Draft Regulations laid before Parliament under section 52(2) of the Child Support Act 1991, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

FAMILY LAW

CHILD SUPPORT

The Child Support (Miscellaneous Amendments) Regulations 2004

Made - - - - 2004

Coming into force in accordance with regulation 1(2)

Whereas a draft of this instrument was laid before Parliament in accordance with section 52(2) of the Child Support Act 1991(**1**) and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 14(3), 16(1)(a), 17(3), 28B(2)(c), 51, 52(4) and 54 of, and paragraphs 5, 6(2), (4) and (6), 9(d), 10(1) and 11 of Schedule 1, paragraphs 1 and 2(a) of Schedule 4A and paragraphs 5(1) and 6 of Schedule 4B to the Child Support Act 1991(**2**) and section 29 of the Child Support, Pensions and Social Security Act 2000(**3**), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Child Support (Miscellaneous Amendments) Regulations 2004.

(**1**) 1991 c. 48. Section 52(2) was amended by section 30(5) of, and paragraph 15 of Schedule 3 to, the Child Support Act 1995 (c. 34) and is substituted by section 25 of the Child Support, Pensions and Social Security Act 2000 (c. 19) ("the 2000 Act").

(**2**) Section 14(3) was amended by section 86(1) of, and paragraph 27(b) of Schedule 7 to, the Social Security Act 1998 (c. 14). Section 16(1) was substituted by section 40 of the Social Security Act 1998 and is amended by section 8(2) of the 2000 Act. Section 17(3) was substituted by section 41 of the Social Security Act 1998. Section 28B was inserted by section 2 of the Child Support Act 1995 and is substituted by section 5(2) of the 2000 Act. Section 51 was amended by section 86(1) of, and paragraph 46 of Schedule 7 to, the Social Security Act 1998 and is amended by section 1(2) of, and paragraph 11(19) of Schedule 3 to, the 2000 Act. Paragraph 5 of Schedule 1 was amended by section 41(4) of, and paragraph 20(7) of Schedule 2 to, the Jobseekers Act 1995 (c. 18) and is substituted by section 1(3) of, and Schedule 1 to, the 2000 Act. Paragraph 10(1) of Schedule 1 is substituted by section 1(3) of, and Schedule 1 to, the 2000 Act. Paragraph 11 of Schedule 1 was amended by section 1(2) of the 2000 Act. Schedule 4A was inserted by section 1(2) of, and Schedule 1 to, the Child Support Act 1995 (c. 34), amended by section 86(1) of, and paragraph 53 of Schedule 7 to, the Social Security Act 1998 and is substituted by section 6(1) of, and Part I of Schedule 2 to, the 2000 Act. Schedule 4B was inserted by section 6(2) of, and Schedule 2 to, the Child Support Act 1995 and is substituted by section 6(2) of, and Part II of Schedule 2 to, the 2000 Act. Section 54 is cited for the meaning ascribed to the word "prescribed". *See also* S.I.2003/192 (C. 11).

(**3**) 2000 c. 19.

(2) These Regulations shall come into force as follows—

(a) subject to sub-paragraph (b), these Regulations shall come into force on the day after the day that they are made;

(b) regulations 2 and 3 shall come into force—

(i) except for the purposes of any type of case referred to in head (ii), on the day after the day that they are made; and

(ii) for the purposes of any type of case which is not one in relation to which 3rd March 2003 is the day appointed for the coming into force of sections 1(2), 8 and 9 of, and paragraph 11(2) and (7) of Schedule 3 to, the Child Support, Pensions and Social Security Act 2000(**4**), on the day on which those provisions come into force in relation to that type of case.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

2.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(**5**) shall be amended in accordance with the following paragraph.

(2) In regulation 6B (circumstances in which a child support decision may not be superseded)(**6**)—

(a) for paragraph (3) substitute—

"(3) Where the application for a supersession is made on more than one ground, if those grounds which do not relate to the net income of the non-resident parent lead to a superseding decision this regulation shall not apply to the ground relating to the net income of that parent.";

(b) after paragraph (4) add—

"(5) Where an application has been made to which paragraph (1) applied ("application A") and a further application ("application B") is made for a supersession on a ground other than one relating to the net income of the non-resident parent, the Secretary of State may make a superseding decision on the basis that application A was made at the same time as application B.".

Amendment of the Child Support (Information, Evidence and Disclosure) Regulations 1992

3. In regulation 8(1) of the Child Support (Information, Evidence and Disclosure) Regulations 1992(**7**) (disclosure of information to a court or tribunal) in paragraph (1), after sub-paragraph (b) insert—

"(cc) a person with a right of appeal under the Act to an appeal tribunal,".

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations 1992

4. In regulation 17(1) of the Child Support (Maintenance Assessment Procedure) Regulations 1992(**8**) (revision of decisions)—

(a) after sub-paragraph (d) omit "or";

(b) after sub-paragraph (e) add—

(**4**) S.I. 2003/192 (C. 11), the relevant amending instrument is S.I. 2003/346 (C. 21).
(**5**) S.I. 1999/991.
(**6**) Regulation 6B was inserted by regulation 8 of S.I. 2000/3185.
(**7**) S.I. 1992/1812, relevant amending instruments are S.I. 1996/2907, S.I. 1998/ 58 and S.I. 1999/1510.
(**8**) S.I. 1992/1813, which is revoked, with savings, by S.I. 2001/157. The relevant amending instrument is S.I. 1999/1047.

"or

(f) if an appeal is made under section 20 of the Act against a decision within the time prescribed in regulation 31 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**9**), or in a case to which regulation 32 of those Regulations applies within the time prescribed in that regulation, but the appeal has not been determined.".

Amendment of the Child Support (Maintenance Assessments and Special Cases) Regulations 1992

5.—(1) The Child Support (Maintenance Assessments and Special Cases) Regulations 1992(**10**) shall be amended in accordance with the following paragraphs.

(2) In Schedule 1 (calculation of N and M), in paragraph 1(1), after head (g) insert—

"(gg) any statutory paternity pay under Part 12ZA of the Contributions and Benefits Act or any statutory adoption pay under Part 12ZB of that Act(**11**);";

(3) After paragraph 36 of Schedule 2 (amounts to be disregarded when calculating or estimating N and M) insert—

"**36A.** Any sum in respect of financial assistance given, or given under arrangements made, by the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) under section 14 of the Education Act 2002(**12**) (power of Secretary of State and National Assembly for Wales to give financial assistance for purposes related to education), to a child.".

(4) In Schedule 3B (amount to be allowed in respect of travelling costs)(**13**)—

(a) in paragraph 1 for the definition of "straight-line distance" substitute—

""straight-line distance" means the straight-line distance measured in kilometres and calculated to 2 decimal places, and, where that distance is not a whole number of kilometres, rounded to the nearest whole number of kilometres, a distance which exceeds a whole number of kilometres by 0.50 of a kilometre being rounded up;";

(b) in paragraphs 7, 14 and 20—

(i) for "150", wherever it appears, substitute "240"; and

(ii) for "10 pence", wherever it appears, substitute "6 pence";

(c) in paragraph 8(1) and (2) for "13", wherever it appears, substitute "14".

Amendment of the Child Support (Maintenance Calculation Procedure) Regulations 2000

6.—(1) The Child Support (Maintenance Calculation Procedure) Regulations 2000(**14**) shall be amended in accordance with the following paragraphs.

(2) In regulation 29(1) (effective dates of maintenance calculations in specified cases), after sub-paragraph (c) add—

(**9**) S.I. 1999/991, relevant amending instruments are S.I. 1999/2570, S.I. 2002/1204 and S.I. 2002/1379.
(**10**) S.I. 1992/1815, which is revoked, with savings, by S.I. 2001/155. The relevant amending instruments are S.I. 1995/1045, S.I. 1996/1945, S.I. 1996/3196, S.I. 1999/977 and S.I. 1999/1510 (C. 43).
(**11**) Part 12ZA was inserted by section 2 of the Employment Act 2002 (c. 22) and Part 12ZB was inserted by section 4 of that Act.
(**12**) 2002 c. 32.
(**13**) Schedule 3B was inserted by regulation 57 of, and Schedule 2 to, S.I. 1995/1045.
(**14**) S.I. 2001/157, relevant amending instruments are S.I. 2002/1204 and S.I. 2003/328.

"(d) except where the parent with care has made a request under section 6(5) of the Act, where on the date the application is made, or treated as made under regulation 3, there is in force a maintenance calculation in relation to the same non-resident parent and a different person with care, and the maintenance calculation in force when the application was made has ceased to have effect before a decision has been made in respect of that application, the effective date of the maintenance calculation made in response to the application shall be—

(i) where the date of notification to the non-resident parent is before the date on which the maintenance calculation in force has ceased to have effect, the day following the day on which that maintenance calculation ceases to have effect;

(ii) where the date of notification to the non-resident parent is after the date on which the maintenance calculation in force has ceased to have effect, the date of notification to the non-resident parent.".

(3) In regulation 31(1)(c) (transitional provision – effective dates and reduced benefit decisions) for "and in sub-paragraph (c)(iii)" substitute ", in sub-paragraph (c)(iii) and the first time it occurs in sub-paragraph (d)".

Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000

7.—(1) The Child Support (Maintenance Calculations and Special Cases) Regulations 2000(**15**) shall be amended in accordance with the following paragraphs.

(2) In regulation 5 (nil rate) omit paragraph (i).

(3) In paragraph 4(1) of the Schedule (net weekly income) after head (d) insert—

"(dd) any statutory paternity pay under Part 12ZA of the Contributions and Benefits Act or any statutory adoption pay under Part 12ZB of that Act(**16**);".

(4) After paragraph 16 of the Schedule add—

"PART VI

BENEFITS, PENSIONS AND ALLOWANCES

17.—(1) Subject to paragraph (2), the net weekly income of a non-resident parent shall include payments made by way of benefits, pensions and allowances prescribed in regulation 4 for the purposes of paragraph 4(1)(b) and (c) of Schedule 1 to the Act, to a non-resident parent or his partner at the rate payable at the effective date.

(2) Paragraph (1) applies only for the purpose of establishing whether the non-resident parent is a person to whom paragraph 5(b) of Schedule 1 to the Act applies.".

Amendment of the Child Support (Transitional Provisions) Regulations 2000

8.—(1) The Child Support (Transitional Provisions) Regulations 2000(**17**) shall be amended in accordance with the following paragraphs.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of "the Act" insert—

(**15**) S.I. 2001/155, relevant amending instruments are S.I. 2002/3019, S.I. 2003/1195 and S.I. 2003/2779.
(**16**) Part 12ZA was inserted by section 2 of the Employment Act 2002 (c. 22) and Part 12ZB was inserted by section 4 of that Act.
(**17**) S.I. 2000/3186, relevant amending instruments are S.I. 2002/1204, S.I. 2003/328, S.I. 2003/347 and S.I. 2003/2779.

""the Arrears, Interest and Adjustment Regulations" means the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992(**18**);";

(b) in the definition of "new amount" for "in accordance with the conversion decision" substitute "from the case conversion date".

(3) In regulation 3 (decision and notice of decision), for paragraph (2) substitute—

"(2) Where the Secretary of State acts in accordance with paragraph (1), the information used for the purposes of that supersession will be—

(a) that held by the Secretary of State on the calculation date; or

(b) where—

(i) regulation 5(b) applies; and

(ii) the Secretary of State is unable to make the decision required to be made in accordance with that regulation on the basis of the information referred to in paragraph (a),

that which was used or considered to make the maintenance assessment to be superseded in accordance with regulation 3(1)(a) or (b).".

(4) After regulation 4 (revision, supersession and appeal of conversion decisions) insert—

"**Revision and supersession of an adjustment**

4A. Where, on or after the calculation date, an application is made to the Secretary of State or he acts on his own initiative to revise or supersede an adjustment of the amounts payable under a maintenance assessment, he may revise or supersede that adjustment in accordance with the Decisions and Appeals Regulations.".

(5) After regulation 5 (outstanding applications at calculation date) insert—

"**Outstanding revisions and supersessions at calculation date**

5A. Regulation 5 shall apply in the same way to a decision of the Secretary of State acting on his own initiative under section 16 or 17 of the former Act to revise or supersede a maintenance assessment, an interim maintenance assessment or a departure direction as it does to an application made for the same purpose.".

(6) In regulation 9(1) (amount of child support maintenance payable) for "Where" substitute "Subject to regulation 9A, where".

(7) After regulation 9 insert—

"**Adjustment of the amount of child support maintenance payable**

9A.—(1) Subject to paragraph (2), where—

(a) there has been an overpayment of child support maintenance under a maintenance assessment; and

(b) the amount payable under that maintenance assessment has been adjusted under regulation 10 of the Arrears, Interest and Adjustment Regulations as it applies to a maintenance assessment,

that adjustment shall apply to the new amount or the transitional amount in the conversion decision, as the case may be, if—

(**18**) S.I. 1992/1816, relevant amending instruments are S.I. 1995/1045, S.I. 1999/1510 (C. 43), S.I. 2001/162 and S.I. 2000/3185.