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## STATUTORY INSTRUMENTS

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# 1992 No. 1815

## The Child Support (Maintenance Assessments and Special Cases) Regulations 1992

### PART III

#### SPECIAL CASES

##### **Both parents are absent**

**19.**—(1) Subject to regulation 27, where the circumstances of a case are that each parent of a qualifying child is an absent parent in relation to that child (neither being a person who is treated as an absent parent by regulation 20(2)) that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case—

- (a) where the application is made in relation to both absent parents, separate assessments shall be made under Schedule 1 to the Act in respect of each so as to determine the amount of child support maintenance payable by each absent parent;
- (b) subject to paragraph (3), where the application is made in relation to both absent parents, the value of C in each case shall be the assessable income of the other absent parent and where the application is made in relation to only one the value of C in the case of the other shall be nil;
- (c) where the person with care is a body of persons corporate or unincorporate, the value of AG shall [<sup>F1</sup>include the amount specified in regulation 3(1)(c)(i) but not the amount specified in regulation 3(1)(c)(ii) (income support family premium)].

[<sup>F2</sup>(d) where the application is made in relation to one absent parent only, the amount of the maintenance requirement applicable in that case shall be one-half of the amount determined in accordance with paragraph 1(2) of Schedule 1 to the Act or, where regulation 23 applies (person caring for children of more than one absent parent), of the amount determined in accordance with paragraphs (2) to (3) of that regulation.]

(3) Where, for the purposes of paragraph (2)(b), information regarding the income of the other absent parent has not been submitted to the Secretary of State or to a child support officer within the period specified in regulation 6(1) of the Maintenance Assessment Procedure Regulations then until such information is acquired the value of C shall be nil.

(4) When the information referred to in paragraph (3) is acquired the child support officer shall make a fresh assessment which shall have effect from the effective date in relation to that other absent parent.

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##### **Textual Amendments**

- F1** Words in reg. 19(2)(c) substituted (7.4.1997) by [The Child Benefit, Child Support and Social Security \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1803\)](#), regs. 1(b), 13

*Status: Point in time view as at 19/01/1998.*

*Changes to legislation: There are currently no known outstanding effects for the The Child Support (Maintenance Assessments and Special Cases) Regulations 1992, PART III. (See end of Document for details)*

**F2** Reg. 19(2)(d) added (7.10.1996) by [The Child Support \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1945\)](#), regs. 1(2), **23** (with reg. 25(5))

### Persons treated as absent parents

**20.**—(1) Where the circumstances of a case are that—

- (a) two or more persons who do not live in the same household each provide day to day care for the same qualifying child; and
- (b) at least one of those persons is a parent of that child,

that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case a parent who provides day to day care for a child of his in the following circumstances is to be treated as an absent parent for the purposes of the Act and these Regulations—

- (a) a parent who provides such care to a lesser extent than the other parent, person or persons who provide such care for the child in question;
- (b) where the persons mentioned in paragraph (1)(a) include both parents and the circumstances are such that care is provided to the same extent by both but each provides care to a greater or equal extent than any other person who provides such care for that child—
  - (i) the parent who is not in receipt of child benefit for the child in question; or
  - (ii) if neither parent is in receipt of child benefit for that child, the parent who, in the opinion of the child support officer, will not be the principal provider of day to day care for that child.

(3) Subject to paragraphs (5) and (6), where a parent is treated as an absent parent under paragraph (2) child support maintenance shall be payable by that parent in respect of the child in question and the amount of the child support maintenance so payable shall be calculated in accordance with the formula set out in paragraph (4).

(4) The formula for the purposes of paragraph (3) is—

$$T = X - \left\{ (X + Y) \times \frac{J}{7 \times L} \right\}$$

where—

T is the amount of child support maintenance payable;

X is the amount of child support maintenance which would be payable by the parent who is treated as an absent parent, assessed under Schedule 1 to the Act as if paragraphs 6 and 7 of that Schedule did not apply, and, where the other parent is an absent parent, as if the value of C was the assessable income of the other parent;

Y is—

- (i) the amount of child support maintenance assessed under Schedule 1 to the Act payable by the other parent if he is an absent parent or which would be payable if he were an absent parent, and for the purposes of such calculation the value of C shall be the assessable income of the parent treated as an absent parent under paragraph(2); or,
- (ii) if there is no such other parent, shall be nil;

J is the total of the weekly average number of nights for which day to day care is provided by the person who is treated as the absent parent in respect of each child included in the maintenance assessment and shall be calculated to 2 decimal places;

L is the number of children who are included in the maintenance assessment in question.

(5) Where the value of T calculated under the provisions of paragraph (4) is less than zero, no child support maintenance shall be payable.

(6) The liability to pay any amount calculated under paragraph (4) shall be subject to the provision made for protected income and minimum payments under paragraphs 6 and 7 of Schedule 1 to the Act.

### One parent is absent and the other is treated as absent

21.—(1) Where the circumstances of a case are that one parent is an absent parent and the other parent is treated as an absent parent by regulation 20(2), that case shall be treated as a special case for the purposes of the Act.

(2) For the purpose of assessing the child support maintenance payable by an absent parent where this case applies, each reference in Schedule 1 to the Act to a parent who is a person with care shall be treated as a reference to a person who is treated as an absent parent by regulation 20(2).

### Multiple applications relating to an absent parent

22.—<sup>[F3]</sup>(1) Where an application for a maintenance assessment has been made in respect of an absent parent and—

- (a) at least one other application for a maintenance assessment has been made in relation to the same absent parent (or a person who is treated as an absent parent by regulation 20(2)) but to different children; or
- (b) at least one maintenance assessment is in force in relation to the same absent parent or a person who is treated as an absent parent by regulation 20(2) but to different children,

that case shall be treated as a special case for the purposes of the Act.]

<sup>[F4]</sup>(2) For the purposes of assessing the amount of child support maintenance payable in respect of each application where <sup>[F5]</sup>paragraph (1)(a)] applies <sup>[F6]</sup>or in respect of the application made in circumstances where paragraph (1)(b) applies], for references to the assessable income of an absent parent in the Act and in these Regulations<sup>[F7]</sup>, and subject to paragraph (2ZA),] there shall be substituted references to the amount calculated by the formula—

$$((A+T) \times BD)CS$$

where—

A is the absent parent's assessable income;

T is the sum of the amounts allowable in the calculation or estimation of his exempt income by virtue of Schedule 3A;

B is the maintenance requirement calculated in respect of the application in question;

D is the sum of the maintenance requirements as calculated for the purposes of each assessment relating to the absent parent in question; and

CS is the amount (if any) allowable by virtue of Schedule 3A in calculating or estimating the absent parent's exempt income in respect of a relevant qualifying transfer of property in respect of the assessment in question.]

<sup>[F8]</sup>(2ZA) Where a case falls within regulation 39(1)(a) of the Departure Direction and Consequential Amendment Regulations, for the purposes of assessing the amount of child support

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maintenance payable in respect of an application for child support maintenance before a departure direction in respect of the maintenance assessment in question is given, for references to the assessable income of an absent parent in the Act and in these Regulations there shall be substituted references to the amount calculated by the formula—

$(A+T) \times BD$

where A, T, B and D have the same meanings as in paragraph (2).]

[<sup>F9</sup>(2A) Where paragraph (1)(b) applies, and a maintenance assessment has been made in respect of the application referred to in paragraph (1), each maintenance assessment in force at the time of that assessment shall be reduced using the formula for calculation of assessable income set out in paragraph (2) and each reduction shall take effect on the date specified in regulation 33(7) of the Maintenance Assessment Procedure Regulations.]

[<sup>F10</sup>(2B) Where—

- (a) a case is treated as a special case for the purposes of the Act by virtue of paragraph (1);
- (b) more than one maintenance assessment is in force in respect of the absent parent; and
- (c) any of those assessments is reviewed under section 16, 17, 18 or 19 of the Act and a fresh assessment is to be made,

the formula set out in paragraph (2) or, as the case may be, paragraph (2ZA) shall be applied to calculate or estimate the amount of child support maintenance payable under that fresh assessment.

(2C) Where a maintenance assessment falls within sub-paragraph (b) of paragraph (2B) but it is not reviewed under any of the provisions set out in sub-paragraph (c) of that paragraph, the formula set out in paragraph (2) or, as the case may be, paragraph (2ZA) shall be applied to determine whether that maintenance assessment should be increased or reduced as a result of the making of a fresh assessment under sub-paragraph (c) and any increase or reduction shall take effect from the effective date of that fresh assessment.]

(3) Where more than one maintenance assessment has been made with respect to the absent parent and payment by him of the aggregate of the amounts of those assessments would reduce his disposable income below his protected income level, the aggregate amount of those assessments shall be reduced (each being reduced by reference to the same proportion as those assessments bear to each other) by the minimum amount necessary to prevent his disposable income being reduced below his protected income level provided that the aggregate amount payable under those assessments shall not be reduced to less than the minimum amount prescribed in regulation 13(1).

[<sup>F11</sup>(4) Where the aggregate of the child support maintenance payable by the absent parent is less than the minimum amount prescribed in regulation 13(1), the child support maintenance payable shall be—

- (a) that prescribed minimum amount apportioned between the two or more applications in the same ratio as the maintenance requirements in question bear to each other; or
- (b) where, because of the application of regulation 2(2), such an apportionment produces an aggregate amount which is different from that prescribed minimum amount, that different amount.]

(5) Payment of each of the maintenance assessments calculated under this regulation shall satisfy the liability of the absent parent (or a person treated as such) to pay child support maintenance.

#### Textual Amendments

- F3** Reg. 22(1) substituted (22.1.1996) by [The Child Support \(Miscellaneous Amendments\) \(No. 2\) Regulations 1995 \(S.I. 1995/3261\)](#), regs. 1(2), **45(2)**

- F4** Reg. 22(2) substituted (18.4.1995) by The Child Support and Income Support (Amendment) Regulations 1995 (S.I. 1995/1045), regs. 1(2), **51** (with reg. 62)
- F5** Words in reg. 22(2) substituted (22.1.1996) by The Child Support (Miscellaneous Amendments) (No. 2) Regulations 1995 (S.I. 1995/3261), regs. 1(2), **45(3)**
- F6** Words in reg. 22(2) inserted (22.1.1996) by The Child Support (Miscellaneous Amendments) (No. 2) Regulations 1995 (S.I. 1995/3261), regs. 1(2), **45(3)**
- F7** Words in reg. 22(2) inserted (2.12.1996) by The Child Support Departure Direction and Consequential Amendments Regulations 1996 (S.I. 1996/2907), regs. 1(1), **68(5)(a)**
- F8** Reg. 22(2ZA) inserted (2.12.1996) by The Child Support Departure Direction and Consequential Amendments Regulations 1996 (S.I. 1996/2907), regs. 1(1), **68(5)(b)**
- F9** Reg. 22(2A) inserted (22.1.1996) by The Child Support (Miscellaneous Amendments) (No. 2) Regulations 1995 (S.I. 1995/3261), regs. 1(2), **45(4)**
- F10** Reg. 22(2B)(2C) inserted (19.1.1998) by The Child Support (Miscellaneous Amendments) Regulations 1997 1998 (S.I. 1998/58), regs. 1(2), **53** (with reg. 59)
- F11** Reg. 22(4) substituted (5.4.1993) by The Child Support (Miscellaneous Amendments) Regulations 1993 (S.I. 1993/913), regs. 1(1), **23**

### Person caring for children of more than one absent parent

23.—(1) Where the circumstances of a case are that—

- (a) a person is a person with care in relation to two or more qualifying children; and
- (b) in relation to at least two of those children there are different persons who are absent parents or persons treated as absent parents by regulation 20(2);

that case shall be treated as a special case for the purposes of the Act.

(2) [<sup>F12</sup>Subject to paragraph (2A)] in calculating the maintenance requirements for the purposes of this case, for any amount which (but for this paragraph) would have been included under regulation 3(1)(b) [<sup>F13</sup>or (c)] (amounts included in the calculation of AG) there shall be substituted an amount calculated by dividing the amount which would have been so included by the relevant number.

[<sup>F14</sup>(2A) In applying the provisions of paragraph (2) to the amount which is to be included in the maintenance requirements under regulation 3(1)(b)—

- (a) first take the amount specified in head (i) of regulation 3(1)(b) and divide it by the relevant number;
- (b) then apply the provisions of regulation 3(1)(b) as if the references to the amount specified in column (2) of paragraph 1(1)(e) of the relevant Schedule were references to the amount which is the product of the calculation required by head (a) above, and as if, in relation to an absent parent, the only qualifying children to be included in the assessment were those qualifying children in relation to whom he is the absent parent.]

(3) [<sup>F15</sup>In paragraph (2) and (2A)] “the relevant number” means the number equal to the total number of persons who, in relation to those children, are either absent parents or persons treated as absent parents by regulation 20(2) except that where in respect of the same child both parents are persons who are either absent parents or persons who are treated as absent parents under that regulation, they shall count as one person.

(4) Where the circumstances of a case fall within this regulation and the person with care is the parent of any of the children, for C in paragraph 2(1) of Schedule 1 to the Act (the assessable income of that person) there shall be substituted the amount which would be calculated under regulation 22(2) if the references therein to an absent parent were references to a parent with care.

*Status: Point in time view as at 19/01/1998.*

*Changes to legislation: There are currently no known outstanding effects for the The Child Support (Maintenance Assessments and Special Cases) Regulations 1992, PART III. (See end of Document for details)*

### Textual Amendments

- F12** Words in reg. 23(2) inserted (7.2.1994) by [The Child Support \(Miscellaneous Amendments and Transitional Provisions\) Regulations 1994 \(S.I. 1994/227\)](#), regs. 1, **4(6)**
- F13** Words in reg. 23(2) substituted (7.4.1997) by [The Child Benefit, Child Support and Social Security \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1803\)](#), regs. 1(b), **14**
- F14** Reg. 23(2A) added (7.2.1994) by [The Child Support \(Miscellaneous Amendments and Transitional Provisions\) Regulations 1994 \(S.I. 1994/227\)](#), regs. 1, **4(6)**
- F15** Words in reg. 23(3) substituted (7.2.1994) by [The Child Support \(Miscellaneous Amendments and Transitional Provisions\) Regulations 1994 \(S.I. 1994/227\)](#), regs. 1, **4(7)**

### Persons with part-time care—not including a person treated as an absent parent

**24.**—(1) Where the circumstances of a case are that—

- (a) two or more persons who do not live in the same household each provide day to day care for the same qualifying child; and
- (b) those persons do not include any parent who is treated as an absent parent of that child by regulation 20(2),

that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case—

- (a) the person whose application for a maintenance assessment is being proceeded with shall, subject to paragraph (b), be entitled to receive all of the child support maintenance payable under the Act in respect of the child in question;
- (b) on request being made to the Secretary of State by—
  - (i) that person; or
  - (ii) any other person who is providing day to day care for that child and who intends to continue to provide that care,

the Secretary of State may make arrangements for the payment of any child support maintenance payable under the Act to the persons who provide such care in the same ratio as that in which it appears to the Secretary of State, that each is to provide such care for the child in question;

- (c) before making an arrangement under sub-paragraph (b), the Secretary of State shall consider all of the circumstances of the case and in particular the interests of the child, the present arrangements for the day to day care of the child in question and any representations or proposals made by the persons who provide such care for that child.

### Care provided in part by a local authority

**25.**—(1) Where the circumstances of a case are that a local authority and a person each provide day to day care for the same qualifying child, that case shall be treated as a special case for the purposes of the Act.

(2) [<sup>F16</sup>Subject to paragraph (3), in a case where this regulation applies]—

- (a) child support maintenance shall be calculated in respect of that child as if this regulation did not apply;
- (b) the amount so calculated shall be divided by 7 so as to produce a daily amount;
- (c) in respect of each night for which day to day care for that child is provided by a person other than the local authority, the daily amount relating to that period shall be payable by

the absent parent (or, as the case may be, by the person treated as an absent parent under regulation 20(2));

- (d) child support maintenance shall not be payable in respect of any night for which the local authority provides day to day care for that qualifying child.

[<sup>F17</sup>(3) In a case where more than one qualifying child is included in a child support maintenance assessment application and ad where this regulation applies to at least one of those children, child support maintenance shall be a calculated by applying the formula—

$$S \times (A7 \times B)$$

where—

S is the total amount of child support maintenance in respect of all qualifying children included in that maintenance assessment application, calculated as if this regulation did not apply;

A is the aggregate of the number of nights of day to day care for all qualifying children included in that maintenance assessment application provided in each week by a person other than the local authority;

B is the number of qualifying children in respect of whom the maintenance assessment application has been made.]

#### Textual Amendments

**F16** Words in reg. 25(2) substituted (18.4.1995) by [The Child Support and Income Support \(Amendment\) Regulations 1995 \(S.I. 1995/1045\)](#), regs. 1(2), **52(2)**

**F17** Reg. 25(3) added (18.4.1995) by [The Child Support and Income Support \(Amendment\) Regulations 1995 \(S.I. 1995/1045\)](#), regs. 1(2), **52(3)**

#### Cases where child support maintenance is not to be payable

26.—(1) Where the circumstances of a case are that—

- (a) but for this regulation the minimum amount prescribed in regulation 13(1) would apply; and

(b) any of the following conditions are satisfied—

- (i) the income of the absent parent includes one or more of the payments or awards specified in Schedule 4 or would include such a payment but for a provision preventing the receipt of that payment by reason of it overlapping with some other benefit payment or would, in the case of the payments referred to in paragraph (a) (i) or (iv) of that Schedule, include such a payment if the relevant contribution conditions for entitlement had been satisfied;

- (ii) an amount to which regulation [<sup>F18</sup>11(1)(c) or (f)] applies (protected income: income support family premium) is taken into account in calculating or estimating [<sup>F19</sup>under paragraphs(1) to (5) of regulation 11,] the protected income of the absent parent;

- (iii) the absent parent is a child within the meaning of section 55 of the Act;

- (iv) the absent parent is a prisoner; or

- (v) the absent parent is a person in respect of whom N (as calculated or estimated under regulation 7(1)) is less than the minimum amount prescribed by regulation 13(1),

the case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case—

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- (a) the requirement in paragraph 7(2) of Schedule 1 to the Act (minimum amount of child support maintenance fixed by an assessment to be the prescribed minimum amount) shall not apply;
- (b) the amount of the child support maintenance to be fixed by the assessment shall be nil.

#### Textual Amendments

- F18** Words in reg. 26(1)(b)(ii) substituted (7.4.1997) by [The Child Benefit, Child Support and Social Security \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1803\)](#), regs. 1(b), **15**
- F19** Words in reg. 26(1)(b)(ii) inserted (18.4.1995) by [The Child Support and Income Support \(Amendment\) Regulations 1995 \(S.I. 1995/1045\)](#), regs. 1(2), **53**

### Child who is a boarder or an in-patient

27.—(1) Where the circumstances of a case are that—

- (a) a qualifying child is a boarder at a boarding school or is an in-patient in a hospital; and
- (b) by reason of those circumstances, the person who would otherwise provide day to day care is not doing so,

that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case, section 3(3)(b) of the Act shall be modified so [<sup>F20</sup>that] for the reference to the person who usually provides day to day care for the child there shall be substituted a reference to the person who would usually be providing such care for that child but for the circumstances specified in paragraph (1).

#### Textual Amendments

- F20** Word in reg. 27(2) inserted (5.4.1993) by [The Child Support \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/913\)](#), regs. 1(1), **24**

### [<sup>F21</sup>Child who is allowed to live with his parent under section 23(5) of the Children Act 1989

27A.—(1) Where the circumstances of a case are that a qualifying child who is in the care of a local authority in England and Wales is allowed by the authority to live with a parent of his under section 23(5) of the Children Act 1989, that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case, section 3(3)(b) of the Act shall be modified so that for the reference to the person who usually provides day to day care for the child there shall be substituted a reference to the parent of a child whom the local authority allow the child to live with under section 23(5) of the Children Act 1989.]

#### Textual Amendments

- F21** Reg. 27A inserted (5.4.1993) by [The Child Support \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/913\)](#), regs. 1(1), **25**



### Amount payable where absent parent is in receipt of income support or other prescribed benefit

**28.**—(1) Where the condition specified in section 43(1)(a) of the Act is satisfied in relation to an absent parent (assessable income to be nil where income support<sup>[F22]</sup>, income-based jobseeker's allowance] or other prescribed benefit is paid), the prescribed conditions for the purposes of section 43(1)(b) of the Act are that—

- (a) the absent parent is aged 18 or over;
- (b) he does not satisfy the conditions in paragraph <sup>[F23]</sup>(a) or (b)] of the relevant Schedule (income support family premium) <sup>[F24]</sup>and does not have day to day care of any child (whether or not a relevant child)]; and
- (c) <sup>[F25]</sup>his income does not include] one or more of the payments or awards specified in Schedule 4 (other than by reason of a provision preventing receipt of overlapping benefits or by reason of a failure to satisfy the relevant contribution conditions).

(2) For the purposes of section 43(2)(a) of the Act, the prescribed amount shall be equal to the minimum amount prescribed in regulation 13(1) for the purposes of paragraph 7(1) of Schedule 1 to the Act.

<sup>[F26]</sup><sup>[F27]</sup>(3) Subject to paragraph (4), where—

- (a) an absent parent is liable under section 43 of the Act and this regulation to make payments in place of payments of child support maintenance with respect to two or more qualifying children in relation to whom there is more than one parent with care; or
- (b) that absent parent and his partner (within the meaning of regulation 2(1) of the Social Security (Claims and Payments) Regulations 1987) are both liable to make such payments,

the prescribed amount mentioned in paragraph (2) shall be apportioned between the persons with care in the same ratio as the maintenance requirements of the qualifying child or children in relation to each of those persons with care bear to each other.]

(4) If, in making the apportionment required by paragraph (3), the effect of the application of regulation 2(2) would be such that the aggregate amount payable would be different from the amount prescribed in paragraph (2) the Secretary of State shall adjust that apportionment so as to eliminate that difference; and that adjustment shall be varied from time to time so as to secure that, taking one week with another and so far as is practicable, each person with care receives the amount which she would have received if no adjustment had been made under this paragraph.

(5) The provisions of Schedule 5 shall have effect in relation to cases to which section 43 of the Act and this regulation apply.]

#### Textual Amendments

- F22** Words in reg. 28(1) inserted (7.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Consequential Amendments\) Regulations 1996 \(S.I. 1996/1345\)](#), regs. 1, **6(3)**
- F23** Words in reg. 28(1)(b) substituted (7.4.1997) by [The Child Benefit, Child Support and Social Security \(Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/1803\)](#), regs. 1(b), **16**
- F24** Words in reg. 28(1)(b) inserted (5.4.1993) by [The Child Support \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/913\)](#), regs. 1(1), **26(1)(a)**
- F25** Words in reg. 28(1)(c) substituted (5.4.1993) by [The Child Support \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/913\)](#), regs. 1(1), **26(1)(b)**
- F26** Reg. 28(3)-(5) inserted (5.4.1993) by [The Child Support \(Miscellaneous Amendments\) Regulations 1993 \(S.I. 1993/913\)](#), regs. 1(1), **26(2)**

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**Status:** Point in time view as at 19/01/1998.

**Changes to legislation:** There are currently no known outstanding effects for the The Child Support (Maintenance Assessments and Special Cases) Regulations 1992, PART III. (See end of Document for details)

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**F27** Reg. 28(3) substituted (26.4.1993) by The Child Support (Maintenance Assessments and Special Cases) Amendment Regulations 1993 (S.I. 1993/925), regs. 1, **2(2)**

**Status:**

Point in time view as at 19/01/1998.

**Changes to legislation:**

There are currently no known outstanding effects for the The Child Support (Maintenance Assessments and Special Cases) Regulations 1992, PART III.