Draft Statutory Instrument 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

2002 No.

FAMILY LAW

CHILD SUPPORT

The Child Support (Miscellaneous Amendments) Regulations 2002

Made - - - - 2002

Coming into force in accordance with regulation 1(3)

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(1), 16(1) and (4), 17(5), 20(4), 28B(2)(c), 28E(1), 28G, 46(10), 51, 52(4), 54 and 57 of, and paragraphs 5, 10 and 11 of Schedule 1 and paragraphs 3, 4 and 5 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, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(**4**), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Miscellaneous Amendments) Regulations 2002.

(2) In these Regulations—

(**1**) 1991 c. 48.

(**2**) Section 51 and paragraph 5 of Schedule 1 were amended by, respectively, paragraph 46 of Schedule 7 to the Social Security Act 1998 (c. 14) and paragraph 20(7) of Schedule 2 to the Jobseekers Act 1995 (c. 18). Sections 16(1) and (4) and 17(5) were substituted by sections 40 and 41 respectively of the Social Security Act 1998. Sections 28E(1) and 28G and Schedule 4B were inserted by, respectively, sections 5 and 7 of, and Schedule 2 to, the Child Support Act 1995 (c. 34). Sections 14(1), 16(1), 28E(1) and 51 and paragraph 11 of Schedule 1 were amended by, and sections 20, 28B, 28G, 46(10), Part I of Schedule 1 and Schedule 4B were substituted by, respectively, sections 12, 8 and 5(4) of, paragraph 11(19) of Schedule 3 to, sections 1(2), 10, 5(2), 7 and 19 of, and Schedule 1 and Part II of Schedule 2 to, the Child Support, Pensions and Social Security Act 2000 (c. 19). Section 54 is cited because of the meaning ascribed to "prescribed".

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

(**4**) 1992 c. 53.

"the Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**5**);

"the Departure Regulations" means the Child Support Departure Direction and Consequential Amendments Regulations 1996(**6**);

"the Information Regulations" means the Child Support (Information, Evidence and Disclosure) Regulations 1992(**7**);

"the Maintenance Assessments and Special Cases Regulations" means the Child Support (Maintenance Assessments and Special Cases) Regulations 1992(**8**);

"the Maintenance Calculation Procedure Regulations" means the Child Support (Maintenance Calculation Procedure) Regulations 2000(**9**);

"the Maintenance Calculations and Special Cases Regulations" means the Child Support (Maintenance Calculations and Special Cases) Regulations 2000(**10**);

"the Transitional Regulations" means the Child Support (Transitional Provisions) Regulations 2000(**11**);

"the Variations Regulations" means the Child Support (Variations) Regulations 2000(**12**); and

"the Variations Modification Regulations" means the Child Support (Variations) (Modification of Statutory Provisions) Regulations 2000(**13**).

(3) 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 4(a) shall come into force in relation to a particular case on the day on which, respectively, sections 16, 17 and 20 and sections 51 and 54 of the Child Support Act 1991 as amended by the Child Support, Pensions and Social Security Act 2000 come into force for the purposes of that type of case.

Amendment of the Decisions and Appeals Regulations

2.—(1) The Decisions and Appeals Regulations shall be amended in accordance with the following paragraphs.

(2) In regulation 3A(**14**) (revision of child support decisions)—

(a) in paragraph (1)—

(i) after sub-paragraph (c) there shall be inserted—

"(cc) if an appeal is made under section 20 of the Child Support Act against a decision within the time prescribed in regulation 31, or in a case to which regulation 32 applies within the time prescribed in that regulation, but the appeal has not been determined;"; and

(ii) at the end of sub-paragraph (e) there shall be added—

"; or

(**5**) S.I.1999/991.
(**6**) S.I. 1996/2907.
(**7**) S.I. 1992/1812.
(**8**) S.I. 1992/1815.
(**9**) S.I. 2001/157.
(**10**) S.I. 2001/155.
(**11**) S.I. 2000/3186.
(**12**) S.I. 2001/156.
(**13**) S.I. 2000/3173.
(**14**) Regulation 3A was inserted into S.I. 1999/991 by regulation 5 of S.I. 2000/3185.

(f) if the grounds for revision are that a person with respect to whom a maintenance calculation was made was not, at the time the calculation was made, a parent of a child to whom the calculation relates." ;

(b) for paragraph (3) there shall be substituted—

"(3) In paragraphs (1), (2) and (5A) and in regulation 4(3) "decision" means a decision of the Secretary of State under section 11, 12 or 46 of the Child Support Act, or a determination of an appeal tribunal on a referral under section 28D(1)(b) of that Act, or any supersession of a decision under section 17 of that Act, whether as originally made or as revised under section 16 of that Act."; and

(c) after paragraph (5) there shall be inserted—

"(5A) Where—

(a) the Secretary of State makes a decision ("decision A") and there is an appeal;

(b) there is a further decision in relation to the appellant ("decision B") after the appeal but before the appeal results in a decision by an appeal tribunal ("decision C"); and

(c) the Secretary of State would have made decision B differently if he had been aware of decision C at the time he made decision B,

decision B may be revised at any time.".

(3) In regulation 6B(4)(e) (circumstances in which a child support decision may not be superseded) the reference to ", (19)" shall be omitted.

(4) In regulation 7B (date from which a decision superseded under section 17 of the Child Support Act takes effect)(**15**)—

(a) after paragraph (1) there shall be inserted—

"(1A) Where a decision is superseded by a decision made by the Secretary of State in a case to which regulation 6A(2)(a) or (3) applies and the relevant circumstance is that—

(a) paragraph 4(2) of Schedule 1 to the Child Support Act applies, the decision shall take effect from the first day of the maintenance period on or after—

(i) the date on which the non-resident parent becomes the partner of a non-resident parent; or

(ii) where a maintenance calculation is first made in respect of the non-resident parent's partner, the date on which that calculation takes effect for the purposes of the Child Support Act; or

(b) paragraph 4(2) of Schedule 1 to the Child Support Act ceases to apply, the decision shall take effect from the first day of the maintenance period on or after the date on which—

(i) the non-resident parent or his partner ceases to be a non-resident parent; or

(ii) the non-resident parent ceases to be the partner of a non-resident parent."; and

(b) paragraph (19) shall be omitted.

(5) In regulation 31(2)(**16**) (time within which an appeal is to be brought) after "regulation 3(1) or (3)" in both places where it occurs, there shall be inserted "or 3A(1)".

(**15**) Regulation 7B was inserted into S.I. 1999/991 by regulation 9 of S.I. 2000/3185.
(**16**) Regulation 31(2) was amended by regulation 22 of S.I. 1999/2570.

Amendment of the Departure Regulations

3. After sub-paragraph (b) of paragraph (2) of regulation 23 of the Departure Regulations (assets capable of producing income or higher income)(**17**), there shall be added—

"; or

(c) if the non-applicant were a claimant, paragraph 64 of Schedule 10 to the Income Support (General) Regulations 1987(**18**) (treatment of relevant trust payments) would apply to the asset referred to in that paragraph.".

Amendment of the Information Regulations

4. In regulation 2(2) of the Information Regulations (persons under a duty to furnish information)(**19**)—

(a) after sub-paragraph (a), there shall be inserted—

"(aa) where regulation 8(1) of the Maintenance Calculations and Special Cases Regulations applies (persons treated as non-resident parents), a parent of or a person who provides day to day care for the child in respect of whom a maintenance calculation has been applied for or has been treated as applied for or is or has been in force, with respect to the matter listed in sub-paragraph (1) of regulation 3(1);"; and

(b) in sub-paragraph (h)—

(i) in head (i), after "under" there shall be inserted "the Road Traffic (Northern Ireland) Order 1981(**20**),"; and

(ii) in head (ii), after "1952" there shall be inserted ", the Prison Act (Northern Ireland) 1953(**21**) or the Prisons (Scotland) Act 1989(**22**)".

Amendment of the Maintenance Assessments and Special Cases Regulations

5. Paragraph (1) of regulation 9 of the Maintenance Assessments and Special Cases Regulations (exempt income: calculation or estimation of E)(**23**), shall be amended as follows—

(a) in sub-paragraph (e), after head (ii), there shall be added—

"(iii) if the parent were a claimant, the conditions in paragraph 13A of the relevant Schedule (income support enhanced disability premium) would be satisfied in respect of him, an amount equal to the amount specified in paragraph 15(8)(b) of that Schedule;"; and

(b) in sub-paragraph (g), after head (ii), there shall be added—

"(iii) if the conditions set out in paragraph 13A of the relevant Schedule (income support enhanced disability premium) are satisfied in respect of that child, an amount equal to the amount specified in paragraph 15(8)(a) of that Schedule or, where paragraph (2) applies, half that amount;".

(**17**) Regulation 23 was amended by regulation 16 of S.I. 1998/58 and is revoked, with savings, by regulation 33 of S.I. 2001/156.
(**18**) S.I. 1987/1967. Paragraph 64 was added by regulation 2 of S.I. 2001/1118.
(**19**) Regulation 2 was amended by regulation 2 of S.I. 1995/123, regulation 22 of S.I. 1995/1045, regulation 7 of S.I. 1995/3261, regulation 7 of S.I. 1996/1945, article 6 of S.I. 1999/1510 (C. 43) and regulation 5 of S.I. 2001/161.
(**20**) S.I. 1981/154 (N.I. 1).
(**21**) 1953 c. 18.
(**22**) 1989 c. 45.
(**23**) Regulation 9 was amended by regulation 20 of S.I. 1993/913, regulation 44 of S.I. 1995/1045, regulation 42 of S.I. 1995/3261, regulation 19 of S.I. 1996/1945, regulation 68 of S.I. 1996/2907, regulation 11 of S.I. 1996/1803 and regulation 47 of S.I. 1998/58 and is revoked, with savings, by regulation 15 of S.I. 2001/155.

Amendment of the Maintenance Calculation Procedure Regulations

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

(2) In regulation 1(5) (commencement), for ", 54 and 55" there shall be substituted "and 54".

(3) After regulation 9 (period within which reasons are to be given), there shall be inserted—

"**Period for parent to state if request still stands**

9A. The period to be specified for the purposes of section 46(6) of the Act (period for the parent to state if her request still stands) is 4 weeks from the date on which the Secretary of State serves notice under that subsection.".

(4) In regulation 26(1) (effective dates of maintenance calculations—maintenance order and application under section 4 or 7), for sub-paragraph (c) there shall be substituted—

"(c) there is a maintenance order which—

(i) is in force and was made on or after the date prescribed for the purposes of section 4(10)(a) of the Act;

(ii) relates to the person with care, the non-resident parent and all the children to whom the application referred to in sub-paragraph (b) relates; and

(iii) has been in force for at least one year prior to the date of the application referred to in sub-paragraph (b).".

(5) In regulation 27 (effective dates of maintenance calculations—maintenance order and application under section 6), in paragraph (1)(c), for "and the non-resident parent", there shall be substituted ", the non-resident parent and all the children to whom the application referred to in sub-paragraph (b) relates".

(6) In regulation 28(b) (effective dates of maintenance calculations—maintenance order ceases), for "25 or 26" there shall be substituted "26 or 27".

(7) In regulation 29 (effective dates of maintenance calculations in specified cases), after paragraph (b) there shall be added—

"(c) except where the parent with care has made a request under section 6(5) of the Act, where—

(i) in the period of 8 weeks immediately preceding the date the application is made, or treated as made under regulation 3, a maintenance calculation ("the previous maintenance calculation") has been in force and has ceased to have effect;

(ii) the parent with care in respect of the previous maintenance calculation is the non-resident parent in respect of the application;

(iii) the non-resident parent in respect of the previous maintenance calculation is the parent with care in respect of the application; and

(iv) the application relates to the same qualifying child, or all of the same qualifying children, and no others, as the previous maintenance calculation,

the effective date of the maintenance calculation to which the application relates shall be the date on which the previous maintenance calculation ceased to have effect.".

(8) In regulation 31(3) (transitional provision—effective dates and reduced benefit decisions), for "on or before" there shall be substituted "immediately before".