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DRAFT STATUTORY INSTRUMENTS

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**2012 No.**

**The Child Support Maintenance Calculation Regulations 2012**

**PART 5**

**VARIATIONS**

**CHAPTER 1**

**GENERAL**

**Application for a variation**

**56.**—(1) Where an application for a variation is made other than in writing it is treated as made on the date on which the applicant notifies the Secretary of State that the applicant wishes to make such an application.

(2) Where an application for a variation is made in writing it is treated as made on the date that the Secretary of State receives it.

(3) Two or more applications for a variation with respect to the same maintenance calculation or application for a maintenance calculation may be considered together.

(4) The Secretary of State may treat an application for a variation made on one ground as made on another ground if that other ground is more appropriate to the facts alleged in that case.

**Rejection of an application following preliminary consideration**

**57.**—(1) The circumstances prescribed for the purposes of section 28B(2)(c) of the 1991 Act<sup>(1)</sup> (other circumstances in which an application may be rejected after preliminary consideration) are—

- (a) the applicant does not state a ground for the variation or provide sufficient information to enable a ground to be identified;
- (b) although a ground is stated, the Secretary of State is satisfied that the application would not be agreed to because —
  - (i) the facts alleged do not bring the case within the ground; or
  - (ii) no facts are alleged that would support the ground or could reasonably form the basis of further enquiries;
- (c) a default maintenance decision is in force;
- (d) the non-resident parent is liable to pay the flat rate or nil rate because the non-resident parent or their partner is in receipt of a benefit listed in regulation 44(2) (flat rate);
- (e) in the case of an application made by the non-resident parent on the grounds mentioned in Chapter 2 (special expenses)—
  - (i) the amount of the expenses does not exceed the relevant threshold;

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<sup>(1)</sup> Section 28B was inserted by section 5(1) and (2) of the 2000 Act.

- (ii) the amount of maintenance for which the non-resident parent is liable is equal to or less than the flat rate referred to in paragraph 4(1) of Schedule 1 to the 1991 Act (or in that sub-paragraph as modified by regulations under paragraph 10A of Schedule 1);
  - (iii) the amount of the non-resident parent's gross weekly income would exceed the capped amount after deducting special expenses; or
  - (iv) the non resident parent's gross weekly income has been determined on the basis of regulation 42 (estimate of current income where insufficient information available);  
or
  - (f) in the case of an application on any of the grounds mentioned in Chapter 3 (additional income), the amount of the non-resident parent's gross weekly income (without taking that ground into account) is the capped amount.
- (2) The circumstances set out in paragraph (1) are circumstances prescribed for the purposes of section 28F(3)(b) of the 1991 Act in which the Secretary of State must not agree to a variation.

### **Provision of information**

**58.**—(1) Where the Secretary of State has received an application for a variation the Secretary of State may request further information or evidence from the applicant to enable that application to be determined.

(2) Any such information or evidence requested in accordance with paragraph (1) must be provided within 14 days after the date of notification of the request or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case.

(3) Where any information or evidence requested is not provided within the time specified in paragraph (2), the Secretary of State may, where able to do so, proceed to determine the application in the absence of the requested information or evidence.

### **Procedure in relation to a variation**

**59.**—(1) Where the Secretary of State has given the preliminary consideration to an application for a variation and not rejected it, the Secretary of State—

- (a) must give notice of the application to any other party informing them of the grounds on which the application has been made and any relevant information or evidence given by the applicant or obtained by the Secretary of State, except information or evidence falling within paragraph (5); and
  - (b) may invite representations (which need not be in writing but must be in writing if in any case the Secretary of State so directs) from the other party on any matter relating to that application, to be submitted to the Secretary of State within 14 days after the date of notification or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case.
- (2) The Secretary of State need not act in accordance with paragraph (1) if—
- (a) the Secretary of State is satisfied on the information or evidence available that the application would not be agreed to;
  - (b) in the case of an application for a variation on the ground mentioned in regulation 69 (non-resident parent with unearned income), the information from HMRC for the latest available tax year does not disclose unearned income exceeding the relevant threshold and the Secretary of State is not in possession of other information or evidence that would merit further enquiry; or
  - (c) regulation 75 (previously agreed variation may be taken into account notwithstanding that no further application has been made) applies;

- (3) Where the Secretary of State receives representations from the other party—
- (a) the Secretary of State may, if the Secretary of State is satisfied that it is reasonable to do so, inform the applicant of the representations concerned (excluding material falling within paragraph (5)) and invite comments within 14 days or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case; and
  - (b) where the Secretary of State acts under sub-paragraph (a), the Secretary of State must not proceed to determine the application until such comments are received or the period referred to in that sub-paragraph has expired.
- (4) Where the Secretary of State has not received representations from the other party notified in accordance with paragraph (1) within the time specified in sub-paragraph (b) of that paragraph, the Secretary of State may in their absence proceed to agree (or not, as the case may be) to the variation.
- (5) The information or evidence referred to in paragraph (1)(a) is as follows—
- (a) details of the nature of the long-term illness or disability of the relevant other child which forms the basis of a variation application on the ground in regulation 64 (illness or disability of a relevant other child) where the applicant requests they should not be disclosed and the Secretary of State is satisfied that disclosure is not necessary in order to be able to determine the application;
  - (b) medical evidence or medical advice which has not been disclosed to the applicant or the other party and which the Secretary of State considers would be harmful to the health of the applicant or that party if disclosed; or
  - (c) the address of the other party or qualifying child, or any other information which could reasonably be expected to lead to that party or child being located, where the Secretary of State considers that there would be a risk of harm or undue distress to that other party or that child or any other children living with that other party if the address or information were disclosed.

**Factors not taken into account for the purposes of section 28F**

- 60.** The following factors are not to be taken into account in determining whether it would be just and equitable to agree to a variation in any case—
- (a) the fact that the conception of the qualifying child was not planned by one or both of the parents;
  - (b) whether the non-resident parent or the person with care of the qualifying child was responsible for the breakdown of the relationship between them;
  - (c) the fact that the non-resident parent or the person with care of the qualifying child has formed a new relationship with a person who is not a parent of that child;
  - (d) the existence of particular arrangements for contact with the qualifying child, including whether any arrangements made are being adhered to;
  - (e) the income or assets of any person other than the non-resident parent;
  - (f) the failure by a non-resident parent to make payments of child support maintenance, or to make payments under a maintenance order or a maintenance agreement; or
  - (g) representations made by persons other than the parties.

### Procedure on revision or supersession of a previously determined variation

**61.**—(1) Subject to paragraph (2), where the Secretary of State has received an application under section 16 or 17 of the 1991 Act<sup>(2)</sup> in connection with a previously determined variation which has effect on a maintenance calculation in force, regulations 58 to 60 apply in relation to that application as if it were an application for a variation that had not been rejected after preliminary consideration.

(2) The Secretary of State need not act in accordance with regulation 59(1) (procedure in relation to a variation) if—

- (a) were the application to succeed, the decision as revised or superseded would be less advantageous to the applicant than the decision before it was so revised or superseded; or
- (b) it appears to the Secretary of State that representations of the other party would not be relevant to the decision.

### Regular payments condition

**62.**—(1) For the purposes of section 28C(2)(b) of the 1991 Act<sup>(3)</sup> (payments of child support maintenance less than those specified in the interim maintenance decision) the payments are those fixed by the interim maintenance decision or the maintenance calculation in force, as the case may be, adjusted to take account of the variation applied for by the non-resident parent as if that variation had been agreed.

(2) The Secretary of State may refuse to consider the application for a variation where a regular payments condition has been imposed and the non-resident parent fails to make such payments, which are due and unpaid, within one month after being required to do so by the Secretary of State or such other period as the Secretary of State may in the particular case decide.

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(2) Section 16 was substituted by section 40 of the Social Security Act 1998 (c. 14); subsections (1A) and (1B) were inserted by section 8(1) and (3) of the 2000 Act and subsection (1A) was amended by Schedule 8 to the 2008 Act and by S.I. 2008/2833; section 17 was substituted by section 41 of the Social Security Act 1998; subsection (1) was substituted by section 41 of the Social Security Act 1998 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; subsections (2) and (3) were substituted by section 17 of the 2008 Act. Section 17(4) and (4A) were substituted by section 9(1) and (3) of the 2000 Act.

(3) Section 28C was inserted by sections 5(1) and (2) of the 2000 Act.