative penalty payable to the Department of Social Security in recognition of the additional work involved in pursuing late or non-payment and will be paid into the Consolidated Fund.
226. It is intended that the penalty will not be imposed if a missed payment is paid within a reasonable period, or the payment was missed for good reason, such as sickness, or acceptable arrangements are made to pay the missing amount and to continue to pay over an agreed period.
227. It is envisaged that the penalty will rarely need to be applied, but that it will provide a useful incentive for persuading non-resident parents to meet their responsibilities.
228. This section makes an amendment to section 41 and replaces section 41A of the 1991 Act. It removes the provisions on charging interest and inserts new provisions for financial penalties to be charged.
229. *Subsection (1)* amends section 41 of the 1991 Act to remove the charging of interest on arrears. Transitional provisions will allow the Secretary of State to continue to collect and enforce interest charges already imposed.
230. *Subsection (2)* substitutes section 41A of the 1991 Act with a new provision on financial penalties.

New section 41A: Penalty payments

231. *New section 41A(1)* provides for regulations that allow the Secretary of State to require a non-resident parent who is late in paying child support maintenance to make a penalty payment. Regulations will further provide the way in which penalties are calculated.
232. *New section 41A(2)* makes the amount of a penalty payment discretionary but limits the amount to be charged to 25 per cent of the amount due for that week.
233. *New section 41A(3)* provides that the amount of the child support maintenance arrears remains due even when a financial penalty has been imposed. The financial penalty is not child support maintenance and is not passed on to the parent with care.
234. *New section 41A(4)* provides for regulations to:
- (a) state at what point in time a financial penalty becomes payable; and
 - (b) allow all or part of the penalty to be waived at the discretion of the Secretary of State. This will depend on reasons given for late or non-payment and the level of co-operation in paying the arrears.
235. *New section 41A(5)* allows regulations on collection and enforcement to apply to penalty payments in the same way as they do to child maintenance payments. Therefore the Secretary of State will have exactly the same powers to collect and enforce penalty payments and may combine this action with action to collect and enforce child maintenance.
236. *New section 41A(6)* provides that any payment collected must be paid into the Consolidated Fund and is therefore not paid over to the parent with care.

Section 19: Reduced benefit decisions

237. This section replaces section 46 of the Child Support Act 1991.

New section 46: Reduced benefit decisions

238. *New section 46(1)* applies where a parent with care has asked the Secretary of State not to pursue child maintenance, or failed to provide information or refused to take a scientific test such as a DNA test. For example, where the parent with care fears violence from the non-resident parent if he were to be pursued for maintenance.
239. *New section 46(2)* enables the Secretary of State to require the parent with care to provide reasons why she has “good cause” either to ask the Secretary of State not to act under section 6, or to fail to give information as required by section 6, or to refuse to take a scientific test. When a parent with care is in receipt of a benefit referred to in, or prescribed for, the purposes of section 6(1) and asks the Secretary of State not to act, or refuses to take a test, the parent with care will be interviewed. If she is unsure whether she wants to ask the Secretary of State not to act she will be given a specified period to make her decision and give her reasons.
240. *New section 46(3)* provides that when the specified period has expired the Secretary of State must make a decision, based on the information provided by the parent with care, on whether there are reasonable grounds for believing that she or her child(ren) would be at a risk of harm or undue distress as a consequence of the Secretary of State recovering child support maintenance from the non-resident parent, insisting on the provision of information or if she were to agree to a scientific test. The term “reduced benefit decision” will replace the term “reduced benefit direction” in the existing Act.
241. “Specified” is defined in section 46(10), which gives power to prescribe a period. The Government intends to prescribe four weeks, from the date when the parent with care is given notice asking for her reasons under section 46(2).

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242. *New section 46(4)* provides that if the Secretary of State considers that there are reasonable grounds for believing that the parent with care or her child would be at risk of harm or undue distress, then he is to take no further action under section 46, and that she will be notified of this.
243. *New section 46(5) to (10)* set out the same provisions as section 46 of the 1991 Child Support Act, but substitutes some of the existing terminology. For example, reduced benefit direction in section 46 is changed to reduced benefit decision under this legislation.
244. *New section 46(6)* enables the Secretary of State to require the parent to state whether she still does not wish him to act under section 6(3) and to give her reasons.