



Social Security Act 1998

1998 CHAPTER 14

PART I

DECISIONS AND APPEALS

CHAPTER III

OTHER DECISIONS AND APPEALS

Child support

40 Child support: revision of decisions

For section 16 of the Child Support Act there shall be substituted the following section—

“16 Revision of decisions

- (1) Any decision of the Secretary of State under section 11, 12 or 17 may be revised by the Secretary of State—
 - (a) either within the prescribed period or in prescribed cases or circumstances; and
 - (b) either on an application made for the purpose or on his own initiative; and regulations may prescribe the procedure by which a decision of the Secretary of State may be so revised.
- (2) In making a decision under subsection (1), 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 him to act on his own initiative.

Status: This is the original version (as it was originally enacted).

- (3) Subject to subsections (4) and (5) and section 28ZC, a revision under this section shall take effect as from the date on which the original decision took (or was to take) effect.
- (4) Regulations may provide that, in prescribed cases or circumstances, a revision under this section shall take effect as from such other date as may be prescribed.
- (5) Where a decision is revised under this section, for the purpose of any rule as to the time allowed for bringing an appeal, the decision shall be regarded as made on the date on which it is so revised.
- (6) Except in prescribed circumstances, an appeal against a decision of the Secretary of State shall lapse if the decision is revised under this section before the appeal is determined.”

41 Child support: decisions superseding earlier decisions

For sections 17 to 19 of the Child Support Act there shall be substituted the following section—

“17 Decisions superseding earlier decisions

- (1) Subject to subsection (2), the following, namely—
 - (a) any decision of the Secretary of State under section 11 or 12 or this section, whether as originally made or as revised under section 16;
 - (b) any decision of an appeal tribunal under section 20; and
 - (c) any decision of a Child Support Commissioner on an appeal from such a decision as is mentioned in paragraph (b),
 may be superseded by a decision made by the Secretary of State, either on an application made for the purpose or on his own initiative.
- (2) In making a decision under subsection (1), 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 him to act on his own initiative.
- (3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this section.
- (4) Subject to subsection (5) and section 28ZC, a decision under this section shall take effect as from the date on which it is made or, where applicable, the date on which the application was made.
- (5) Regulations may provide that, in prescribed cases or circumstances, a decision under this section shall take effect as from such other date as may be prescribed.”

42 Child support: appeals to appeal tribunals

For sections 20 to 21 of the Child Support Act there shall be substituted the following section—

Status: This is the original version (as it was originally enacted).

“20 Appeals to appeal tribunals

- (1) Where an application for a maintenance assessment is refused, the person who made that application shall have a right of appeal to an appeal tribunal against the refusal.
- (2) Where a maintenance assessment is in force—
 - (a) the absent parent or person with care with respect to whom it was made; or
 - (b) where the application for the assessment was made under section 7, either of them or the child concerned,shall have a right of appeal to an appeal tribunal against the amount of the assessment or the date from which the assessment takes effect.
- (3) Where a maintenance assessment is cancelled, or an application for the cancellation of a maintenance assessment is refused—
 - (a) the absent parent or person with care with respect to whom the maintenance assessment in question was, or remains, in force; or
 - (b) where the application for that assessment was made under section 7, either of them or the child concerned,shall have a right of appeal to an appeal tribunal against the cancellation or refusal.
- (4) A person with a right of appeal under this section shall be given such notice of that right and, in the case of a right conferred by subsection (1) or (3), such notice of the decision as may be prescribed.
- (5) Regulations may make—
 - (a) provision as to the manner in which, and the time within which, appeals are to be brought; and
 - (b) such provision with respect to proceedings before appeal tribunals as the Secretary of State considers appropriate.
- (6) The regulations may in particular make any provision of a kind mentioned in Schedule 5 to the Social Security Act 1998.
- (7) In deciding an appeal under this section, an appeal tribunal—
 - (a) need not consider any issue that is not raised by the appeal; and
 - (b) shall not take into account any circumstances not obtaining at the time when the decision or assessment appealed against was made.”

43 Child support: decisions and appeals dependent on other cases

After section 28 of the Child Support Act there shall be inserted the following sections—

“Decisions and appeals dependent on other cases

28ZA Decisions involving issues that arise on appeal in other cases

- (1) This section applies where—

Status: This is the original version (as it was originally enacted).

- (a) a decision by the Secretary of State falls to be made under section 11, 12, 16 or 17 in relation to a maintenance assessment; and
 - (b) an appeal is pending against a decision given in relation to a different maintenance assessment by a Child Support Commissioner or a court.
- (2) If the Secretary of State considers it possible that the result of the appeal will be such that, if it were already determined, it would affect the decision in some way—
- (a) he need not, except in such cases or circumstances as may be prescribed, make the decision while the appeal is pending;
 - (b) he may, in such cases or circumstances as may be prescribed, make the decision on such basis as may be prescribed.
- (3) Where the Secretary of State acts in accordance with subsection (2)(b), following the determination of the appeal he shall if appropriate revise his decision (under section 16) in accordance with that determination.
- (4) For the purposes of this section, an appeal against a decision is pending if—
- (a) an appeal against the decision has been brought but not determined;
 - (b) an application for leave to appeal against the decision has been made but not determined; or
 - (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.
- (5) In paragraphs (a), (b) and (c) of subsection (4), any reference to an appeal, or an application for leave to appeal, against a decision includes a reference to—
- (a) an application for, or for leave to apply for, judicial review of the decision under section 31 of the Supreme Court Act 1981; or
 - (b) an application to the supervisory jurisdiction of the Court of Session in respect of the decision.

28ZB Appeals involving issues that arise on appeal in other cases

- (1) This section applies where—
- (a) an appeal (“appeal A”) in relation to a decision falling within section 20(1) or (3), or an assessment falling within section 20(2), is made to an appeal tribunal, or from an appeal tribunal to a Child Support Commissioner; and
 - (b) an appeal (“appeal B”) is pending against a decision given in a different case by a Child Support Commissioner or a court.
- (2) If the Secretary of State considers it possible that the result of appeal B will be such that, if it were already determined, it would affect the determination of appeal A, he may serve notice requiring the tribunal or Child Support Commissioner—
- (a) not to determine appeal A but to refer it to him; or
 - (b) to deal with the appeal in accordance with subsection (4).

Status: This is the original version (as it was originally enacted).

- (3) Where appeal A is referred to the Secretary of State under subsection (2) (a), following the determination of appeal B and in accordance with that determination, he shall if appropriate—
- (a) in a case where appeal A has not been determined by the tribunal, revise (under section 16) his decision which gave rise to that appeal; or
 - (b) in a case where appeal A has been determined by the tribunal, make a decision (under section 17) superseding the tribunal’s decision.
- (4) Where appeal A is to be dealt with in accordance with this subsection, the appeal tribunal or Child Support Commissioner shall either—
- (a) stay appeal A until appeal B is determined; or
 - (b) if the tribunal or Child Support Commissioner considers it to be in the interests of the appellant to do so, determine appeal A as if—
 - (i) appeal B had already been determined; and
 - (ii) the issues arising on appeal B had been decided in the way that was most unfavourable to the appellant.
- In this subsection “the appellant” means the person who appealed or, as the case may be, first appealed against the decision or assessment mentioned in subsection (1)(a).
- (5) Where the appeal tribunal or Child Support Commissioner acts in accordance with subsection (4)(b), following the determination of appeal B the Secretary of State shall, if appropriate, make a decision (under section 17) superseding the decision of the tribunal or Child Support Commissioner in accordance with that determination.
- (6) For the purposes of this section, an appeal against a decision is pending if—
- (a) an appeal against the decision has been brought but not determined;
 - (b) an application for leave to appeal against the decision has been made but not determined; or
 - (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.
- (7) In this section—
- (a) the reference in subsection (1)(a) to an appeal to a Child Support Commissioner includes a reference to an application for leave to appeal to a Child Support Commissioner; and
 - (b) any reference in paragraph (a), (b) or (c) of subsection (6) to an appeal, or to an application for leave to appeal, against a decision includes a reference to—
 - (i) an application for, or for leave to apply for, judicial review of the decision under section 31 of the Supreme Court Act 1981; or
 - (ii) an application to the supervisory jurisdiction of the Court of Session in respect of the decision.
- (8) Regulations may make provision supplementing that made by this section.”

Status: This is the original version (as it was originally enacted).

44 **Child support: cases of error**

After section 28ZB of the Child Support Act there shall be inserted the following sections—

“Cases of error

28ZC Restrictions on liability in certain cases of error

- (1) Subject to subsection (2), this section applies where—
 - (a) the effect of the determination, whenever made, of an appeal to a Child Support Commissioner or the court (“the relevant determination”) is that the adjudicating authority’s decision out of which the appeal arose was erroneous in point of law; and
 - (b) after the date of the relevant determination a decision falls to be made by the Secretary of State in accordance with that determination (or would, apart from this section, fall to be so made)—
 - (i) with respect to an application for a maintenance assessment (made after the commencement date);
 - (ii) as to whether to revise, under section 16, a decision (made after the commencement date) with respect to such an assessment; or
 - (iii) on an application under section 17 (made after the commencement date) for a decision with respect to such an assessment to be superseded.
- (2) This section does not apply where the decision of the Secretary of State mentioned in subsection (1)(b)—
 - (a) is one which, but for section 28ZA(2)(a), would have been made before the date of the relevant determination; or
 - (b) is one made in pursuance of section 28ZB(3) or (5).
- (3) In so far as the decision relates to a person’s liability in respect of a period before the date of the relevant determination, it shall be made as if the adjudicating authority’s decision had been found by the Commissioner or court not to have been erroneous in point of law.
- (4) Subsection (1)(a) shall be read as including a case where—
 - (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
 - (b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.
- (5) It is immaterial for the purposes of subsection (1)—
 - (a) where such a decision as is mentioned in paragraph (b)(i) falls to be made; or
 - (b) where such a decision as is mentioned in paragraph (b)(ii) or (iii) falls to be made on an application under section 16 or (as the case may be) section 17,
 whether the application was made before or after the date of the relevant determination.

Status: This is the original version (as it was originally enacted).

- (6) In this section—
- “adjudicating authority” means the Secretary of State, or a child support officer;
- “the commencement date” means the date of the coming into force of section 44 of the Social Security Act 1998; and
- “the court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in Northern Ireland, the House of Lords or the Court of Justice of the European Community.
- (7) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this section in accordance with any regulations made for that purpose.
- (8) Regulations made under subsection (7) may include provision—
- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or a Child Support Commissioner; or
 - (b) for a determination of a lower court or a Child Support Commissioner to be treated as if it had been made on the date of a determination of a higher court.

28ZD Correction of errors and setting aside of decisions

- (1) Regulations may make provision with respect to—
- (a) the correction of accidental errors in any decision or record of a decision given under this Act; and
 - (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—
 - (i) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party’s representative or was not received at an appropriate time by the body or person who gave the decision; or
 - (ii) a party to the proceedings or a party’s representative was not present at a hearing related to the proceedings.
- (2) Nothing in subsection (1) shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that subsection.”