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STATUTORY INSTRUMENTS

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**1992 No. 1816**

**The Child Support (Arrears, Interest and Adjustment  
of Maintenance Assessments) Regulations 1992**

**PART II**

**ARREARS OF CHILD SUPPORT  
MAINTENANCE AND INTEREST ON ARREARS**

**Applicability of provisions as to arrears and interest and arrears notices**

- 2.—**(1) The provisions of paragraphs (2) to (4) and regulations 3 to 9 shall apply where—
- (a) a case falls within section 41(1) of the Act; and
  - (b) the Secretary of State is arranging for the collection of child support maintenance under section 29 of the Act.
- (2) Where the Secretary of State is considering taking action with regard to a case falling within paragraph (1), he shall serve a notice (an “arrears notice”) on the absent parent.
- (3) An arrears notice shall—
- (a) itemize the payments of child support maintenance due and not paid;
  - (b) set out in general terms the provisions as to arrears and interest contained in this regulation and regulations 3 to 9; and
  - (c) request the absent parent to make payment of all outstanding arrears.
- (4) Where an arrears notice has been served under paragraph (2), no duty to serve a further notice under that paragraph shall arise in relation to further arrears unless those further arrears have arisen after an intervening continuous period of not less than 12 weeks during the course of which all payments of child support maintenance due from the absent parent have been paid on time in accordance with regulations made under section 29 of the Act.

**Liability to make payments of interest with respect to arrears**

- 3.—**(1) Subject to paragraph (2) and regulations 4 and 5, interest shall be payable with respect to any amount of child support maintenance due in accordance with a maintenance assessment and not paid by the date specified by the Secretary of State in accordance with regulations made under section 29 of the Act (the “due date”), and shall be payable in respect of the period commencing on that day and terminating on the date that amount is paid.
- (2) Subject to paragraph (3), interest with respect to arrears shall only be payable if the Secretary of State has served an arrears notice in relation to those arrears, and shall not be payable in respect of any period terminating on a date earlier than 14 days prior to the date the arrears notice is served on the absent parent.
- (3) Where the Secretary of State has served an arrears notice, the provisions of paragraph (2) shall not apply in relation to further arrears unless the conditions mentioned in regulation 2(4) are satisfied.

(4) Subject to paragraph (6), where, following a review under section 18 or 19 of the Act or an appeal under section 20 of the Act, a fresh maintenance assessment is made with retrospective effect, interest in respect of the relevant retrospective period shall be payable with respect to the arrears calculated by reference to that fresh assessment.

(5) The provisions of paragraph (4) shall apply to a fresh assessment following a review under section 18 or 19 of the Act or an appeal under section 20 of the Act prior to any adjustment of that assessment under the provisions of regulation 10.

(6) For the purposes of paragraph (4), where the review under section 18 or 19 of the Act or an appeal under section 20 of the Act results in an increased assessment, and arrears in relation to that assessment arise, no interest shall be payable with respect to the arrears relating to the additional maintenance payable under that assessment in respect of any period prior to the date the absent parent is notified of the increased assessment.

#### **Circumstances in which no liability to pay interest arises**

4.—(1) An absent parent shall not be liable to make payments of interest with respect to arrears in respect of any period if the conditions set out in paragraph (2) are satisfied in relation to that period.

(2) The conditions referred to in paragraph (1) are—

- (a) the absent parent did not know, and could not reasonably have been expected to know, of the existence of the arrears; or
- (b) the arrears have arisen solely in consequence of an operational or administrative error on the part of the Secretary of State or a child support officer.

#### **Payment of arrears by agreement**

5.—(1) The Secretary of State may at any time enter into an agreement in writing with an absent parent (an “arrears agreement”) for the absent parent to pay all outstanding arrears.

(2) An arrears agreement shall specify the dates on which the payments of arrears shall be made and the amount to be paid on each such date.

(3) If an arrears agreement is entered into within 28 days of the due date, and the terms of that agreement are adhered to by the absent parent, there shall be no liability to make payments of interest under the provisions of regulation 3 with respect to the arrears in relation to which the arrears agreement was entered into.

(4) If an arrears agreement is entered into later than 28 days after the due date and the terms of that agreement are adhered to by the absent parent, there shall, with respect to the arrears in relation to which that agreement was entered into, be no liability to make payments of interest in respect of any period commencing on the date that agreement was entered into.

(5) The Secretary of State may at any time enter into a further arrears agreement with the absent parent in relation to all arrears then outstanding.

(6) Where the terms of any arrears agreement are not adhered to by an absent parent, interest shall be payable with respect to arrears in accordance with the provisions of regulation 3.

(7) It shall be an implied term of any arrears agreement that any payment of child support maintenance that becomes due whilst that agreement is in force shall be made by the due date.

#### **Rate of interest and calculation of interest**

6.—(1) The rate of interest payable where liability to pay interest under regulation 3 arises shall be one per centum per annum above the median base rate prevailing from time to time calculated on a daily basis.

(2) Interest shall be payable only with respect to arrears of child support maintenance and shall not be payable with respect to any interest that has already become due.

(3) For the purposes of paragraph (1)—

(a) the median base rate, in relation to a year or part of a year, is the base rate quoted by the reference banks; or, if different base rates are quoted, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

(b) the reference banks are the seven largest institutions—

(i) authorised by the Bank of England under the Banking Act 1987(1), and

(ii) incorporated in and carrying on a deposit-taking business within the United Kingdom,

which quote a base rate in sterling; and

(c) the size of an institution is to be determined by reference to its total consolidated gross assets in sterling, as shown in its audited end-year accounts last published.

(4) In paragraph (3)(c), the reference to the consolidated gross assets of an institution is a reference to the consolidated gross assets of that institution together with any subsidiary (within the meaning of section 736 of the Companies Act 1985)(2)

### **Receipt and retention of interest paid**

7.—(1) Payments of interest with respect to arrears shall be made in accordance with regulations under section 29 of the Act as though they were payments of child support maintenance payable in accordance with a maintenance assessment, and shall be made within 14 days of being demanded by the Secretary of State.

(2) Subject to paragraph (3), where the Secretary of State has been authorised to recover child support maintenance under section 6 of the Act and income support is paid to or in respect of the parent with care, interest with respect to arrears relating to the period during which income support is paid shall be payable to the Secretary of State and may be retained by him.

(3) Where a case falls within paragraph (2), but the Secretary of State considers that, if the absent parent had made payments of child support maintenance due from him in accordance with that assessment, the parent with care would not have been entitled to income support, any interest shall be payable to the parent with care.

(4) Where the child support maintenance payable under a maintenance assessment is payable to more than one person, any interest in respect of arrears under that assessment shall be apportioned in the same ratio as the child support maintenance that is payable, and the provisions of paragraphs (1) to (3) shall apply to each amount of interest so apportioned.

### **Retention of recovered arrears of child support maintenance by the Secretary of State**

8. Where the Secretary of State recovers arrears from an absent parent and income support is paid to or in respect of the person with care, the Secretary of State may retain such amount of those arrears as is equal to the difference between the amount of income support that was paid to or in respect of the person with care and the amount of income support that he is satisfied would have been paid had the absent parent paid the child support maintenance due in accordance with the maintenance assessment in force by the due dates.

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(1) 1987 c. 22.

(2) Section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).