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STATUTORY INSTRUMENTS

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**1999 No. 1047**

**The Child Support (Miscellaneous  
Amendments) (No. 2) Regulations 1999**

**PART I**

**Amendment of the Maintenance Assessment Procedure Regulations**

**Substitution of Parts V to VII**

**16.** For Parts V to VII of the Maintenance Assessment Procedure Regulations<sup>(1)</sup> there shall be substituted the following Part—

**“PART V**

**Revisions and Supersessions**

**Revision of decisions**

**17.—**(1) Subject to paragraphs (6) and (8), any decision may be revised by the Secretary of State—

- (a) if the Secretary of State receives an application for the revision of a decision under section 16 of the Act within one month of the date of notification of the decision or within such longer time as may be allowed by regulation 18;
- (b) if—
  - (i) the Secretary of State notifies a person, who applied for a decision to be revised within the period specified in sub-paragraph (a), that the application is unsuccessful because the Secretary of State is not in possession of all of the information or evidence needed to make a decision; and
  - (ii) that person reapplies for a decision to be revised within one month of the notification described in head (i) above, or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case, and provides in that application sufficient evidence or information to enable a decision to be made;
- (c) if the decision arose from an official error;
- (d) if the Secretary of State is satisfied that the original decision was erroneous due to a misrepresentation of, or failure to disclose, a material fact and that the decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would otherwise have been but for that error; or

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<sup>(1)</sup> Amended by S.I. 1993/913, S.I. 1994/227, S.I. 1995/3261, S.I. 1996/2907, S.I. 1996/3196, S.I. 1998/58 and S.I. 1998/2799.

- (e) if the Secretary of State commences action leading to the revision of a decision within one month of the date of notification of the decision.
- (2) A decision may be revised by the Secretary of State in consequence of a departure direction where that departure direction takes effect on the effective date.
- (3) Subject to regulation 20(6) a decision of the Secretary of State under section 12 of the Act may be revised where—
  - (a) the Secretary of State receives information which enables him to make a maintenance assessment calculated in accordance with Part I of Schedule 1 to the Act for the whole of the period beginning with the effective date applicable to a particular case; or
  - (b) the Secretary of State is satisfied that there was unavoidable delay by the absent parent in—
    - (i) completing and returning a maintenance enquiry form under the provisions of regulation 6(1);
    - (ii) providing information or evidence that is required by him for the determination of an application for a maintenance assessment; or
    - (iii) providing information or evidence that is required by him to enable him to revise a decision under section 16 of the Act or supersede a decision under section 17 of the Act.
- (4) Where an interim maintenance assessment is in force which is not a Category B interim maintenance assessment and the Secretary of State is satisfied that it would be appropriate to make a Category B interim maintenance assessment, he may revise the interim maintenance assessment which is in force.
- (5) Where the Secretary of State revises an interim maintenance assessment in accordance with paragraph (4) and that interim maintenance assessment was made immediately following a previous interim maintenance assessment, he may also revise that previous interim maintenance assessment.
- (6) Paragraph (1) shall apply neither—
  - (a) in respect of a material change of circumstances which—
    - (i) occurred since the date as from which the decision had effect; or
    - (ii) is expected, according to information or evidence which the Secretary of State has, to occur; nor
  - (b) where—
    - (i) an appeal against a decision has been brought but not determined; and
    - (ii) from the point of view of the appellant, a revision of that decision, if made, would be less to his advantage than the original decision.
- (7) In paragraphs (1), (2) and (6) and regulation 18(3) “decision” means a decision of the Secretary of State under section 11 or 12 of the Act and any supersession of such a decision.
- (8) Paragraph (1) shall apply in relation to—
  - (a) any decision of the Secretary of State with respect to a reduced benefit direction or a person’s liability under section 43 of the Act; and
  - (b) the supersession of any such decision under section 17 as extended by paragraph 2 of Schedule 4C to the Act,

as it applies in relation to any decision of the Secretary of State under sections 11, 12 or 17 of the Act.

### **Late applications for a revision**

**18.**—(1) The period of one month specified in regulation 17(1)(a) may be extended where the requirements specified in the following provisions of this regulation are met.

(2) An application for an extension of time shall be made by a relevant person or a person acting on his behalf.

(3) An application for an extension of time under this regulation shall—

- (a) be made within 13 months of the date on which notification of the decision which it is sought to have revised was given or sent; and
- (b) contain particulars of the grounds on which the extension of time is sought and shall contain sufficient details of the decision which it is sought to have revised to enable that decision to be identified.

(4) The application for an extension of time shall not be granted unless the person making the application or any person acting for him satisfies the Secretary of State that—

- (a) it is reasonable to grant that application;
- (b) the application for a decision to be revised has merit; and
- (c) special circumstances are relevant to the application for an extension of time,

and as a result of those special circumstances, it was not practicable for the application for a decision to be revised to be made within one month of the date of notification of the decision which it is sought to have revised.

(5) In determining whether it is reasonable to grant an application for an extension of time, the Secretary of State shall have regard to the principle that the greater the time that has elapsed between the expiration of the period of one month described in regulation 17(1) (a) from the date of notification of the decision which it is sought to have revised and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(6) In determining whether it is reasonable to grant the application for an extension of time, no account shall be taken of the following—

- (a) that the person making the application for an extension of time or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
- (b) that a Child Support Commissioner or a court has taken a different view of the law from that previously understood and applied.

(7) An application under this regulation for an extension of time which has been refused may not be renewed.

### **Date from which revised decision takes effect**

**19.** Where the date from which a decision took effect is found to be erroneous on a revision under section 16 of the Act, the revision shall take effect from the date on which the revised decision would have taken effect had the error not been made.

### **Supersession of decisions**

**20.**—(1) Subject to paragraphs (9) and (10), for the purposes of section 17 of the Act, the cases and circumstances in which a decision (“a superseding decision”) may be made under that section are set out in paragraphs (2) to (7).

- (2) A decision may be superseded by a decision made by the Secretary of State acting on his own initiative—
- (a) where he is satisfied that the decision is one in respect of which there has been a material change of circumstances since the decision was made;
  - (b) where he is satisfied that the decision was made in ignorance of, or was based upon a mistake as to, some material fact; or
  - (c) in consequence of a departure direction or of a revision or supersession of a decision with respect to a departure direction.
- (3) Except where paragraph (8) applies, a decision may be superseded by a decision made by the Secretary of State where—
- (a) an application is made on the basis that—
    - (i) there has been a change of circumstances since the decision was made; or
    - (ii) it is expected that a change of circumstances will occur; and
  - (b) the Secretary of State is satisfied that the change of circumstances is or would be material.
- (4) A decision may be superseded by a decision made by the Secretary of State where—
- (a) an application is made on the basis that the decision was made in ignorance of, or was based upon a mistake as to, a fact; and
  - (b) the Secretary of State is satisfied that the fact is or would be material.
- (5) A decision, other than a decision given on appeal, may be superseded by a decision made by the Secretary of State—
- (a) acting on his own initiative where he is satisfied that the decision was erroneous in point of law; or
  - (b) where an application is made on the basis that the decision was erroneous in point of law.
- (6) An interim maintenance assessment may be superseded by a decision made by the Secretary of State where he receives information which enables him to make a maintenance assessment calculated in accordance with Part I of Schedule 1 to the Act for a period beginning after the effective date of that interim maintenance assessment.
- (7) Subject to paragraphs (4) and (5) of regulation 17, where the Secretary of State is satisfied that it would be appropriate to make an interim maintenance assessment the category of which is different from that of the interim maintenance assessment which is in force, he may make a decision which supersedes the interim maintenance assessment which is in force.
- (8) This paragraph applies—
- (a) where any paragraph of regulation 21 applies; and
  - (b) in the case of a Category A or Category D interim maintenance assessment.
- (9) The cases and circumstances in which a decision may be superseded shall not include any case or circumstance in which a decision may be revised.
- (10) Paragraphs (2) to (6) shall apply neither in respect of—
- (a) a decision to refuse an application for a maintenance assessment; nor
  - (b) a decision to cancel a maintenance assessment.
- (11) For the purposes of section 17 of the Act as extended by paragraph 2 of Schedule 4C to the Act, paragraphs (2) to (5) shall apply in relation to—

- (a) a decision with respect to a reduced benefit direction or a person's liability under section 43 of the Act; and
- (b) any decision of the Secretary of State under section 17 of the Act as extended by paragraph 2 of Schedule 4C to the Act, whether as originally made or as revised under section 16 of the Act as extended by paragraph 1 of Schedule 4C to the Act, as they apply in relation to any decision as to a maintenance assessment save that paragraph (8) shall not apply in respect of such a decision.

**Circumstances in which a decision may not be superseded**

**21.**—(1) A decision of the Secretary of State shall not be superseded in any of the circumstances specified in the following paragraphs of this regulation.

(2) Except where paragraph (3) or (4) applies and subject to paragraph (5) and regulation 22, this paragraph applies where the difference between—

- (a) the amount of child support maintenance (“the amount”) fixed in accordance with the original decision; and
- (b) the amount which would be fixed in accordance with a superseding decision,

is less than £10.00 per week.

(3) Subject to paragraph (5), this paragraph applies where the circumstances of the absent parent are such that the provisions of paragraph 6 of Schedule 1 to the Act would apply and either—

- (a) the amount fixed in accordance with the original decision is less than the amount that would be fixed in accordance with a superseding decision and the difference between the two amounts is less than £5.00 per week; or
- (b) the amount fixed in accordance with the original decision is more than the amount that would be fixed in accordance with the superseding decision and the difference between the two amounts is less than £1.00 per week.

(4) Subject to paragraph (5), this paragraph applies where—

- (a) the children, in respect of whom child support maintenance would be fixed in accordance with a superseding decision, are not the same children for whom child support maintenance was fixed in accordance with the original decision; and
- (b) the difference between—
  - (i) the amount of child support maintenance (“the amount”) fixed in accordance with the original decision; and
  - (ii) the amount which would be fixed in accordance with a superseding decision, is less than £1.00 per week.

(5) This regulation shall not apply where—

- (a) the absent parent is, by virtue of paragraph 5(4) of Schedule 1 to the Act, to be taken for the purposes of that Schedule to have no assessable income;
- (b) the case falls within paragraph 7(2) of Schedule 1 to the Act; or
- (c) it appears to the Secretary of State that the case no longer falls within paragraph 5(4) of Schedule 1 to the Act.

(6) In this regulation—

“original decision” means the decision which would be superseded but for the application of this regulation; and

“superseding decision” means a decision which would supersede the original decision but for the application of this regulation.

### **Special cases and circumstances for which regulation 21 is modified**

**22.** Where an application is made for a supersession on the basis of a change of circumstances which is relevant to more than one maintenance assessment, regulation 21 shall apply with the following modifications—

- (a) before the word “amount” in each place it occurs there shall be inserted the word “aggregate”; and
- (b) for the word “decision” in each place it occurs there shall be substituted the word “decisions”.

### **Date from which a decision is superseded**

**23.—**(1) Except in a case to which paragraph (2) applies, where notice is given under regulation 24 in the period which begins 28 days before an application for a supersession is made and ends 28 days after that application is made, the superseding decision of which notice was given under regulation 24 shall take effect as from the first day of the maintenance period in which that application was made.

(2) Where a decision is superseded by a decision made by the Secretary of State in a case to which regulation 20(2)(a) applies on the basis of evidence or information which was also the basis of a decision made under section 9 or 10 of the Social Security Act 1998 the superseding decision under section 17 shall take effect as from the first day of the maintenance period in which that evidence or information was first brought to the attention of an officer exercising the functions of the Secretary of State under the Act.

(3) Where a superseding decision is made in a case to which either paragraph (2)(b) or (5)(a) of regulation 20 applies, the decision shall take effect as from the first day of the maintenance period in which the decision was made.

(4) Where a superseding decision is made in a case to which regulation 20(3)(a)(i), (4) or (5)(b) applies, the decision shall take effect as from the first day of the maintenance period in which the application for a supersession was made.

(5) Where a superseding decision is made in a case to which regulation 20(3)(a)(ii) applies, the decision shall take effect as from the first day of the maintenance period in which the change of circumstances is due to occur.

(6) Subject to paragraphs (1), (3) and (14), in a case to which regulation 24 applies, a superseding decision shall take effect as from the first day of the maintenance period in which falls the date which is 28 days after the date on which the Secretary of State gave notice to the relevant persons under that regulation.

(7) For the purposes of paragraph (6), where the relevant persons are notified on different dates, the period of 28 days shall be counted from the date of the latest notification.

(8) For the purposes of paragraphs (6) and (7)—

- (a) notification includes oral and written notification;
- (b) where a person is notified in more than one way, the date on which he is notified is the date on which he was first given notification; and
- (c) the date of written notification is the date on which it was handed or sent to the person.

(9) Regulation 1(6) shall not apply in a case to which paragraph (8)(c) applies.

(10) Where—

- (a) a decision made by an appeal tribunal under section 20 of the Act or by a Child Support Commissioner is superseded on the ground that it was erroneous due to a misrepresentation of, or that there was a failure to disclose, a material fact; and
- (b) the Secretary of State is satisfied that the decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would otherwise have been but for that error,

the superseding decision shall take effect as from the date the decision of the appeal tribunal or, as the case may be, the Child Support Commissioner took, or was to take effect.

(11) Any decision given under section 17 of the Act in consequence of a determination which is a relevant determination for the purposes of section 28ZC of the Act<sup>(2)</sup> (restrictions on liability in certain cases of error) shall take effect as from the date of the relevant determination.

(12) Where the Secretary of State supersedes a decision in accordance with regulation 20(6), the superseding decision shall take effect as from the first day of the maintenance period in which the Secretary of State has received the information referred to in that paragraph.

(13) Where the Secretary of State supersedes a decision in accordance with regulation 20(7), the superseding decision shall take effect as from the first day of the maintenance period in which the Secretary of State became satisfied that it would be appropriate to make an interim maintenance assessment the category of which is different from that of the maintenance assessment which is in force.

(14) Where a decision is superseded in consequence of a departure direction or a revision or supersession of a decision with respect to a departure direction—

- (a) paragraph (6) above shall not apply; and
- (b) the superseding decision shall take effect as from the date on which the departure direction or, as the case may be, the revision or supersession, took effect.

(15) Where a decision with respect to a reduced benefit direction is superseded because the direction ceases to be in force in accordance with regulation 41(a), the superseding decision shall have effect as from—

- (a) where the direction is in operation immediately before it ceases to be in force, the last day of the benefit week during the course of which the parent concerned complied with the obligations imposed by section 6 of the Act; or
- (b) where the direction is suspended immediately before it ceases to be in force, the date on which the parent concerned complied with the obligations imposed by section 6 of the Act.

(16) Where a decision with respect to a reduced benefit direction is superseded because the direction ceases to be in force in accordance with regulation 41(b), the superseding decision shall have effect as from—

- (a) where the direction is in operation immediately before it ceases to be in force, the last day of the benefit week during the course of which the application under regulation 41(b) was made; or
- (b) where the direction is suspended immediately before it ceases to be in force, the date on which the application under regulation 41(b) was made.

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(2) Section 28ZC was inserted by section 44 of the Social Security Act 1998 (c. 14).

(17) Where a decision with respect to a reduced benefit direction is superseded because the direction ceases to be in force in accordance with regulation 41(c) or (d), the superseding decision shall have effect as from—

- (a) where the direction is in operation immediately before it ceases to be in force, the last day of the benefit week during the course of which the Secretary of State is supplied with information that enables him to make the assessment;
- (b) where the direction is suspended immediately before it ceases to be in force, the date on which the Secretary of State is supplied with information that enables him to make the assessment.

(18) Where a decision with respect to a reduced benefit direction is superseded because the direction ceases to be in force in accordance with regulation 47(1), the superseding decision shall have effect as from the last day of the benefit week preceding the benefit week on the first day of which, in accordance with the provisions of regulation 36(4), the further direction comes into operation, or would come into operation but for the provisions of regulation 40 or 40ZA.

**Procedure where the Secretary of State proposes to supersede a decision on his own initiative**

24. Where the Secretary of State on his own initiative proposes to make a decision superseding a decision other than in consequence of a decision with respect to a departure direction or a revision or supersession of such a decision he shall notify the relevant persons who could be materially affected by the decision of that intention.”.