
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Child Support Maintenance Calculation Regulations 2012

PART 3

DECISION MAKING

CHAPTER 1

MAKING THE MAINTENANCE CALCULATION

Initial effective date

12. The effective date of a decision under section 11 of the 1991 Act⁽¹⁾ (“the initial effective date”) is the date on which notice is given to the non-resident parent in accordance with regulation 11.

Effect of variation applied for before a maintenance calculation is made

13.—(1) Subject to paragraph (2), where an application for a variation is made in the circumstances referred to in section 28A(3) of the 1991 Act⁽²⁾ (that is before the Secretary of State has reached a decision under section 11 or 12(1) of the Act) and the application is agreed to, the effective date of the maintenance calculation which takes account of the variation is—

- (a) where the ground giving rise to the variation existed from the initial effective date, that date; or
- (b) where the ground giving rise to the variation arose after the initial effective date, the day on which the ground arose.

(2) Where—

- (a) the ground for the variation applied for under section 28A(3) of the 1991 Act is a ground in regulation 65 (prior debts) or 67 (payments in respect of certain mortgages, loans or insurance policies), and
- (b) payments falling within the relevant regulation which have been made by the non-resident parent constitute voluntary payments for the purposes of section 28J of that Act (voluntary payments)⁽³⁾ and regulations made under that section,

the date from which the maintenance calculation is to take account of the variation on this ground is to be the date on which the non-resident parent is notified under regulation 25 (notification of a maintenance calculation) of the amount of their liability to pay child support maintenance.

(3) Where the ground for the variation applied for under section 28A(3) of the 1991 Act has ceased to exist by the date on which the maintenance calculation is made, that calculation is to take account of the variation for the period ending on the day on which the ground ceased to exist.

⁽¹⁾ Section 11 was substituted by section 1(1) of the 2000 Act and amended by Schedule 8 to the 2008 Act.

⁽²⁾ Section 28A(3) was amended by Schedule 8 to the 2008 Act.

⁽³⁾ Section 28J was inserted by section 20 of the 2000 Act.

CHAPTER 2

REVISION

Grounds for revision

14.—(1) A decision to which section 16(1A) of the 1991 Act applies⁽⁴⁾ may be revised by the Secretary of State—

- (a) if the Secretary of State receives an application for the revision of a decision either—
 - (i) under section 16 of that Act, or
 - (ii) by way of application under section 28G of that Act⁽⁵⁾ (application for a variation where a maintenance calculation is in force),
 within 30 days after the date of notification of the decision or within such longer time as may be allowed under regulation 15;
- (b) if the Secretary of State is satisfied that the decision was wrong due to a misrepresentation of, or failure to disclose, a material fact and that decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would have been but for the wrongness of the decision;
- (c) if an appeal is made under section 20 of the 1991 Act⁽⁶⁾ (appeals to First-tier Tribunal) against a decision within the time limit prescribed by the Tribunal Procedure Rules but that appeal has not been determined;
- (d) if the Secretary of State commences action leading to the revision of the decision within 30 days after the date of notification of the decision;
- (e) if the decision arose from official error;
- (f) if the information held by HMRC in relation to a tax year in respect of which the Secretary of State has determined historic income for the purposes of regulation 35, or unearned income for the purposes of regulation 69, has since been amended; or
- (g) if the ground for revision is 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.

(2) A decision may not be revised because of a change of circumstances that occurred since the decision had effect or is expected to occur.

(3) An interim maintenance decision or default maintenance decision made under section 12 of the 1991 Act may be revised at any time.

(4) In paragraph (1)(e) “official error” means an error made by an officer of the Department for Work and Pensions or HMRC acting as such to which no person outside the Department or HMRC materially contributed, but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of the Upper Tribunal or the court.

(4) Section 16(1A) was inserted by section 8(1) and (3) of the 2000 Act and amended by Schedule 8 to the 2008 Act and by [S.I. 2008/2833](#); the decisions to which section 16(1A) applies are: a maintenance calculation; an interim maintenance decision; a default maintenance decision; a supersession; a decision on a variation referred to an appeal tribunal under section 28D of the 1991 Act.

(5) Section 28G was substituted by section 7 of the 2000 Act and amended by Schedule 8 to the 2008 Act.

(6) Section 20 was amended by paragraphs 1(1), (4), (5) and (6) and 3 of Schedule 7 to, and Schedule 8 to, the 2008 Act and by [S.I. 2008/2833](#).

Late application for a revision

15.—(1) The time limit for making an application for a revision specified in regulation 14(1)(a) (grounds for revision) may be extended where the conditions specified in the following provisions of this regulation are satisfied.

(2) An application for an extension of time must be made by one of the parties or their authorised representative.

(3) An application for an extension of time must contain particulars of the grounds on which the extension is sought and must contain sufficient details of the decision which it is sought to have revised to enable that decision to be identified.

(4) An application for an extension of time may not be granted unless the applicant satisfies the Secretary of State that—

- (a) it is reasonable to grant the application;
- (b) the application for revision has merit; and
- (c) special circumstances are relevant to the application and because of those special circumstances it was not practicable for the application to be made within the time limit specified in regulation 14(1)(a).

(5) In determining whether it is reasonable to grant an application for an extension of time, the Secretary of State must have regard to the principle that the greater the amount of time that has elapsed between the end of the time specified in regulation 14(1)(a) for applying for a revision and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(6) In determining whether it is reasonable to grant the application for an extension of time, no account shall be taken of the following—

- (a) that the applicant, or any person acting for the applicant, was unaware of or misunderstood the law applicable to the case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
- (b) that the Upper Tribunal or a court has taken a different view of the law from that previously understood and applied.

(7) An application under this regulation for an extension of time which has been refused may not be renewed.

Effective date of a revision

16. Where a decision is revised and the date from which the original decision took effect is found to be wrong, the decision as revised takes effect from the date on which the original decision would have taken effect had the error not been made.

CHAPTER 3

SUPERSESSION

Grounds for supersession

17.—(1) A decision mentioned in section 17(1) of the 1991 Act⁽⁷⁾ may be superseded by a decision of the Secretary of State, on an application or on the Secretary of State's own initiative, where—

(7) Section 17(1) was substituted by section 41 of the Social Security Act 1998 (c. 14) and amended by section 9(1) and (2) of, and Schedule 9 to, the 2000 Act, Schedule 8 to the 2008 Act, and S.I. 2008/2833. The decisions mentioned in section 17 are; a maintenance calculation, an interim maintenance decision, a default maintenance decision or a supersession (whether as

- (a) there has been a relevant change of circumstances since the decision had effect or it is expected that a relevant change of circumstances will occur;
- (b) the decision was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) the decision was wrong in law (unless it was a decision made on appeal).

(2) The circumstances in which a decision may be superseded include where the relevant change of circumstances causes the maintenance calculation to cease by virtue of paragraph 16 of Schedule 1 to the 1991 Act(8) or where the Secretary of State no longer has jurisdiction by virtue of section 44 of that Act.

(3) A decision may be superseded by a decision made by the Secretary of State where the Secretary of State receives an application for the supersession of a decision by way of an application under section 28G of the 1991 Act (application for a variation where a maintenance calculation is in force).

(4) A decision may not be superseded in circumstances where it may be revised.

(5) A decision to refuse an application for a maintenance calculation may not be superseded.

(6) In making a supersession decision under section 17(1) of the 1991 Act, the Secretary of State need not consider any issue that is not raised by the application or, as the case may be, did not cause the decision to be made on the Secretary of State's own initiative.

(7) This regulation is subject to any provision in Chapter 4 of this Part (updating gross weekly income) relating to the circumstances in which a supersession decision may be made.

Effective dates for supersession decisions

18.—(1) This regulation sets out cases and circumstances in which a supersession decision takes effect on a date other than the date mentioned in section 17(4) of the 1991 Act(9).

(2) Where the ground for the supersession decision is that a relevant change of circumstances is expected to occur or that a ground for a variation is expected to occur, the decision takes effect from the date on which that change or that ground is expected to occur.

(3) Where the ground for the supersession decision is that a relevant change of circumstances of the following kind has occurred, the decision takes effect from the date on which the change occurred—

- (a) a child ceases to be a qualifying child, a relevant other child, or a child supported under another arrangement;
- (b) the person with care dies or ceases to be a person with care in relation to a qualifying child;
- (c) the person with care, the non-resident parent or a qualifying child ceases to be habitually resident in the United Kingdom;
- (d) the non-resident parent begins or ceases to receive a benefit mentioned in regulation 44(1) or begins or ceases to be a person who receives, or whose partner receives, a benefit referred to in regulation 44(2).

(4) Where the ground for the supersession decision is that a relevant change of circumstances affecting the non-resident parent's current income has occurred and the non-resident parent was required to report that change in accordance with regulations under section 14(1) of the 1991 Act, the decision takes effect from the date on which the change occurred.

originally made or revised), a decision of a First-tier tribunal made on appeal under section 20 or on a variation referred under section 28D of the 1991 Act and a decision of an Upper Tribunal on appeal from the First-tier Tribunal.

(8) Paragraph 16 was amended by section 1(2) of, and paragraph 11(1) and (2) and (22)(c)(i) of Schedule 3 to, the 2000 Act; there are other amendments not relevant to these Regulations.

(9) Section 17(4) and (4A) were substituted by section 9(1) and (3) of the 2000 Act.

(5) Where the ground for the supersession decision is that there is a new qualifying child in relation to the non-resident parent, the decision takes effect from the date which would be the initial effective date in relation to an application under section 4 or 7 of the 1991 Act in relation to that child if there were no maintenance calculation already in force.

(6) Where paragraphs (2) to (5) do not apply—

- (a) if the supersession decision is made on an application by one of the parties, the decision takes effect from the date of the application;
- (b) if the supersession decision is made on the Secretary of State's own initiative on the basis of information provided by a third party, the decision takes effect from the date on which that information is provided; and
- (c) if the supersession decision is made on the Secretary of State's own initiative, and sub-paragraph (b) does not apply, the decision takes effect from the date on which it is made.

(7) In paragraph (3)—

- (a) the reference to a child supported under another arrangement is to a child supported under a qualifying maintenance arrangement mentioned in paragraph 5A of Schedule 1 to the 1991 Act⁽¹⁰⁾ or a child mentioned in regulation 52 (non-resident parent liable to maintain a child of the family or a child abroad); and
- (b) the reference to the date on which a person begins or ceases to receive a benefit is to the date on which entitlement to the benefit commences or ceases.

(8) This regulation is subject to any provision in Chapter 4 of this Part (updating gross weekly income) relating to the date from which a supersession decision made under that Chapter takes effect.

CHAPTER 4

UPDATING GROSS WEEKLY INCOME

Setting the review date

19.—(1) The Secretary of State must, in relation to each application for a maintenance calculation, fix a date at which the non-resident parent's gross weekly income is to be reviewed by reference to an updated HMRC figure ("the review date").

(2) Subject to paragraph (3), the first review date falls 12 months after the initial effective date and subsequent review dates fall on each anniversary of that date, unless the Secretary of State decides in any particular case or class of case to fix a different date.

(3) Where a maintenance calculation is in force and there is a further application in relation to the non-resident parent in respect of a new qualifying child, the review dates are to be aligned so that the first review date in respect of the new application is the next review date for the calculation already in force.

(4) Where an application for a maintenance calculation in relation to both non-resident parents of a qualifying child is treated as a single application by virtue of regulation 10(3) (multiple applications) the Secretary of State may fix different review dates in respect of each non-resident parent.

Updating gross weekly income at the review date

20.—(1) Where an updated figure is provided by HMRC for the latest available tax year in accordance with a request under regulation 35(2)(b) (historic income – general), that figure applies, for the purposes of determining historic income, on and after the review date.

⁽¹⁰⁾ Paragraph 5A was inserted by paragraph 5(2) of Schedule 4 to the 2008 Act.

(2) If the non-resident parent's gross weekly income, as calculated in accordance with Chapter 1 of Part 4 by reference to that updated figure, has changed, the Secretary of State may make a supersession decision with effect from the review date.

Updating unearned income at the review date

21.—(1) This regulation applies where, in relation to a maintenance calculation in force, additional income has been taken into account by virtue of a variation previously agreed to under regulation 69 (non-resident parent with unearned income).

(2) When the Secretary of State makes a request to HMRC for the purposes of reviewing the non-resident parent's gross weekly income in accordance with regulation 20 (updating gross weekly income at the review date) the Secretary of State may also request information relating to the non-resident parent's unearned income for the latest available tax year and, where appropriate, make a supersession decision on the basis of that information with effect from the review date.

Periodic current income check

22.—(1) Where—

(a) the non-resident parent's gross weekly income is based on an amount of current income by virtue of regulation 34(2) (the general rule for determining gross weekly income and exceptions to that rule); and

(b) no supersession decision changing that amount has been made within the past 11 months, the Secretary of State may, for the purposes of validating that amount, require evidence of current income to be provided by the non-resident parent.

(2) Where the non-resident parent fails to provide evidence as requested under paragraph (1), the Secretary of State may make a supersession decision determining the non-resident parent's gross weekly income on the basis of historic income.

(3) Where the Secretary of State is provided with sufficient information on which to make a new determination of current income, the Secretary of State may make a supersession decision applying the general rule in regulation 34(2).

(4) Subject to paragraph (5), a supersession decision under this regulation has effect from the date on which it is made.

(5) Where the Secretary of State makes a supersession decision under paragraph (3) and the relevant change of circumstances affecting the non-resident parent's current income was one that the non-resident parent was required to report in accordance with regulations under section 14(1) of the 1991 Act, the decision takes effect from the date on which the change occurred.

25% tolerance for changes outside annual review or periodic current income check

23.—(1) This regulation applies where the non-resident parent's gross weekly income is based on an amount of current income by virtue of regulation 34(2) and, before the next review date, there is a change of circumstances affecting the amount of that current income.

(2) No supersession decision giving effect to that change may be made unless the amount of that current income has changed by at least 25%.

(3) Paragraph (1) does not prevent a supersession decision that—

(a) is made on the Secretary of State's own initiative under regulation 20 (updating weekly income at the annual review) or regulation 22 (periodic check where current income unchanged for 11 months);

(b) is made on the ground mentioned in regulation 17(1)(c) (error of law); or

(c) supersedes a decision determining the non-resident parent's gross weekly income on the basis of regulation 42 (estimate of current income where insufficient information available).

(4) Where the condition in paragraph (2) is satisfied, the current income (as changed) is to apply even if it does not differ from historic income by an amount that is at least 25% of historic income.

CHAPTER 5

NOTIFICATION OF DECISIONS

Notification – general

24.—(1) Notification of a decision made by the Secretary of State under section 11 (maintenance calculation), 12 (default or interim maintenance decision) or 17 (supersession) of the 1991 Act or of any revision of such a decision under section 16 of that Act must be given to the parties in accordance with this Chapter.

(2) Any such notification must include information as to the provisions relating to the revision and supersession of, and appeals from, decisions made under the 1991 Act.

Notification of a maintenance calculation

25.—(1) Notification of a decision made under section 11 or 12(2) of the 1991 Act⁽¹¹⁾ must set out—

- (a) the effective date of the maintenance calculation;
- (b) where relevant, the non-resident parent's gross weekly income, including—
 - (i) whether that is based on historic income or current income, and
 - (ii) if based on current income, whether that income has been estimated in accordance with regulation 42;
- (c) the number of qualifying children;
- (d) the number of relevant other children;
- (e) the weekly rate;
- (f) the amounts calculated in accordance with Part 1 of Schedule 1 to the 1991 Act and, where there has been an agreement to a variation or a variation has otherwise been taken into account, Part 5 of these Regulations (Variations);
- (g) where the weekly rate is adjusted by apportionment or to take account of shared care;
- (h) where the amount of child support maintenance is decreased—
 - (i) to take account of a child supported under a qualifying maintenance arrangement mentioned in paragraph 5A of Schedule 1 to the 1991 Act; or
 - (ii) in accordance with regulation 52 (non-resident parent liable to maintain a child of the family or a child abroad) or regulation 53 (care provided in part by a local authority).

(2) A notification of a maintenance calculation made under section 12(1) of the 1991 Act (default maintenance decision) must set out—

- (a) the effective date of the maintenance calculation;
- (b) the default rate;
- (c) the number of qualifying children on which the rate is based; and
- (d) whether apportionment has been applied under regulation 49,

⁽¹¹⁾ Section 12(2) was amended by Schedule 8 to the 2008 Act.

and must state the nature of the information required to enable a calculation decision to be made.

(3) Except with the written permission of the person concerned, a notice under this regulation must not include—

- (a) the address of any person other than the recipient of the notice (other than the address of the relevant office of the Secretary of State) or any other information the use of which could reasonably be expected to lead to any such persons being located; and
- (b) any other information the use of which could reasonably be expected to lead to any person other than the qualifying child or a party to the application being identified.

Notification of a revision or supersession

26.—(1) A notification of a decision made following the revision or supersession of a decision made under section 11 (the maintenance calculation), 12 (default or interim maintenance decision) or 17 (supersession) of the 1991 Act, whether as originally made or revised under section 16 of that Act, must, subject to the qualification in regulation 25(3), set out the information mentioned in regulation 25(1) and (2) in relation to the decision in question.

(2) The requirement in paragraph (1) does not apply where the Secretary of State has decided not to supersede a decision and in that case the Secretary of State must, where appropriate and as far as reasonably practicable, notify the parties of that decision.

Notification of cessation of a maintenance calculation

27.—(1) Where the Secretary of State decides that a maintenance calculation has ceased or is to cease to have effect, the Secretary of State must immediately notify the non-resident parent and person with care so far as that is reasonably practicable.

(2) Where a child under section 7 of the 1991 Act ceases to be a child for the purposes of that Act, the Secretary of State must immediately notify the persons mentioned in paragraph (1) and the other qualifying children with the meaning of section 7(2) of that Act.

CHAPTER 6

MISCELLANEOUS MATTERS RELATING TO APPEALS

Decisions involving issues that arise on appeal in other cases

28.—(1) For the purposes of section 28ZA(2)(b) of the 1991 Act⁽¹²⁾ (prescribed cases and circumstances in which a decision may be made on a prescribed basis)—

- (a) a case in which there is no maintenance calculation in force is a prescribed case; and
- (b) the prescribed basis on which the Secretary of State may make the decision is as if—
 - (i) the appeal in relation to the different matter, which is referred to in section 28ZA(1)(b) of that Act had already been determined, and
 - (ii) for the purposes of making that decision, the appeal had been determined in a way that resulted in the lowest possible amount of child support maintenance in the circumstances of that case being payable.

(2) The circumstances prescribed under section 28ZA(4)(c) of the 1991 Act (appeal treated as pending against a decision given in a different case even though an appeal against the decision has not been brought or, as the case may be, an application for permission to appeal against the decision has not been made but the time for doing so has not expired) are that the Secretary of State—

- (a) certifies in writing that an appeal against that decision is being considered; and

⁽¹²⁾ Sections 28ZA was inserted by section 43 of the Social Security Act 1998 (c.14).

- (b) considers that, if such an appeal were to be determined in a particular way—
 - (i) there would be no liability for child support maintenance, or
 - (ii) such liability would be less than would be the case were an appeal not made.

Child support appeals involving issues that arise in other cases

29. The circumstances prescribed for the purposes of section 28ZB(6)(c) of the 1991 Act(13) (appeals involving issues that arise on appeal in other cases) are where the Secretary of State—

- (a) certifies in writing that an appeal against the decision in question is being considered; and
- (b) considers that, if such an appeal were already determined, it would affect the determination of the appeal described in section 28ZB(1)(a) of that Act.

Tribunal decision made pending outcome of a related appeal

30. Where, in accordance with section 28ZB(5) of the 1991 Act (appeals involving issues that arise on appeal in other cases), the Secretary of State makes a decision superseding the decision of the First-tier Tribunal or the Upper Tribunal, the superseding decision takes effect from the date on which the decision of the First-tier Tribunal or, as the case may be, the Upper Tribunal would have taken effect had it been decided in accordance with the determination of the Upper Tribunal or the court in the appeal referred to in section 28ZB(1)(b) of that Act.

Supersession of tribunal decision made in error due to misrepresentation etc.

31.—(1) Where—

- (a) a decision made by the First-tier Tribunal or the Upper Tribunal is superseded on the ground that it was erroneous due to misrepresentation of, or that there was a failure to disclose, a material fact; and
- (b) the Secretary of State is satisfied that the decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would otherwise have been but for that error,

the superseding decision takes effect from the date on which the decision of the First-tier Tribunal or, as the case may be, the Upper Tribunal, took or was to take, effect.

Supersession of look alike case where law reinterpreted by the Upper Tribunal or a court

32. Any supersession decision made under section 17 of the 1991 Act in consequence of a determination which is a relevant determination for the purposes of section 28ZC of that Act(14) (restriction on liability in certain cases of error) takes effect from the date of the relevant determination.

Procedural matters relating to appeals

33. The Schedule to these Regulations has effect.

(13) Section 28ZB was inserted by section 43 of the Social Security Act 1998 (c.14). Subsection (6) concerns the situation where, in prescribed circumstances, an appeal against a decision in a case has not been brought, or an application for leave to appeal has not been made, but the time for doing so has not expired.

(14) Section 28ZC was inserted by section 44 of the Social Security Act 1998, amended by section 1(2) of the 2000 Act, section 40(4) of, and paragraph 54 of Schedule 9 to, the Constitutional Reform Act 2005 (c. 4), paragraph 11(1) and (13) of Schedule 3 to the 2000 Act, Schedule 8 to the 2008 Act and S.I.s 2008/2833, 2009/1604 and 2011/1043.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK
Statutory Instrument: The Child Support Maintenance Calculation Regulations 2012 No. 2677
