
STATUTORY INSTRUMENTS

2000 No. 3186

The Child Support (Transitional Provisions) Regulations 2000

PART II

DECISION MAKING AND APPEALS

Decision and notice of decision

3.—(1) Subject to paragraph (2), a decision as to the amount of child support maintenance payable under a maintenance assessment or an interim maintenance assessment made under section 11, 12, 16, 17 or 20 of the former Act may be superseded by the Secretary of State on his own initiative under section 17 of the Act, in relation to—

- (a) a maintenance assessment (whenever made) which has an effective date before the commencement date and is in force on the calculation date;
- (b) a maintenance assessment made following an application for child support maintenance which is made or treated as made as provided for in regulation 28(1);
- (c) an interim maintenance assessment where there is sufficient information held by the Secretary of State to make a decision in accordance with this paragraph.

(2) Where the Secretary of State acts in accordance with paragraph (1) the information used for the purposes of that supersession will be that held by the Secretary of State on the calculation date.

(3) Where a superseding decision referred to in paragraph (1) is made the Secretary of State shall—

- (a) make a conversion calculation;
- (b) calculate a new amount; and
- (c) notify to the non-resident parent and the person with care and, where the maintenance assessment was made in response to an application under section 7 of the former Act, the child, in writing—
 - (i) the new amount;
 - (ii) where appropriate, the transitional amount;
 - (iii) any phasing amount applied in the calculation of the transitional amount;
 - (iv) the length of the transitional period;
 - (v) the date the conversion decision was made;
 - (vi) the effective date of the conversion decision;
 - (vii) the non-resident parent's net weekly income;
 - (viii) the number of qualifying children;
 - (ix) the number of relevant other children;
 - (x) where there is an adjustment for apportionment or shared care, or both, or under regulation 9 or 11 of the Maintenance Calculations and Special Cases Regulations,

the amount calculated in accordance with Part I of Schedule 1 to the Act and those Regulations;

- (xi) any relevant departure direction or relevant property transfer taken into account in the conversion decision; and
- (xii) any apportionment carried out in accordance with regulation 25(3).

(4) Where at the calculation date there is an interim maintenance assessment in force and there is insufficient information held by the Secretary of State to make a maintenance assessment, or a decision in accordance with paragraph (1), the Secretary of State shall—

- (a) supersede the interim maintenance assessment to make a default maintenance decision; and
- (b) notify the non-resident parent, the person with care and, where the maintenance assessment was made in response to an application under section 7, the child, in writing, in accordance with regulation 15C(2) of the Decisions and Appeals Regulations.

(5) In a case to which paragraph (1)(c) or (4) applies, where after the calculation date information is made available to the Secretary of State to enable him to make a maintenance assessment he may—

- (a) where the decision was made under paragraph (1)(c), revise the interim maintenance assessment in accordance with the Assessment Procedure Regulations, and supersede the conversion decision in accordance with the Decisions and Appeals Regulations;
- (b) where the decision was made under paragraph (4), revise the interim maintenance assessment in accordance with the Assessment Procedure Regulations, and revise the default maintenance decision in accordance with the Decisions and Appeals Regulations.

(6) A decision referred to in paragraph (1) or (4) shall take effect from the case conversion date.

Revision, supersession and appeal of conversion decisions

4.—(1) Subject to this Part, where—

- (a) an application is made to the Secretary of State or he acts on his own initiative to revise or supersede a conversion decision; or
- (b) there is an appeal in respect of a conversion decision,

such application, action or appeal shall be decided under the Decisions and Appeals Regulations and except as otherwise provided in paragraph (2), notification shall be given in accordance with regulation 3(3).

(2) Where the Secretary of State acts in accordance with paragraph (1) he shall notify—

- (a) in relation to regulation 3(3)(c)(i), the subsequent decision amount in place of the new amount; and
- (b) where there has been agreement to a variation or a variation has otherwise been taken into account, the amounts calculated in accordance with the Variations Regulations.

(3) Where after the calculation date—

- (a) an application is made to the Secretary of State or he acts on his own initiative to revise or supersede a maintenance assessment, an interim maintenance assessment or departure direction; or
- (b) there is an appeal in respect of a maintenance assessment, an interim maintenance assessment or departure direction; and
- (c) such application, action or appeal has been decided in accordance with regulations made under the former Act for the determination of such applications,

the Secretary of State may revise or supersede the conversion decision in accordance with the Decisions and Appeals Regulations.

(4) In their application to a decision referred to in these Regulations, the Decisions and Appeals Regulations shall be modified so as to provide, on any revision or supersession of a conversion decision under section 16 or 17, respectively, of the Act, that—

- (a) the conversion decision may include a relevant departure direction or relevant property transfer; and
- (b) the effective date of the revision or supersession shall be as determined under the Decisions and Appeals Regulations or the case conversion date, whichever is the later.

(5) In this Part, for the purposes of any revision or supersession a conversion decision shall include a subsequent decision.

Outstanding applications at calculation date

5. Where at the calculation date there is outstanding an application for a maintenance assessment or a departure direction, or under section 16 or 17 of the former Act for the revision or supersession of a maintenance assessment, an interim maintenance assessment or a departure direction, the Secretary of State may—

- (a) where the application has been finally decided in accordance with Regulations made under the former Act for deciding such applications, supersede the maintenance assessment in accordance with regulation 3; or
- (b) where he is unable to make a final decision on the application for—
 - (i) a departure direction; or
 - (ii) a revision or supersession,supersede the maintenance assessment or the interim maintenance assessment in accordance with regulation 3.

Applications for a departure direction or a variation made after calculation date

6.—(1) Where an application for a departure direction or a variation is made after notification of the conversion decision the Secretary of State shall—

- (a) where the grounds of the application are subject only to a decision under the Departure Regulations, make a decision under the Departure Regulations;
- (b) where the grounds of the application are subject to a decision or determination, as the case may be, under—
 - (i) the Departure Regulations; and
 - (ii) the Variations Regulations,make a decision under the Departure Regulations; or
- (c) where the grounds of the application are subject only to a determination under the Variations Regulations, treat the application as an advance application for a variation.

(2) Where the Secretary of State has made a decision or a determination in which he agrees to the departure direction or variation applied for as provided under paragraph(1) he shall—

- (a) where the decision is made under paragraph (1)(a), supersede the maintenance assessment in accordance with the Assessment Procedure Regulations and the conversion decision in accordance with the Decisions and Appeals Regulations;
- (b) where the decision is made under paragraph (1)(b), supersede the maintenance assessment in accordance with the Assessment Procedure Regulations and the conversion decision

in accordance with the Decisions and Appeals Regulations to give effect to any relevant departure direction, and from the case conversion date any variation, in the decision; or

- (c) where a determination is made under paragraph (1)(c), supersede the conversion decision in accordance with the Decisions and Appeals Regulations.

(3) Where the Secretary of State does not have the information required to make a decision under paragraph (1) he shall not revise or supersede the conversion decision.

Grounds on which a conversion decision may not be revised, superseded or altered on appeal

7. A decision of the Secretary of State made under regulation 3 shall not be revised, superseded or altered on appeal on any of the following grounds—

- (a) the use of the information held by the Secretary of State at the calculation date;
- (b) that the Secretary of State took into account a relevant departure direction in the conversion decision;
- (c) the application of the phasing amount in the calculation of the transitional amount;
- (d) the phasing amount applied to the calculation of the transitional amount;
- (e) the length of the transitional period;
- (f) that an existing departure direction has not been taken into account by the Secretary of State in the transitional amount;
- (g) that the Secretary of State took into account a relevant property transfer in the conversion decision, except where the application affects a relevant property transfer which has been included in the conversion decision on the grounds that—
 - (i) where the person with care or, where the maintenance assessment was made in response to an application under section 7 of the former Act, the child applies for the relevant property transfer to be removed, that property transfer when awarded did not reflect the true nature, purpose or value of the property transfer; or
 - (ii) where the person with care, the non-resident parent or, where the maintenance assessment was made in response to an application under section 7 of the former Act, the child applies for the relevant property transfer to be replaced with a variation in relation to the same transfer.

Outstanding appeals at calculation date

8.—(1) Where there is an appeal outstanding at the calculation date against a maintenance assessment, an interim maintenance assessment or an application for a departure direction under the former Act, the Secretary of State shall supersede the maintenance assessment in accordance with regulation 3 using the information held at that date.

(2) When the appeal is decided—

- (a) it shall be put into effect in accordance with the tribunal's decision; and
- (b) the conversion decision shall be superseded in accordance with the Decisions and Appeals Regulations in consequence of the implementation of the tribunal decision.