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STATUTORY INSTRUMENTS

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**1993 No. 623 (L. 6)**

**FAMILY LAW**

**The Maintenance Orders (Backdating) Order 1993**

*Made* - - - - - *3rd March 1993*  
*Laid before Parliament* *12th March 1993*  
*Coming into force* - - *5th April 1993*

The Lord Chancellor, in exercise of the powers conferred on him by section 58(7) of the Child Support Act 1991(1), hereby makes the following Order:—

**Citation and Commencement**

1. This Order may be cited as the Maintenance Orders (Backdating) Order 1993 and shall come into force on 5th April 1993.

**Backdating of certain court orders**

2. The amendments set out in Schedule 1 to this Order (which extend the powers of courts to backdate certain orders in circumstances relating to the operation of the Child Support Act 1991) shall have effect.

**Definition of family proceedings**

3. The amendments in Schedule 2 to this Order (which extend the definition of family proceedings to certain proceedings under the Child Support Act 1991) shall have effect.

Dated 3rd March 1993

*Mackay of Clashfern, C.*

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SCHEDULE 1

Article 2

AMENDMENT OF PROVISIONS RELATING TO  
THE BACKDATING OF CERTAIN COURT ORDERS

**Matrimonial Causes Act 1973(2)**

1. In section 29(2) of the Matrimonial Causes Act 1973(3) (duration of continuing financial provision orders in favour of children), after the words “any later date” there shall be inserted the words “or a date ascertained in accordance with subsection (5) or (6) below”.

2. After section 29(4) of that Act there shall be inserted—

“(5) Where—

- (a) a maintenance assessment (“the current assessment”) is in force with respect to a child; and
- (b) an application is made under Part II of this Act for a periodical payments or secured periodical payments order in favour of that child—
  - (i) in accordance with section 8 of the Child Support Act 1991(4), and
  - (ii) before the end of the period of 6 months beginning with the making of the current assessment

the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.

(6) For the purposes of subsection (5) above, “the earliest permitted date” is whichever is the later of—

- (a) the date 6 months before the application is made; or
- (b) the date on which the current assessment took effect or, where successive maintenance assessments have been continuously in force with respect to a child, on which the first of those assessments took effect.

(7) Where—

- (a) a maintenance assessment ceases to have effect or is cancelled by or under any provision of the Child Support Act 1991; and
- (b) an application is made, before the end of the period of 6 months beginning with the relevant date, for a periodical payments or secured periodical payments order in favour of a child with respect to whom that maintenance assessment was in force immediately before it ceased to have effect or was cancelled,

the term to be specified in any such order made on that application may begin with the date on which that maintenance assessment ceased to have effect or, as the case may be, the date with effect from which it was cancelled, or any later date.

(8) In subsection (7)(b) above—

- (a) where the maintenance assessment ceased to have effect, the relevant date is the date on which it so ceased; and
- (b) where the maintenance assessment was cancelled, the relevant date is the later of—
  - (i) the date on which the person who cancelled it did so, and

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(2) 1973 c. 18.

(3) Section 29(2) was amended by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 5(4)

(4) 1991 c. 48.

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(ii) the date from which the cancellation first had effect.”

3. After section 31(10) of that Act (effective date of variation of certain orders for financial relief)(5) there shall be inserted—

“(11) Where—

- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a maintenance assessment (“the assessment”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made; and
- (d) an application is made, before the end of the period of 6 months beginning with the date on which the assessment was made, for the variation or discharge of the order, the court may, in exercise of its powers under this section to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which the assessment took effect or any later date.

(12) Where—

- (a) an order (“the child order”) of a kind prescribed for the purposes of section 10(1) of the Child Support Act 1991 is affected by a maintenance assessment;
- (b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the spousal order”) in favour of a party to a marriage having the care of the child in whose favour the child order was made; and
- (c) an application is made, before the end of the period of 6 months beginning with the date on which the maintenance assessment was made, for the spousal order to be varied or discharged,

the court may, in exercise of its powers under this section to vary or discharge the spousal order, direct that the variation or discharge shall take effect from the date on which the child order became so affected or any later date.

(13) For the purposes of subsection (12) above, an order is affected if it ceases to have effect or is modified by or under section 10 of the Child Support Act 1991.

(14) Subsections (11) and (12) above are without prejudice to any other power of the court to direct that the variation or discharge of an order under this section shall take effect from a date earlier than that on which the order for variation or discharge was made.”

4. In section 52(1) of that Act (interpretation), after the definition of “education” there shall be inserted—

““maintenance assessment” has the same meaning as it has in the Child Support Act 1991 by virtue of section 54 of that Act as read with any regulations in force under that section.”

#### **Domestic Proceedings and Magistrates' Courts Act 1978(6)**

4. In section 5(2) of the Domestic Proceedings and Magistrates' Courts Act 1978 (duration of orders for financial provision for children), after the words “any later date” there shall be inserted the words “or a date ascertained in accordance with subsection (5) or (6) below.”.

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(5) Section 31(10) was inserted by the Matrimonial and Family Proceedings Act 1984 (c. 42), section 6(4).

(6) 1978 c. 22.

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5. After section 5(4) of that Act there shall be inserted—

“(5) Where—

- (a) a maintenance assessment (“the current assessment”) is in force with respect to a child; and
- (b) an application is made for an order under section 2(1)(c) of this Act—
  - (i) in accordance with section 8 of the Child Support Act 1991(7); and
  - (ii) before the end of the period of 6 months beginning with the making of the current assessment,

the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.

(6) For the purposes of subsection (5) above, “the earliest permitted date” is whichever is the later of—

- (a) the date 6 months before the application is made; or
- (b) the date on which the current assessment took effect or, where successive maintenance assessments have been continuously in force with respect to a child, on which the first of those assessments took effect.

(7) Where—

- (a) a maintenance assessment ceases to have effect or is cancelled by or under any provision of the Child Support Act 1991; and
- (b) an application is made, before the end of the period of 6 months beginning with the relevant date, for an order under section 2(1)(c) of this Act in relation to a child with respect to whom that maintenance assessment was in force immediately before it ceased to have effect or was cancelled,

the term to be specified in any such order, or in any interim order under section 19 of this Act, made on that application, may begin with the date on which that maintenance assessment ceased to have effect or, as the case may be, the date with effect from which it was cancelled, or any later date.

(8) In subsection (7)(b) above—

- (a) where the maintenance assessment ceased to have effect, the relevant date is the date on which it so ceased; and
- (b) where the maintenance assessment was cancelled, the relevant date is the later of—
  - (i) the date on which the person who cancelled it did so, and
  - (ii) the date from which the cancellation first had effect.”

6. In section 19(3) of that Act (duration of interim orders), for the words “, not being” there shall be substituted the words “except that, subject to section 5(5) and (6) of this Act, the date shall not be”.

7. In section 20(9) of that Act (effective date of variation of orders for periodical payments)(8), for the words “, not being” there shall be substituted “except that, subject to subsections (9A) and (9B) below, the date shall not be”.

8. After section 20(9) of that Act there shall be inserted—

“(9A) Where—

- (a) there is in force an order (“the order”)—

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(7) 1991 c. 48.

(8) Section 20(9) was amended by the Children Act 1989, Schedule 15.

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- (i) under section 2(1)(c) of this Act,
  - (ii) under section 6(1) of this Act making provision of a kind mentioned in paragraph (c) of section 6(2) of this Act (regardless of whether it makes provision of any other kind mentioned in that paragraph),
  - (iii) under section 7(2)(b) of this Act, or
  - (iv) which is an interim maintenance order under which the payments are to be made to a child or to the applicant for the benefit of a child;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
  - (c) a maintenance assessment (“the assessment”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made; and
  - (d) an application is made, before the end of the period of 6 months beginning with the date on which the assessment was made, for the variation or revocation of the order,

the court may, in exercise of its powers under this section to vary or revoke the order, direct that the variation or revocation shall take effect from the date on which the assessment took effect or any later date.

(9B) Where—

- (a) an order (“the child order”) of a kind prescribed for the purposes of section 10(1) of the Child Support Act 1991 is affected by a maintenance assessment;
- (b) on the date on which the child order became so affected there was in force an order (“the spousal order”)—
  - (i) under section 2(1)(a) of this Act,
  - (ii) under section 6(1) of this Act making provision of a kind mentioned in section 6(2)(a) of this Act (regardless of whether it makes provision of any other kind mentioned in that paragraph),
  - (iii) under section 7(2)(a) of this Act, or
  - (iv) which is an interim maintenance order under which the payments are to be made to the applicant (otherwise than for the benefit of a child); and
- (c) an application is made, before the end of the period of 6 months beginning with the date on which the maintenance assessment was made, for the spousal order to be varied or revoked,

the court may, in exercise of its powers under this section to vary or revoke the spousal order, direct that the variation or revocation shall take effect from the date on which the child order became so affected or any later date.

(9C) For the purposes of subsection (9B) above, an order is affected if it ceases to have effect or is modified by or under section 10 of the Child Support Act 1991.”

**9.** In section 88 of that Act (interpretation), after the definition of “magistrates' court maintenance order”<sup>(9)</sup> there shall be inserted—

““maintenance assessment” has the same meaning as it has in the Child Support Act 1991 by virtue of section 54 of that Act as read with any regulations in force under that section.”

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(9) That definition was inserted by the Family Law Reform Act 1987, Schedule 2, paragraph 71.

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### **Children Act 1989(10)**

**10.** In paragraph 3(1) of Schedule 1 to the Children Act 1989 (duration of orders for financial relief), after the words “any later date” there shall be inserted “or a date ascertained in accordance with sub-paragraph (5) or (6)”.

**11.** After paragraph 3(4) of that Schedule there shall be inserted—

“(5) Where—

- (a) a maintenance assessment (“the current assessment”) is in force with respect to a child; and
- (b) an application is made for an order under paragraph 1(2)(a) or (b) of this Schedule for periodical payments in favour of that child—
  - (i) in accordance with section 8 of the Child Support Act 1991<sup>(11)</sup>; and
  - (ii) before the end of the period of 6 months beginning with the making of the current assessment,

the term to be specified in any such order made on that application may be expressed to begin on, or at any time after, the earliest permitted date.

(6) For the purposes of subsection (5) above, “the earliest permitted date” is whichever is the later of—

- (a) the date 6 months before the application is made; or
- (b) the date on which the current assessment took effect or, where successive maintenance assessments have been continuously in force with respect to a child, on which the first of those assessments took effect.

(7) Where—

- (a) a maintenance assessment ceases to have effect or is cancelled by or under any provision of the Child Support Act 1991, and
- (b) an application is made, before the end of the period of 6 months beginning with the relevant date, for an order for periodical payments under paragraph 1(2)(a) or (b) in favour of a child with respect to whom that maintenance assessment was in force immediately before it ceased to have effect or was cancelled,

the term to be specified in any such order, or in any interim order under paragraph 9, made on that application may begin with the date on which that maintenance assessment ceased to have effect or, as the case may be, the date with effect from which it was cancelled, or any later date.

(8) In sub-paragraph (7)(b)—

- (a) where the maintenance assessment ceased to have effect, the relevant date is the date on which it so ceased; and
- (b) where the maintenance assessment was cancelled, the relevant date is the later of—
  - (i) the date on which the person who cancelled it did so, and
  - (ii) the date from which the cancellation first had effect.”

**12.** In paragraph 6(3) of that Schedule (effective date of variation of orders for periodical payments), for the words “, not being” there shall be substituted “except that, subject to sub-paragraph (9), the date shall not be”.

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<sup>(10)</sup> 1989 c. 41.

<sup>(11)</sup> 1991 c. 48.

13. After paragraph 6(8) of that Schedule, there shall be inserted—

“(9) Where—

- (a) an order under paragraph 1(2)(a) or (b) for the making or securing of periodical payments in favour of more than one child (“the order”) is in force;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a maintenance assessment (“the assessment”) is made with respect to one or more, but not all, of the children with respect to whom those payments are to be made; and
- (d) an application is made, before the end of the period of 6 months beginning with the date on which the assessment was made, for the variation or discharge of the order,

the court may, in exercise of its powers under paragraph 1 to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which the assessment took effect or any later date.”

14. In paragraph 9(2) of that Schedule (effective date of interim orders) for the words “,not being” there shall be substituted “except that, subject to paragraph 3(5) and (6), the date shall not be”.

15. After paragraph 16(2) of that Schedule (interpretation), there shall be inserted—

“(3) In this Schedule, “maintenance assessment” has the same meaning as it has in the Child Support Act 1991 by virtue of section 54 of that Act as read with any regulations in force under that section.”

## SCHEDULE 2

Article 3

### DEFINITION OF FAMILY PROCEEDINGS

#### **Magistrates' Courts Act 1980(12)**

In section 65(1) of the Magistrates' Courts Act 1980 (meaning of family proceedings), the following paragraph shall be inserted after paragraph (n)—

“(o) section 20 (so far as it provides, by virtue of an order under section 45(13), for appeals to be made to a court) or section 27 of the Child Support Act 1991;”.

2. In section 65(2) of the Magistrates' Courts Act 1980 (proceedings which may be treated as family proceedings), the following paragraph shall be inserted after paragraph (d)—

“(e) section 20 (so far as it provides, by virtue of an order under section 45, for appeals to be made to a court) or section 27 of the Child Support Act 1991.”.

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(12) 1980 c. 43, as amended by the Children Act 1980 (c. 41), Schedule 11, paragraph 8.

(13) S.I.1993/961 provides for appeals on parentage issues to be made to a court instead of to a child support appeals tribunal.

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends various provisions of the Matrimonial Causes Act 1973, the Domestic Proceedings and Magistrates' Courts Act 1978 and the Children Act 1989 so as to allow maintenance orders to be backdated to a time before the date of application. The general effect of the amendments is to allow maintenance orders to be backdated to the effective date of a maintenance assessment made under the Child Support Act 1991, provided that the application for the maintenance order is made within six months from the date of the assessment.

The Order also extends the definition of family proceedings in section 65 of the Magistrates' Courts Act 1980 to cover certain Child Support Act proceedings.