*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

# 2000 No.

# FAMILY LAW

## CHILD SUPPORT

# The Child Support (Variations) Regulations 2000

*Made - - - - 2000*

*Coming into force as provided in regulation 1(1)*

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 a resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 28A(5), 28B(2)(c), 28C(2)(b) and (5), 28E(1) and (5), 28F(2)(b) and (3)(b), 28G (3), 51, 52(4) and 54 of, and paragraphs 1, 2(a), 4 and 5(1) of Schedule 4A, and paragraphs 2(2) to (5), 3(1) and (2), 4, 5(1) and (3) to (5) and 6 of Schedule 4B to the Child Support Act 1991(**2**) hereby makes the following Regulations:

## PART I

## GENERAL

### Citation, commencement and interpretation

**1.**—(1) These Regulations may be cited as the Child Support (Variations) Regulations 2000 and shall come into force in relation to a particular case on the day on which section 5 of the Child Support, Pensions and Social Security Act 2000 which substitutes or amends sections 28A to 28F of the Act is commenced in relation to that type of case.

(2) In these Regulations, unless the context otherwise requires—

"the Act" means the Child Support Act 1991;

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

(**2**) Section 28A, 28B, 28C and 28F and Schedules 4A and 4B are substituted by section 5 of, and Schedule 2 to, the Child Support, Pensions and Social Security Act 2000 c. 19. Section 28E was inserted by the Child Support Act 1995 c. 34 and is amended by section 5 of the Child Support, Pensions and Social Security Act 2000. Section 54 is cited because of the meaning assigned to the word "prescribed" and Schedule 4A paragraph 1 is cited because of the meaning assigned to the word "regulations".

"capped amount" means the amount of income for the purposes of paragraph 10(3) of Schedule 1 to the Act;

"Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992(**3**);

"couple" has the same meaning as in paragraph 10C(5) of Schedule 1 to the Act;

"date of notification" means the date upon which notification is given in person or communicated by telephone to the recipient or, where this is not possible, the date of posting;

"date of receipt" means the day on which the information or document is actually received;

"home" has the meaning given in regulation 1(2) of the Maintenance Calculations and Special Cases Regulations;

"Maintenance Calculation Procedure Regulations" means the Child Support (Maintenance Calculation Procedure) Regulations 2000(**4**);

"Maintenance Calculations and Special Cases Regulations" means the Child Support (Maintenance Calculations and Special Cases) Regulations 2000(**5**);

"qualifying child" means the child with respect to whom the maintenance calculation falls to be made;

"relevant person" means—

(a) a non-resident parent, or a person treated as a non-resident parent under regulation 8 of the Maintenance Calculations and Special Cases Regulations, whose liability to pay child support maintenance may be affected by any variation agreed;

(b) a person with care, or a child to whom section 7 of the Act applies, where the amount of child support maintenance payable by virtue of a calculation relevant to that person with care or in respect of that child may be affected by any variation agreed; and

"Transitional Regulations" means the Child Support (Transitional Provisions) Regulations 2000(**6**).

(3) In these Regulations, unless the context otherwise requires, a reference—

(a) to a numbered Part, is to the Part of these Regulations bearing that number;

(b) to the Schedule, is to the Schedule to these Regulations;

(c) to a numbered regulation, is to the regulation in these Regulations bearing that number;

(d) in a regulation, or the Schedule, to a numbered paragraph, is to the paragraph in that regulation or the Schedule bearing that number; and

(e) in a paragraph to a lettered or numbered sub-paragraph, is to the sub-paragraph in that paragraph bearing that letter or number.

**Documents**

**2.** Except where otherwise stated, where—

(a) any document is given or sent to the Secretary of State, that document shall be treated as having been so given or sent on the date of receipt by the Secretary of State; and

(b) any document is given or sent to any other person, that document shall, if sent by post to that person's last known or notified address, be treated as having been given or sent on the date that it is posted.

(**3**) 1992 c. 4.
(**4**) S.I. 2000/
(**5**) S.I. 2000/
(**6**) S.I. 2000/3186.

**Determination of amounts**

**3.**—(1) Where any amount is required to be determined for the purposes of these Regulations, it shall be determined as a weekly amount and, except where the context otherwise requires, any reference to such an amount shall be construed accordingly.

(2) Where any calculation made under these Regulations results in a fraction of a penny, that fraction shall be treated as a penny if it is either one half or exceeds one half and shall be otherwise disregarded.

# PART II

## APPLICATION AND DETERMINATION PROCEDURE

**Application for a variation**

**4.**—(1) Where an application for a variation is made other than in writing and the Secretary of State directs that the application be made in writing, the application shall be made either on an application form provided by the Secretary of State and completed in accordance with the Secretary of State's instructions or in such other written form as the Secretary of State may accept as sufficient in the circumstances of any particular case.

(2) An application for a variation which is made other than in writing shall be treated as made on the date of notification from the applicant to the Secretary of State that he wishes to make such an application.

(3) Where an application for a variation is made in writing other than in the circumstances to which paragraph (1) applies, the application shall be treated as made on the date of receipt by the Secretary of State.

(4) Where paragraph (1) applies and the Secretary of State receives the application within 14 days of the date of the direction, or at a later date but in circumstances where the Secretary of State is satisfied that the delay was unavoidable, the application shall be treated as made on the date of notification from the applicant to the Secretary of State that he wishes to make an application for a variation.

(5) Where paragraph (1) applies and the Secretary of State receives the application more than 14 days from the date of the direction and in circumstances where he is not satisfied that the delay was unavoidable, the application shall be treated as made on the date of receipt.

(6) An application for a variation is duly made when it has been made in accordance with this regulation and section 28A(4) of the Act.

**Amendment or withdrawal of application**

**5.**—(1) A person who has made an application for a variation may amend or withdraw his application at any time before a decision under section 11, 16 or 17 of the Act, or a decision not to revise or supersede under section 16 or 17 of the Act, is made in response to the variation application and such amendment or withdrawal need not be in writing unless, in any particular case, the Secretary of State requires it to be.

(2) No amendment under paragraph (1) shall relate to any change of circumstances arising after what would be the effective date of a decision in response to the variation application.

**Rejection of an application following preliminary consideration**

**6.**—(1) The Secretary of State may, on completing the preliminary consideration, reject an application for a variation (and proceed to make his decision on the application for a maintenance calculation, or to revise or supersede a decision under section 16 or 17 of the Act, without the variation, or not to revise or supersede a decision under section 16 or 17 of the Act, as the case may be) if one of the circumstances in paragraph (2) applies.

(2) The circumstances are—

(a) the application has been made in one of the circumstances to which regulation 7 applies;

(b) the application is made—

(i) on a ground in paragraph 2 of Schedule 4B to the Act (special expenses) and the amount of the special expenses, or the aggregate amount of those expenses, as the case may be, does not exceed the relevant threshold provided for in regulation 15;

(ii) on a ground in paragraph 3 of that Schedule (property or capital transfers) and the value of the property or capital transferred does not exceed the minimum value in regulation 16(4); or

(iii) on a ground referred to in regulation 18 (assets) and the value of the assets does not exceed the figure in regulation 18(3)(a), or on a ground in regulation 19(1) (income not taken into account) and the amount of the income does not exceed the figure in regulation 19(2);

(c) a request under regulation 8 has not been complied with by the applicant and the Secretary of State is not able to determine the application without the information requested; or

(d) the Secretary of State is satisfied, on the information or evidence available to him, that the application would not be agreed to, including where, although a ground is stated, the facts alleged in the application would not bring the case within the prescription of the relevant ground in these Regulations.

**Prescribed circumstances**

**7.**—(1) This regulation applies where an application for a variation is made under section 28G of the Act and—

(a) the application is made by a relevant person and a circumstance set out in paragraph (2) applies at the relevant date;

(b) the application is made by a non-resident parent and a circumstance set out in paragraph (3) or (4) applies at the relevant date;

(c) the application is made by a person with care, or a child to whom section 7 of the Act applies, on a ground in paragraph 4 of Schedule 4B to the Act (additional cases) and a circumstance set out in paragraph (5) applies at the relevant date; or

(d) the application is made by a non-resident parent on a ground in paragraph 2 of Schedule 4B to the Act (special expenses) and a circumstance set out in paragraph (6) applies at the relevant date.

(2) The circumstances for the purposes of this paragraph are that—

(a) a default maintenance decision is in force with respect to the non-resident parent;

(b) the non-resident parent is liable to pay the flat rate of child support maintenance owing to the application of paragraph 4(1)(c) of Schedule 1 to the Act, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Act, or the Transitional Regulations; or

(c) the non-resident parent is liable to pay child support maintenance at a flat rate of a prescribed amount owing to the application of paragraph 4(2) of Schedule 1 to the Act, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Act, or the Transitional Regulations.

(3) The circumstances for the purposes of this paragraph are that the non-resident parent is liable to pay child support maintenance—

(a) at the nil rate owing to the application of paragraph 5 of Schedule 1 to the Act;

(b) at a flat rate owing to the application of paragraph 4(1)(a) of Schedule 1 to the Act, including where the net weekly income of the non-resident parent which is taken into account for the purposes of a maintenance calculation in force in respect of him is £100 per week or less owing to a variation being taken into account or to the application of regulation 18, 19 or 21 of the Transitional Regulations (reduction for relevant departure direction or relevant property transfer); or

(c) at a flat rate owing to the application of paragraph 4(1)(b) of Schedule 1 to the Act, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Act, or the Transitional Regulations.

(4) The circumstances for the purposes of this paragraph are that the non-resident parent is liable to pay an amount of child support maintenance at a rate—

(a) of £5 per week or such other amount as may be prescribed owing to the application of paragraph 7(7) of Schedule 1 to the Act (shared care); or

(b) equivalent to the flat rate provided for in, or prescribed for the purposes of, paragraph 4(1)(b) of Part 1 of Schedule 1 to the Act owing to the application of—

(i) regulation 27(5);

(ii) regulation 9 of the Maintenance Calculations and Special Cases Regulations (care provided in part by a local authority); or

(iii) regulation 23(5) of the Transitional Regulations.

(5) The circumstances for the purposes of this paragraph are that—

(a) the amount of the net weekly income of the non-resident parent to which the Secretary of State had regard when making the maintenance calculation was the capped amount; or

(b) the non-resident parent or a partner of his is in receipt of working families' tax credit (as defined in section 128 of the Contributions and Benefits Act) or disabled person's tax credit (as defined in section 129(**7**) of that Act) and for this purpose "partner" has the same meaning as in paragraph 10C(4) of Schedule 1 to the Act.

(6) The circumstances for the purposes of this paragraph are that the amount of the net weekly income of the non-resident parent to which the Secretary of State would have regard after deducting the amount of the special expenses would exceed the capped amount.

(7) For the purposes of paragraph (1), the "relevant date" means the date from which, if the variation were agreed, the decision under section 16 or 17 of the Act, as the case may be, would take effect.

**Provision of information**

**8.**—(1) Where an application has been duly made, the Secretary of State may request further information or evidence from the applicant to enable that application to be determined and any such information or evidence requested shall be provided within one month of the date of notification

(**7**) Sections 128 and 129 were amended by section 1(2) of Schedule 1 to the Tax Credits Act 1999 (c. 10).