These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

EXPLANATORY NOTES

Part 1: Child Support

Commentary on Sections

Maintenance calculations and interim and default maintenance decisions

Section 1: Maintenance calculations and terminology

13. A central part of the Government's reform of the child support system is a new way of working out child support liability. In place of the existing formula, which includes a wide range of income and expenses in the assessment, will be a simpler system of rates, based solely on:

    - the non-resident parent's* net income (taking into account a restricted range of potential income sources); and
    - the number of children for whom the non-resident parent is responsible.

14. It is intended that the maintenance calculation should be based on one of three rates: a basic rate, a reduced rate or a flat rate.

    - The general rule is that there should be a **basic rate** of liability based on a percentage of the non-resident parent's net weekly income. The percentages applied will depend on whether the non-resident parent is liable to pay maintenance for one, two or three or more children. Where the non-resident parent is also responsible for children living in his household (referred to as "relevant other children"), the basic rate is calculated by applying the percentages to the non-resident parent's net weekly income after this has been reduced to take account of the number of relevant other children.
    - A **reduced rate,** which will be payable where the non-resident parent's net weekly income is more than £100 but less than £200.
    - A **flat rate,** which will be payable if the non-resident parent's net weekly income is £100 or less or he receives a prescribed benefit, pension or allowance, or he or his partner receive any prescribed benefit. It is also intended that certain categories of non-resident parent (including those with a net weekly income below £5) will have a nil rate of liability.

15. The new calculation rules allow for apportionment of the liability where there is more than one person with care*. The provisions for apportionment of liability are in Schedule 1, paragraph 6. The rates can be modified in shared care cases, that is, if the non-resident parent has any child for whom he is liable to pay child support living with him for at least one night a week. Provision for shared care is set out in Schedule 1,

paragraphs 7 to 9. Maintenance liability can also be varied in exceptional cases – the provisions for varying the liability are in sections 5 to 7 of this Act.

16. Sections 4 and 7 of the 1991 Act provide that persons with care, non-resident parents and, in Scotland, qualifying children, can apply for a maintenance calculation. Section 6 of that Act (substituted by section 3) provides that parents with care who claim Income Support or income-based Jobseeker's Allowance can be treated as having applied for a maintenance calculation. It is the duty of the Secretary of State to reach a decision on any application for which he has jurisdiction.

17. Sections 4(10) and 44 of the 1991 Act provide circumstances in which there is no jurisdiction. These provisions are amended by sections 2 and 22 of this Act.

18. Section 1 provides the basis for the maintenance calculation and the rates that will be used to determine maintenance liability.

19. *Subsection (1)* substitutes a new section 11 (dealing with the rules for maintenance calculations) in the 1991 Act.

New section 11: Maintenance calculations

20. This section places a duty on the Secretary of State to make a maintenance calculation. It provides, for the purposes of revision, supersession and appeal, that the outcome of the calculation is a decision about whether child support maintenance is payable.

21. *New section 11(1) and (2)* provide that the Secretary of State shall deal with an application for a maintenance calculation in accordance with the Act and make a decision about whether, and how much, child maintenance is payable, or decide not to make a calculation, or make a decision under section 12.

22. *New section 11(3) to (5*) allow the Secretary of State to stop acting on an application treated as made under section 6(3) if the parent with care ceases to fall within section 6(1). (Section 6(3) of the 1991 Act is substituted by section 3 of this Act. It provides that a parent with care who claims or receives Income Support or income-based Jobseeker's Allowance can be treated as having applied for a maintenance calculation). However, if the parent with care still wants to apply for a maintenance calculation (in other words she wants it treated as though she has applied under section 4 of the 1991 Act) and there is no court order or pre-1993 written maintenance agreement* in place preventing this, then she has one month to respond to the letter telling her that the Secretary of State intends to stop acting. Where the parent with care is content for the Secretary of State to stop acting on her application, but the non-resident parent has already been contacted, then the non-resident parent must be notified. If the parent with care is herself prevented from applying under section 4 then she must be notified of this. These provisions mirror subsections (1A), (1B) and (1C) of the existing section 11.

23. *New section 11(6*) provides that the amount of a maintenance calculation shall be fixed by the rates set out in Part I of Schedule 1.

24. *New section 11(7)* provides for maintenance where a variation has been agreed to. *New section 11(8)* refers to Part II of Schedule 1.

25. *Subsection (2)* of section 1 amends the 1991 Act to replace existing child support terminology, where it appears in the 1991 Act, with the new terminology to be used in the reformed child support scheme.

- *Maintenance calculation* will replace maintenance assessment.
- *Calculation* will replace assessment wherever it occurs in connection with an assessment of maintenance.

26. *Subsection (3)* introduces a new Part I of Schedule 1 to the 1991 Act.

Schedule 1: Calculation of weekly amount of child support maintenance

27. This Schedule replaces Part I of Schedule 1 to the 1991 Act with a new provision that sets out the way that the weekly amount of child support maintenance will be calculated.

Paragraph 1: General rule

28. This paragraph provides the foundation on which child support liability is based.

Sub-paragraph (1) provides for child support liability to be calculated at the basic rate except where rules provide that a reduced rate, flat rate or nil rate liability is appropriate. These terms are explained in paragraphs 2, 3, 4 and 5.

Sub-paragraph (2) provides for the amount payable to the parent with care to be the amount calculated using the appropriate (applicable) rate or, where there is more than one parent with care, a proportion of that amount (see paragraph 6) in either case, reduced as necessary where the non-resident parent shares the care of a qualifying child* (see paragraphs 7 to 9).

Paragraph 2: Basic rate

29. This paragraph provides the rules for determining the basic rate for child support liability.

Sub-paragraph (1) provides for the basic rate to be calculated at a set percentage of the non-resident parent's net income. Where the non-resident parent is liable for maintenance for one qualifying child, the basic rate is 15%. For two children, the basic rate is 20% and for three or more children, the basic rate is 25%.

Sub-paragraph (2) provides for the non-resident parent's net income to be reduced by 15%, 20% or 25% *before* the provisions of sub-paragraph (1*)* are applied, where he has one, two or three or more children living with him (relevant other children).

Paragraph 3: Reduced rate

30. This paragraph provides the rules for determining which non-resident parents will have a liability calculated at the reduced rate.

Sub-paragraph (1) provides that a reduced rate is payable where the non-resident parent's net income is less than £200 but more than £100, unless the non-resident parent is liable for the nil rate or flat rate of liability.

Sub-paragraph (2) provides for the reduced rate (or its method of calculation) to be prescribed in regulations. The intention is that regulations will provide for percentages to be applied to net income so that liability increases in proportion to the amount by which net income exceeds £100.

> **Example:** Neil has one qualifying child. His earnings are £150 and his liability is £18. When his earnings increase to £170, his liability increases to £23, in proportion to the amount by which his earnings exceed £100.

Paragraph 4: Flat rate

31. This paragraph provides the rules for determining which non-resident parents will have a flat rate liability.

Sub-paragraph (1) provides for the flat rate to apply where the non-resident parent has net weekly income of £100 or less; or he is in receipt of a prescribed social security benefit, pension or allowance, or he or his partner (if any) is in receipt of prescribed benefits. The flat rate is not payable in a case where a non-resident parent has a nil liability (see paragraph 5).

Sub-paragraph (2) provides for the flat rate to be payable at a different amount where the non-resident parent has one or more partners who are also liable to pay child support, and either the non-resident parent or his partner is in receipt of a prescribed benefit (intended to be Income Support or income-based Jobseeker's Allowance). For example, in a case where both members of a couple in receipt of Income Support are non-resident parents, it is intended to provide for the non-resident parent's liability to be one half of the flat rate amount.

Sub-paragraph (3) provides for the prescribed social security benefits, pensions and allowances in sub-paragraph (1)(b) to include those paid to non-resident parents under the law of countries other than those in the United Kingdom, for example a state retirement pension paid to an EU national.

Paragraph 5: Nil rate

32. This paragraph provides that the non-resident parent will be liable for a nil rate where he has a net income of below £5 or is of a prescribed description. It is intended to prescribe full time students in advanced education and prisoners among the categories for this purpose.

Paragraph 6: Apportionment

33. The provisions of this paragraph deal with cases where there is more than one person with care and more than one qualifying child in respect of the same non-resident parent. In these circumstances, the maintenance liability of the non-resident parent will be apportioned between the persons with care. The non-resident parent's liability is divided by the number of qualifying children and then shared between the parents with care in proportion to the number of qualifying children in each family.

> **Example**: David has three qualifying children, one being cared for by Dawn and two being cared for by Rebecca. Dawn would receive one-third of David's maintenance liability, whilst Rebecca would receive two-thirds.

Paragraph 7: Shared care – basic and reduced rate

34. The provisions of this paragraph set out the rules for adjusting maintenance liability where the non-resident parent shares the care of a qualifying child (see paragraph 15) and the maintenance liability is calculated at the basic or reduced rate.

Sub-paragraph (1) restricts a reduction in liability for shared care under this paragraph to maintenance payable at the basic or reduced rate. Paragraph 8 (see below) provides for the effect of shared care on a flat-rate liability.

Sub-paragraphs (2) to (4) provide that where the non-resident parent has overnight care of the child for at least 52 nights in total during a prescribed 12 month period, the amount payable to the parent with care of that child will be decreased by one-seventh for care on 52 to 103 nights, two sevenths for care on 104 to 155 nights, three-sevenths for care on 156 to 174 nights and one-half for care on 175 or more nights. Where a period of 12 months is not available, paragraph 9 allows the Secretary of State to make regulations giving him flexibility to use a period other than 12 months.

Sub-paragraph (5) provides that where the parent with care is caring for more than one qualifying child of the same non-resident parent then the reduction will be the sum of the relevant fractions divided by the number of such qualifying children. For example, where the non-resident parent shares the care of two children, one for an average of one night a week, and the other for an average of two nights a week, his liability is reduced by 3/14ths.

Sub-paragraph (6) provides for the maintenance liability to be reduced by a further £7 for each qualifying child for whom care is equally shared.

Sub-paragraph (7) restricts the amount by which the provisions of this paragraph can reduce liability so that the non-resident parent cannot have a liability of less than £5. Where there is more than one person with care and more than one qualifying child in respect of the same non-resident parent, this sum will be apportioned between the persons with care in accordance with the provisions of paragraph 6.

Paragraph 8: Shared care – flat rate

35. The provisions of this paragraph apply where the non-resident parent has a flat rate liability because he is in receipt of a prescribed social security benefit, pension or allowance or he or his partner are in receipt of prescribed benefits or he or his partner receive prescribed benefits and both are non-resident parents.

Sub-paragraph (2) provides that where a non-resident parent shares the care of a qualifying child for at least 52 nights in total during a prescribed 12 month period, his liability to the parent with care of that child will be nil. However, his liability to any other parent with care to whom he is liable to pay maintenance will remain.

Example: a non-resident parent in receipt of income-based Jobseeker's Allowance has two children living with different parents with care. His flat rate liability is £5 and this is apportioned amongst the parents with care at £2.50 each. The non-resident parent shares the care of a child in the first parent with care's household and therefore pays nothing to that parent with care. However, his contact with the child living with the second parent with care is limited and does not meet "shared care" criteria. He therefore pays £2.50 to the second parent with care.

Paragraph 9: Regulations about shared care

36. The provisions of this paragraph allow the Secretary of State to use regulations to set the parameters of what counts as shared care. Regulations will provide for what nights count for this purpose, what counts as care for these purposes and the use of periods other than 12 months to set the reduction for shared care.

Paragraph 10: Net weekly income

37. This paragraph enables the Secretary of State to specify in regulations the items to be taken into account in calculating the net weekly income of the non-resident parent. The intention is to take account of income tax, National Insurance contributions* and contributions to an Inland Revenue approved pension scheme. *Sub-paragraph (2)* allows the Secretary of State to estimate a non-resident parent's income, or make an assumption as to any fact, if he feels that the information he has is incomplete or not truly representative. *Sub-paragraph (3)* sets a limit of £2,000 on the amount of net weekly income that is to be used in the calculation of maintenance.

Paragraph 10A: Regulations about rates, figures, etc

38. This paragraph provides a regulation-making power enabling the Secretary of State to adapt the percentages and amounts used to set the maintenance rates and to revise the number of nights and fractions used to adjust the maintenance calculation where care of a child is shared. It also provides that the level of earnings above which child maintenance is not payable can be revised.

Paragraph 10B: Regulations about income

39. This paragraph provides the Secretary of State with further regulation-making powers to enable him to define what will and will not count as income. For example, where

the Secretary of State is satisfied that a non-resident parent has intentionally deprived himself of income, by, for example, working for a relative and not being paid, the regulation-making power will allow him to include that income for the purposes of calculating his maintenance liability.

Paragraph 10C: References to various terms

40. The provisions of this paragraph set the definitions of various terms used in this Schedule.

Qualifying children: Children who are living apart from one or both parents and for whom the maintenance calculation falls to be made.

Relevant other children: Children in respect of whom either the non-resident parent or his partner receives Child Benefit*, or in respect of whom certain other prescribed conditions are met. For example, it is intended to prescribe for a child to be a relevant other child where child benefit entitlement conditions are not yet met because the child has not been resident in the United Kingdom for more than 26 weeks.

A person "*receives*" a benefit, pension or allowance for any week for which it is paid or due to be paid.

A person's *partner*: the other member of a couple. Or, in the case of a marriage under a law which permits polygamy, another party to the marriage who is of the opposite sex and is a member of the same household.

A couple: a man and woman who are married and members of the same household or not married and living together as husband and wife.

Section 2: Applications under section 4 of the Child Support Act 1991

41. The White Paper *Children Come First,* published in 1990, stated that the current child support system would be available to all parents. However, it was recognised that a staged programme of implementation would be needed. Priority would be given to those who needed child support most. The take-on of applications from parents who had existing maintenance arrangements was deferred and the jurisdiction of the Child Support Agency (CSA) in cases where either parent or the child was living abroad was specifically denied. (Section 44 of the 1991 Act currently excludes cases where the parents are not habitually resident in the United Kingdom from the CSA's jurisdiction.)

42. The phased take-on of applications from parents with existing maintenance agreements was set out in regulations (SI 1993/966). By 1995 it was clear that the CSA was not in a position to take on such a high volume of cases and an amendment was introduced. Section 4(10), inserted by the 1995 Act, deferred applications for child support for an indefinite period where, for example, there was a written maintenance agreement in force made before 5th April 1993, or there was any maintenance order. These cases would continue to be subject to the jurisdiction of the courts.

43. The term "maintenance order" is defined in section 8(11) of the 1991 Act as an order requiring periodical payments to, or for the benefit of, a child under specified legislation. Written maintenance agreements, which are registered in Scotland in the Book of Sessions, are also treated as maintenance orders.

44. This section provides for the Secretary of State to accept applications from parents who have a maintenance order made after the reforms are introduced provided that the order has been in force for at least a year. Parents with maintenance orders in force at the time that the reforms are introduced – and those with written maintenance agreements made before April 1993 – will, as now, use the courts for enforcement and variation of child maintenance liability.

45. The section amends section 4(10) of the 1991 Act, which prevents the CSA from accepting applications from parents with maintenance orders.

46. *Subsection (2)* amends this exclusion to refer only to maintenance orders made before a prescribed date. The Government intends to prescribe the date that the reforms come into effect for this purpose. *Subsection (3)* adds a new exclusion to cover maintenance orders made after the prescribed date if they have not been in force for at least a year.

47. The Government intends to use its powers to prescribe the effective dates of maintenance calculations in paragraph 11 of Schedule 1 to the 1991 Act to set the effective date of any liability resulting from an application covered by the new section 4(10)(aa) to two months after the date of application. This will allow both parents time to consider whether they wish to renegotiate the maintenance order before child support liability begins. The effective date of any liability is the date when the court order ceases to have effect and child support is payable.

Section 3: Applications by persons claiming or receiving benefit

48. Currently a parent with care on Income Support or income-based Jobseeker's Allowance or any other prescribed benefit can be required to authorise the Secretary of State to take action to recover child support maintenance. She is not required to do so if there are reasonable grounds for believing that if she did there would be a risk to her, or any child living with her, suffering harm or undue distress. This is known as “good cause” for not claiming child maintenance.

49. Under the reformed child support system, parents with care who get Income Support, income-based Jobseeker's Allowance or other prescribed benefits will be treated as having applied for child support, unless they specifically request the Secretary of State not to recover child support maintenance. Where a parent with care asks the Secretary of State not to pursue maintenance the Secretary of State will decide if she has good cause not to do so and if he concludes she does not, her benefit will be reduced by a prescribed amount, currently 40% of the adult personal allowance. This benefit penalty will apply until she asks the Secretary of State to pursue maintenance or shows good cause, as now. The current definition of good cause will be retained.

50. Section 19 of this Act substitutes section 46 of the 1991 Act, which provides for a benefit penalty for parents with care to whom section 6 applies, if they refuse, without good cause, to agree to child support action for their children. While the current section 6 includes a consideration of good cause before requiring the parent to apply for child support, the amendments in section 3 will allow parents to opt out of the child support process under any circumstances. The consideration of whether there is good cause for opting out will form part of the consideration of a benefit penalty, and so is placed in a substituted section 46 in section 19.

51. The intention is that, having been told by the parent with care that she wishes to opt out, the Secretary of State will ask for her reasons. The parent will have four weeks to provide reasons. If at the end of this time, it is accepted that there are reasonable grounds for believing that pursuing child support would cause harm or undue distress to the parent with care or her children, no further action will be taken. If the Secretary of State decides that there is no good cause, he will impose a benefit penalty.

52. Section 3 provides that parents with care on Income Support or income-based Jobseeker's Allowance (or other prescribed benefits) will be treated as applying for child support unless they choose to opt out. This section substitutes a new section 6 for section 6 of the 1991 Act, under which the parent with care is treated as applying for child support. Section 19 substitutes section 46 of the 1991 Act in relation to failure to comply with obligations imposed by section 6.

New section 6: Applications by those claiming or receiving benefit

53. *New section 6(1) to (3)* provide that a parent with care who claims or who is receiving Income Support or income-based Jobseeker's Allowance may be treated as having applied for child maintenance. *Subsection (1)* contains a power to prescribe other benefits for the purpose of this section; for example, should another income-related benefit be introduced in the future.

54. *New section 6(4)* requires the Secretary of State to notify the parent with care of this, of her ability under *subsection (5)* to request him not to act, and of the power to impose a reduced benefit decision under section 46.

55. *New section 6(6)* sets out that this will apply whether or not she receives the benefit in respect of that qualifying child. This provision is contained in the current section 6 (see *subsection (8)*). A parent with care can claim benefit for herself and the qualifying child, but benefit for the child will not be awarded in circumstances where the child has earnings, a trust fund or settlement, or capital of more than £3000.

56. *New section 6(7)* follows closely the wording in the current subsection (9). It requires the parent with care to provide the Secretary of State with the information to enable him to identify or trace the non-resident parent so that a child support maintenance calculation can be made and payments collected. She is not required to comply with this section if she has asked the Secretary of State not to pursue child maintenance.

57. *New section 6(8)* provides a power to make regulations specifying the circumstances in which the requirement to supply information does not apply or will be waived. This carries forward a power (which has not been used) in the current section 6. This power is retained because it may provide protection for parents with care in as yet unforeseen circumstances.

58. *New section 6(9)* allows a parent with care who is no longer entitled to a benefit to which this section relates to stop child support action. It makes it clear that, until the parent indicates that she wants child support to cease, the Secretary of State may continue to pursue maintenance.

59. *New section 6(10)* of the substituted section 6 requires the Secretary of State to comply with a request under subsection (9) to cease acting. Regulations under *new section 6(11)* can provide for the detail of how this will happen.

60. *New section 6(12)* reflects the current section 6(14). It provides that the provisions in this section will apply even when there is a maintenance calculation already in force. For example, in situations where there is a change in the parent with care's circumstances, and she claims good cause or makes a new application.

Section 4: Default and interim maintenance decisions

61. There will be circumstances in which a final maintenance calculation cannot be made straightaway, for example, when sufficient details are not made available, or need to be verified. The reformed scheme will allow for maintenance to be collected:

- where the information needed to complete a maintenance calculation (apart from information needed in relation to a variation application) is not immediately available, using a *default rate*; and
- where the calculation cannot be completed because an application for a variation is outstanding, using an *interim rate*.

62. The system of *default rates* will allow the CSA to get maintenance flowing quickly where there is no information about the non-resident parent's current earnings. It is intended that these will be set at 15%, 20% or 25% of average non-resident parent's weekly earnings (currently around £200) according to the number of qualifying children.

63. When the information needed to complete a proper assessment is provided, the default rate will be replaced by a new maintenance calculation. For non-co-operative non-resident parents, maintenance liability for the past will only be recalculated if the full rate is higher than the default maintenance rate. This will both provide an incentive to those non-resident parents to provide information quickly and avoid creating overpayments which have to be recovered from the parent with care.

64. The *interim rate* will be set at the same level as the normal maintenance calculation pending a decision on the variation application. If a variation is allowed, the interim rate will be replaced, with retrospective effect, by the new rate of maintenance liability resulting from the variation.

65. This section substitutes a new section 12 of the 1991 Act which provides for decisions to set liability at a default or interim rate. The section provides the power to make regulations which will define the way that these decisions are made and subsequently altered.

New section 12: Default and interim maintenance decisions

66. *New section 12(1)* provides for a default maintenance decision that will establish a maintenance liability calculated in accordance with regulations made under *subsections (4) and (5)*. This decision may be made where there is insufficient information (apart from information needed in relation to a variation application) to decide maintenance liability.

67. Decisions on maintenance liability are covered by section 11 of the 1991 Act (as substituted by section 1 of this Act) which requires Secretary of State to make a decision on an application for a maintenance calculation, and by sections 16 and 17 of the 1991 Act which provide for the revision and supersession of maintenance decisions.

68. *New section 12(2)* provides for interim maintenance decisions in cases where an application for a variation has been made which has not yet been determined. Sections 28A and 28B of the 1991 Act, inserted by section 5 of this Act, provide for applications for a variation and the preliminary consideration of such applications.

69. *New section 12(3)* provides that the amount of child support maintenance payable by virtue of an interim maintenance decision will be fixed in accordance with Part I of Schedule 1.

70. *New section 12(4) and (5)* provide for regulations to define the way that default and interim decisions are made. The Government intends to provide by regulations that default rates will be £30 per week for one qualifying child, £40 for two children and £50 for three or more children.

Applications for a variation

Section 5: Departure from usual rules for calculating maintenance

71. The new child support rates set out in Part I of Schedule 1 to the Child Support Act 1991, substituted by Schedule 1 to this Act, are intended to provide a fair maintenance calculation in the vast majority of cases. Nevertheless, the Government recognises that there will be exceptional cases where the child support rates do not properly reflect a non-resident parent's ability to support his children. For example, a non-resident parent may need to spend an exceptionally large amount of money keeping in touch with the children, or the net income used in working out his liability may not properly reflect the resources available to him.

72. Accordingly, the Government has decided to allow for the variation (both upwards and downwards) of the rates payable under the replacement scheme in certain exceptional cases. However, the Government is concerned to avoid simply re-introducing the

complexity of the existing formula by another route. The exceptional cases in which a variation will be possible will therefore be clearly defined.

73. The structure of the new legislation follows the broad lines of the departures scheme which was introduced by the Child Support Act 1995. In particular:

- the consideration of a non-resident parent's application for a variation may depend on his continuing regular payment of maintenance (section 28C); and
- maintenance liability will only be varied if it is just and equitable to do so.

74. However, unlike the provision for departures, an application for a variation may be made before the maintenance calculation has been completed, and the revised legislation is drafted to deal specifically with an application made in these circumstances. Regulations made under section 28G of the 1991 Act, as inserted by section 7 of this Act, will provide the rules for handling an application for a variation made after the maintenance calculation has been completed. Where the maintenance calculation is made without taking account of the variation application, liability will initially be based on an *interim maintenance decision.* Section 12(2), substituted by section 4 of this Act, provides for this decision.

75. This section provides the general rules governing the application for a variation before a final maintenance calculation has been made, and how the application is to be considered and decided.

76. *Subsection (2)* replaces sections 28A, 28B and 28C of the 1991 Act.

New section 28A: Applications for variation of usual rules for calculating maintenance

77. This section provides the rules governing applications for a variation. It specifies who can apply, and in what circumstances and in what manner the application can be made. The substituted Schedule 4A, introduced by section 6 of this Act, supplements this section.

78. *New section 28A(1), (2) and (3)* provide that the person with care and the non-resident parent (or, in Scotland, either of them or the child) can each make an application for a variation at any time, once an application for a maintenance calculation has been made and before a maintenance calculation decision under section 11 (a normal calculation) or 12(1) (a default decision) has been made.

79. *New section 28A(4) and (5)* provide that, unlike applications for departures, applications for a variation need not be in writing unless, exceptionally, the Secretary of State considers this to be appropriate (for example, having regard to the complexity surrounding the case). When making an application, the applicant will be required to state the ground on which they are applying. The Secretary of State may impose other conditions. Where appropriate, he may, for example, require a dedicated application form to have been completed properly before he will accept that an application has been made.

80. *New section 28A(6)* cross-references to the substituted Schedule 4A (see section 6 and Schedule 2 of this Act) which provides additional regulation-making powers relating to the handling of variation applications.

New section 28B: Preliminary consideration of applications

81. This section provides for a preliminary consideration of the application. This is intended to sift out at the earliest possible stage those applications which have no prospect of success.

82. *New section 28B(1)* provides that, having received an application, the Secretary of State may carry out a preliminary examination (known as a "preliminary sift") to check that it merits further consideration.

83. *New section 28B(2)* provides, in particular, that an application from any source will be rejected where it has not been made on one or more of the recognised grounds, or where a default maintenance decision (substituted section 12(1) of the 1991 Act) would be made. A partial list of the criteria which the Secretary of State will consider under the preliminary sift is in substituted Schedule 4B of 1991 Act and the rest will be prescribed in regulations. The intention is to sift out applications from non-resident parents in the circumstances where, for example, at the date from which any variation agreed in response to the application would take effect, they had either a nil liability, or a flat-rate liability, or a liability which has been reduced to the equivalent of the flat rate on account of any shared care adjustments. In these circumstances, the non-resident parents could not benefit from the effect of a variation.

New section 28C: Imposition of regular payments condition

84. This section provides for the imposition of a regular payments condition. This condition requires a non-resident parent who has made an application for a variation to continue paying maintenance regularly while the application is being considered. This is intended to ensure that children receive maintenance regularly and reliably and that unnecessary debts are not built up during the variation process.

85. *New section 28C(1)* provides that, where the Secretary of State has made an interim decision pending the determination of a non-resident parent's variation application, and has not rejected the application at the preliminary sift stage, he may require the parent in question to make regular, ongoing payments of maintenance as a pre-condition of having the application considered. This is called a "regular payments condition".

86. *New section 28C(2)* provides that the rate may either be at the rate of the existing interim decision or at a lesser rate which might anticipate the effect of a successful variation application.

87. *New section 28C(3)* provides that, in these circumstances, the Secretary of State will notify all the persons with care (and child, if the applicant for the maintenance calculation) concerned, and the non-resident parent, of the imposition of the condition and the effect of failing to comply with it.

88. *New section 28C(4)* provides that the regular payments condition will cease to have effect either when, in response to the variation application, the Secretary of State replaces his interim maintenance decision with a decision under section 11 (whether he agrees to variation or not) or where the variation application is withdrawn.

89. *New section 28C(5), (6) and (7)* provide that, if the Secretary of State determines that the non-resident parent has failed to comply with the regular payment condition, the Secretary of State may refuse to consider the variation application and proceed to replace the existing interim decision on the basis that the variation application has failed. Regulations will provide for deciding what constitutes a "regular payment". For example, there will need to be scope for taking some account of occasions where payment is unavoidably late, for example, where a bank fails to operate a direct debit. It is intended that where the Secretary of State is not satisfied that the regular payments condition has been met, progress on the variation application may be suspended to allow the non-resident parent the further opportunity to comply. If within the period of a further calendar month, he has still failed to do so without good reason, the application will fail. In this event, the Secretary of State will not vary the maintenance calculation and will notify all the persons with care (or child) and the non-resident parent accordingly. In these circumstances, the non-resident parent will have to make a fresh application if he again wishes to have special circumstances considered.

90. *Subsections (3) and (4)* of section 5 of this Act make amendments to the wording of sections 28D and 28E of the 1991 Act (which deal with determination of applications and matters to be taken into account, respectively), substituting references to departure directions with references to variations. With respect to section 28D, the intention is that where the variation application has not failed, been withdrawn, or been rejected at any preliminary stage, the Secretary of State may elect either to determine the application himself or, exceptionally, to refer it direct to the appeal tribunal for determination. This represents no change from the options available to the Secretary of State under the departures scheme. Cases which the Secretary of State might refer to the tribunal are those which are particularly complex or contentious and which he feels unable to resolve.

91. *Subsection (5)* substitutes section 28F of the 1991 Act (which relates to the determination of departure applications) with equivalent wording – with some modifications – relating to the determination of applications for variations.

New section 28F: Agreement to a variation

92. *New section 28F(1)* provides that a variation may be allowed only if it has been made on one or more of the recognised grounds, and if, having regard to all the circumstances, it would be just and equitable to allow a variation in any particular case.

93. *New section 28F(2)* provides that, in determining whether it would be just and equitable to vary the normal rules in any particular case, the Secretary of State must have regard to the welfare of any child who would be affected by the variation, and such other factors as may be prescribed in regulations. The Secretary of State will need to consider, for example, whether any variation in the amount of child support liability would be likely to result in either parent giving up work.

94. *New section 28F(3)* reaffirms that an application from any source will not be agreed to where the Secretary of State has insufficient information to enable him to make a decision as to maintenance liability under section 11 of the 1991 Act, such that he has to make a default decision under section 12(1) of that Act. The full list of the other circumstances that will automatically prevent agreement to a variation will be prescribed in regulations. In particular, the intention is to disallow applications from any source where a non-resident parent was in receipt of (or was the partner of someone in receipt of) a prescribed income-related benefit at the date from which any variation given in response to the application could take effect.

95. *New section 28F(4)* provides that, where the Secretary of State agrees to a variation, he has to determine the basis on which the child support maintenance is to be calculated, and proceed to make a decision under section 11 on that basis.

96. *New section 28F(5)* provides that where the Secretary of State has made an interim maintenance decision and subsequently makes a decision under section 11 (whether or not he agrees to a variation), the interim maintenance decision is to be treated as having been replaced by his decision under section 11. Any appeal which has previously been lodged against the interim decision will lapse, other than in prescribed circumstances. Any outstanding activity under section 16 (revision) or section 17 (supersession) relating to the interim decision itself will be dealt with, as part of the final decision. There will be a right of appeal against the final section 11 decision.

97. *New section 28F(6)* requires the Secretary of State to comply with any regulations made under the powers of Part II of the substituted Schedule 4B, which is provided for by section 6 of this Act, in considering whether to agree to a variation.

Section 6: Applications for a variation: further provisions

98. This section substitutes both Schedule 4A to the 1991 Act (which, among other things, provides additional regulation-making powers relating to the procedural handling of

departure applications) and Schedule 4B to the same Act (which specifies the cases in which a departure direction may be given and the regulatory controls which govern the operation of the departures scheme) with the equivalent provisions in relation to variation applications.

Schedule 2

99. Schedule 2 substitutes Schedules 4A and 4B to the 1991 Act.

New Schedule 4A: Applications for a variation

100. This Schedule contains detailed provisions supplementing the rules governing applications for variations in section 28A. In particular, it provides for:

- regulations to specify the procedure to be followed by the Secretary of State or a tribunal in considering an application (*paragraph 2*);
- information to be supplied within a specified period to enable an application for a variation to be determined (*paragraph 4*);
- two or more variation applications to be considered together (*paragraph 5(1)*);
- a tribunal to be able to consider any variation application which has been referred to it for determination under section 28D(1)(b) at the same time as any appeal under section 20 connected to an interim maintenance decision (*paragraph 5(3)).*

New Schedule 4B: Applications for a variation: the cases and controls

101. This Schedule details the cases and controls relating to variations.

Part I: The cases

Paragraph 2: Special expenses

102. Paragraph 2 relates to the special expenses in respect of which a non-resident parent may apply for a variation of the normal rules by which maintenance liability is calculated. These will be set out in regulations.

Sub-paragraph (2) provides that the Secretary of State may have regard either to all or part of the expenses, or, in prescribed cases, only to that element of the expenses which exceeds a prescribed threshold.

Sub-paragraph (3) specifies some cases which may be prescribed. The list is not intended to be exhaustive. The non-resident parent will be able to seek a variation in recognition of one or more of the following expenses:

- the costs incurred in keeping in contact with a qualifying child;
- the costs attributable to the long-term illness or disability of a relevant other child;
- the costs incurred in honouring debts which were incurred at time when both parents were living together and were for the joint benefit of both parents, or for the benefit of the child in respect of whom a maintenance calculation has been applied for ("the child concerned"), or for the benefit of any other child within a prescribed category,
- the costs incurred in meeting the boarding school fees payable in respect of the child concerned;
- payments of the mortgage on the former home, where the former partner continues to live in the house with a qualifying child, in the circumstances where, exceptionally, the non-resident parent no longer has any interest in the property.

Sub-paragraph (4) provides that the definitions of "illness", "disability" and "long term" will be prescribed in regulations.

Sub-paragraph (5) provides that the definition of "boarding school fees" and the elements of the fees that the Secretary of State may recognise, will be prescribed in regulations. Regulations will also allow the Secretary of State to make an estimate of the fees that he may recognise, in the circumstances where the relevant amounts are not otherwise readily identifiable.

Paragraph 3: Property or capital transfers

103. This is a feature of the departures scheme and the ground rules and calculations remain unchanged.

Sub-paragraph (1) requires there to have been a property settlement between the parties in pursuance of a court order or maintenance agreement which pre-dates 5 April 1993. A variation may be made in respect of, for example, the equivalent weekly value of that transfer.

Sub-paragraph (2) provides that the Secretary of State will continue to take no account of transfers valued at less than a minimum figure. This figure will, as now, be prescribed in regulations and is intended to remain at £5000.

Paragraph 4: Additional cases

104. This paragraph provides for regulations to specify further grounds on which any person with care (or, in Scotland, a child) may apply for a variation of the rules on the calculation of liability.

Sub-paragraph (2) gives examples of such cases. The list is not intended to be exhaustive. The person with care (or child) will be able to seek a variation in recognition of one or more of the following grounds: where the non-resident parent has assets which exceed a prescribed value (it is intended to prescribe cash or its equivalent, or property other than his normal place of residence, which exceed in total a value of £65,000); where the non-resident parent enjoys a lifestyle which is inconsistent with the income to which the Secretary of State is able to have regard in the determination of the rate of liability; where the non-resident parent is in receipt of income to which the Secretary of State would not otherwise have had regard (the intention is to prescribe for cases where the non-resident parent has a flat rate liability because he is in receipt of a prescribed social security benefit or war pension, or where he has a nil rate of liability, and has minimum additional income of £100 per week); or where the non-resident parent has unreasonably reduced the income to which the Secretary of State has had regard in the calculation of maintenance liability.

Part II: Regulatory controls

105. **Paragraph 5**provides additional regulation-making powers relating to variations.

Sub-paragraphs (1) and (3) provide regulation-making powers relating to the manner in which the Secretary of State may modify the normal rules for calculating maintenance in the event of a successful variation application. The Secretary of State will normally give effect to a variation by offsetting the expenses against, or increasing the value of, the non-resident parent's net income prior to any further adjustment in respect of relevant children (where appropriate). The only exception to the normal rules will apply, as now, to pre-1993 property transfers, where the equivalent weekly value of the transfer (as calculated) will be deducted from the non-resident parent's "bottom line" liability.

Sub-paragraph (2) provides that no variation may be made other than in the circumstances prescribed.

Sub-paragraphs (4) and (5) provide that the Secretary of State may by regulations impose a limit on the amount of special expenses which he may take into account for the purposes of a variation, and that regulations may provide for different provision with respect to different levels of income. The intention is that the Secretary of State will

recognise expenditure on certain of the prescribed grounds only in so far as it exceeds £10 or £15 per week, depending on the non-resident parent's net weekly income.

106. **Paragraph 6** provides that the Secretary of State may, by regulations, and with prescribed modifications, apply the "shared care" rules and adjustments referred to in paragraph 7 of Part I, Schedule 1 (as substituted by Schedule 1 to this Act) in cases where he has agreed to a variation of the normal rules by which the maintenance liability is calculated.

Section 7: Variations: revision and supersession

107. This section substitutes section 28G of the Child Support Act 1991. (The terms "revision" and "supersession" refer to replacing decisions, either from the original date (revision) or a later date (supersession)).

New section 28G: Variations: Revision and supersession

108. *New section 28G(1)* enables variation applications to be made when a maintenance calculation is in force.

109. *New section 28G(2)* provides the power by regulations to modify sections 16, 17, 20 and 28A to 28F of, and Schedules 4A and 4B to, the 1991 Act for these variation applications.

110. *New section 28G(3)* provides a power by regulations to permit the Secretary of State, when superseding a decision on his own initiative under section 17, to make a decision on the basis of a variation agreed to in respect of an earlier decision. This is because some variation circumstances, such as property transfers, once accepted, will continue to be relevant to liability except in flat rate or nil rate cases.

Section 8: Revision and supersession of decisions

111. In June 1999, new decision-making and appeals rules were introduced for child support. The intention of these changes was to simplify the decision-making process, to focus decisions on the outcome rather than the process, and to streamline the appeals system. However, in developing the new arrangements, the Government considered that further changes to the 1991 Act were needed to support the new system.

112. In particular, the existing legislation did not always clearly provide for a decision to be made. This in turn made it difficult to frame the rules for the revision and supersession of decisions (in sections 16 and 17 of the 1991 Act) and to indicate clearly the point at issue in providing for a right of appeal (section 20).

113. The new decision-making provisions were introduced by the Social Security Act 1998*. This Act substituted sections 16, 17 and 20 of the 1991 Act as well as introducing a new Schedule 4C which provided for decision-making and appeals in specific cases.

114. The changes to sections 11 and 12 of the 1991 Act (introduced by sections 1 and 4 of this Act) and the new rules for variations in child support liability (sections 5 to 7 of this Act) focus more clearly on the decisions to be made. This in turn enables the revision, supersession and appeals rules to be restructured.

115. This section amends section 16 of the 1991 Act by inserting a subsection (1A) to cover the additional cases of decisions to reduce benefit and decisions of appeal tribunals on variations. This replaces provisions in paragraph 1 of Schedule 4C to the 1991 Act.

116. A reduced benefit decision may be imposed if a parent with care who has claimed or who is receiving Income Support or income-based Jobseeker's Allowance requests, without good cause, not to be treated as having applied for child support, or fails to provide information or undergo a scientific test – see section 46 of the 1991 Act, as substituted by section 19 of this Act.

117. An appeal tribunal can determine an application for a variation if asked to do so by the Secretary of State. This process is not the same as determining an appeal: there is no provision for the revision of decisions on appeals.

118. This section also inserts a new subsection (1B) into section 16 of the 1991 Act which provides that on revision, a section 12(1) decision may be treated as if made under section 11 of 1991 Act.

Section 9: Decisions superseding earlier decisions

119. This section amends section 17 of the 1991 Act to clarify the decisions which may be superseded.

120. *Subsections (1) and (2)* amend section 17(1) to provide for the supersession of:

- a reduced benefit decision;
- a decision of an appeal tribunal on a variation referral; and
- a decision of a Commissioner on an appeal from a decision referred to in paragraph (b) or (d) (a decision of an appeal tribunal, including a decision on referral of a variation).

121. *Subsection (3)* substitutes subsection (4) of section 17 of the 1991 Act with two new subsections (4) and (4A) which provide for the date from which a supersession takes effect. The existing section 17 provides that a supersession takes effect from the date of the decision or the date of the application unless otherwise prescribed. Regulations have been made which enable decisions to take effect from the date of the change of circumstances which leads to the supersession (the Child Support (Miscellaneous Amendments) (No. 2) Regulations 1999 (SI 1999/1047)).

122. In child support, decisions normally take effect from the beginning of a maintenance period: this subsection amends section 17 to provide for this. A "maintenance period" represents the weekly unit in which maintenance liability is calculated. The first maintenance period starts on the date that the non-resident parent's liability begins: each subsequent maintenance period starts on the day after the last day of the previous one. Other periods may be prescribed for particular cases.

Section 10: Appeals to appeal tribunals

123. This section substitutes section 20 of the 1991 Act with a new provision governing the right to appeal child support decisions. Its purpose is to set out clearly the decisions which can be appealed and the circumstances in which an appeal can brought against such decisions. As now, the intention is that decisions that affect child support liability will be appealable. There will also continue to be a right of appeal against a decision to impose a reduced benefit decision. Decisions on fees and fixed penalties will also be appealable.

New section 20: Appeals to appeal tribunals

124. *New section 20(1)* sets out who may appeal and the decisions that they may appeal against. An appeal may be brought by any qualifying person. Subsection (2) provides a definition of this term. Decisions which can be appealed are:

(a) a decision to make a maintenance calculation (section 11), a default or interim decision (section 12) and a superseding decision (section 17);

(b) a decision not to make a maintenance calculation or supersede a decision. The Secretary of State has no jurisdiction to make a maintenance calculation in certain circumstances (such as where the child is living abroad) and decisions which cannot be superseded include certain changes of circumstances (such as housing costs, as these will not be taken into account in the maintenance calculation);

(c) a reduced benefit decision;

(d) the imposition of a penalty for late payment of maintenance and the amount of the penalty; and

(e) the requirement to pay fees.

125. *New section 20(2)* provides the definition of "qualifying person" for the purpose of subsection (1) of this section. A qualifying person is:

(a) either the person with care and the non-resident parent;

(b) a child in Scotland who made the application for a maintenance calculation which led to the decision;

(c) the parent with care affected by the decision to reduce benefit;

(d) the parent required to make penalty payments; or

(e) the person required to pay fees.

126. *New section 20(3)* provides that anyone with a right of appeal against a decision or imposition of a requirement must be told of this right.

127. *New sections 20(4) and (5)* provide for regulations to specify how, and within what time, an appeal must be brought. As now, it is intended that there will be a one-month time limit for bringing an appeal, which can be extended at the tribunal's discretion if there was good cause for failing to appeal sooner.

128. *New section 20(6)* provides that the time to appeal against a decision to reduce benefit runs from the date that the reduction in benefit is notified.

129. *New section 20(7)* provides that the tribunal cannot consider changes in circumstances which happened after the date of the decision and need not look at any issue not raised when the decision was made. This is the same as for social security benefit appeals.

130. *New section 20(8)* provides for the way that a tribunal can decide the appeal if it is allowed. The tribunal can either:

(a) decide the appeal itself, or

(b) send the decision back to the CSA with directions as to how a new decision must be made. This provision is needed because the tribunal will often not have all the information or computer support necessary to make a new maintenance calculation.

Section 11: Redetermination of appeals

131. The 1998 Social Security Act (the 1998 Act) introduced a new system of decision-making and appeals in child support and social security. This Act replaced the existing structure of appeal tribunals, including child support appeal tribunals, with a unified tribunal system. The legislation governing child support appeals remains separate, however, with section 20 of the 1991 Act providing the basic legislative framework.

132. In social security legislation, the provisions governing appeal rights are supplemented by a provision allowing tribunals to redetermine appeals when an appeal to a Commissioner against the appeal decision has been sought. Section 13 of the 1998 Act allows a tribunal to set the decision aside if all the parties to the appeal agree that the decision is wrong in law. The appeal then goes to another tribunal to be considered again. This means that Commissioners do not have to deal with uncontested appeals.

133. This provision was not carried over into child support legislation. This section corrects this omission by introducing a new section 23A in the 1991 Act. This new section mirrors section 13 of the 1998 Act.

New section 23A: Redetermination of appeals

134. This section provides for the setting aside of appeal tribunal decisions and the reconsideration of the appeal by the tribunal. It sets out the circumstances in which this can happen and the procedure to be followed.

135. *New section 23A(1)* provides that the section applies when there is an application for leave to appeal to a Commissioner from a decision of a tribunal on a question of law.

136. *New section 23A(2*) allows the person who constituted the tribunal, or otherwise a tribunal chairman to set aside the tribunal decision if he decides it was wrong on a point of law. He can then either refer it for redetermination by the same tribunal or a different one.

137. *New section 23A(3)* provides that a tribunal decision shall be set aside if each of the principal parties accepts that it was wrong in law. Such a case is to be referred for determination by a different tribunal.

138. *New section 23A(4)* defines the "principal parties" to an appeal. They are the Secretary of State, and the qualifying persons referred to in section 20(2) of the 1991 Act (section 10). The qualifying persons are the person with care and the non-resident parent. And where the application for a maintenance calculation has been made under section 7 of the 1991 Act (a child in Scotland) the person with care, the principal parties are the non-resident parent and the child concerned. In the case of an appeal relating to financial penalties or fees, they are the person liable to make payment and in the case of a reduced benefit direction they are the person in respect of whom the benefit is payable.

Information

Section 12: Information required by the Secretary of State

139. The power to request information in section 14(1) of the 1991 Act is currently phrased in terms of information or evidence needed to determine an application, or a question arising in connection with an application, or needed in connection with collection or enforcement of maintenance.

140. The ability to request information should not be limited to the initial decision regarding maintenance liability, but should apply in connection with any decision to be made under the Act, as well as in connection with collection and enforcement of child support or other maintenance.

141. This section amends section 14 of the 1991 Act to allow the Secretary of State to require any information which he may need to make any decision or impose any condition or requirement under the Act.

Section 13: Information – offences

142. The current child support scheme can be thwarted by parents who fail to produce the information required to make a child maintenance assessment. Parents may also provide false information, which can result in an incorrect assessment of liability. When the current scheme was developed, this problem was to be addressed by applying punitive interim maintenance assessments to uncooperative non-resident parents. This sanction has proved ineffective because it is practically impossible to enforce a punitive interim maintenance assessment. The lack of effective sanctions was highlighted in the Benefit Fraud Inspectorate's report on the Child Support Agency.

143. The White Paper *A new contract for welfare: CHILDREN'S RIGHTS AND PARENTS' RESPONSIBILITIES* made it clear that, for the new scheme, the Government intended to ensure that parents who sought to avoid their child support responsibilities would face effective penalties. In particular the White Paper proposed a new penalty for parents who lied to the Child Support Agency or refused to provide information.

144. Section 13 introduces a new section 14A which provides for a fine of up to £1000 for anyone who provides false information or refuses to supply information to the CSA.

New section 14A: Information – offences

145. *New section 14A(1)* provides whom this section applies to.

Subsection (1)(a) specifies those who are required to provide the information necessary to trace and, in the case of a maintenance application made under section 4, identify the non-resident parent, and to assess and collect the maintenance liability.

Subsection (1)(b) enables the Secretary of State to apply the section to other persons. It is intended to specify for example, employers of non-resident parents and accountants.

146. *New section 14A(2)* introduces an offence of knowingly making a false statement or representation or knowingly providing, or allowing to be provided, information which is false.

147. *New section 14A(3)* introduces an offence of failure to provide information when required by the Secretary of State to do so.

148. *New section 14A(4)* provides that if a person has a reasonable excuse for failing to comply with the Secretary of State's request he may use this as a defence.

149. *New section 14A(5)* provides that if a person is found guilty of either new offence, he will be subject on conviction to a fine of up to £1000.

Section 14: Inspectors

150. As explained in the note on section 13, the process of deciding child support liability and collecting maintenance for children can be delayed if information is not provided. Section 13 provides for a penalty if parents lie or refuse to give information to the Child Support Agency (CSA). In other circumstances, other means of getting information may be appropriate. In some cases, a visit to an employer's premises, or the premises from which a non-resident parent conducts his business, can yield information that would be difficult to get by other means.

151. The 1991 Act contains a provision to allow child support inspectors to be appointed on a case-by-case basis to carry out visits. The legislation allows for inspectors to enter any premises which are not solely residential, to question anyone they find there and to see any documents. Obstructing an inspector carries a fine of up to £1,000.

152. In practice, however, inspectors are very rarely used. This is because inspectors cannot be appointed for a reasonable period of time: they have to be separately appointed for each case. This in turn means that the CSA cannot build up a team of trained inspectors to be used as required. Given the substantial training, which is required to make an inspector fully effective, this rule severely limits the usefulness of this provision.

153. Section 14 of this Act amends section 15 of the 1991 Act to provide for inspectors to be appointed in a way that does not tie the appointment to an individual case. The section also restates the powers of inspectors to bring this child support provision in line with the more general provisions for DSS investigators set out in Part III of this Act.

154. *Subsection (2)* substitutes subsections (1) to (4) of section 15 in the 1991 Act.

Amended section 15: Inspectors

155. *New section 15(1)* allows Secretary of State to appoint inspectors. This provision allows the Secretary of State to set the terms of appointment. It is intended that inspectors will be appointed for fixed periods. Normally, inspectors will work for the CSA, but on occasion other people with special qualifications will be appointed for specific tasks. It is intended, for example, to have reciprocal arrangements with inspectors in local authorities and the Benefits Agency.

156. *New section 15(4)* sets out the inspectors' powers to enter at any reasonable time, either alone or accompanied, the premises defined in *subsection (4A)* as being liable to inspection. In these premises, the inspector is empowered to examine and enquire as he thinks appropriate.

157. *New section 15(4A)* defines premises liable to inspection for the purpose of subsection (4). These are any premises other than places used only as a person's home in which:

- a non-resident parent is working, or where he has been working (as an employee or on a self-employed basis); or
- where another person holds information in a professional capacity about a non-resident parent.

158. *Subsection (3)* of section 14 amends subsection (6) of section 15 to allow inspectors to obtain from the persons named in subsection (5) (any person aged 18 or over whom the inspector finds on the premises) any information and documents which the inspector reasonably requires.

159. *Subsection (4)* inserts subsection (11) in section 15, which provides that premises include:

(a) permanent and moveable structures, and, if appropriate, vehicles, boats etc;

(b) offshore installations such as oil-rigs; and

(c) all other places occupied on a permanent or temporary basis.

Parentage

Section 15: Presumption of parentage in child support cases

160. Most fathers who are non-resident parents acknowledge their children and accept their responsibility to them. In these cases, child support liability can be worked out without any further investigation as to paternity. However, occasionally a man may have good reason to doubt the parent with care's statement that he is the father of the child in question. And, in some cases, men have contested paternity in order to slow down the process of collecting child maintenance.

161. To allow child support to be worked out without unnecessary delay, the Secretary of State can, in specific circumstances, assume that a man is the father of a child even if he denies it. In these cases, child support liability can only be stopped if the non-resident parent proves in court that he is not in fact the child's father.

162. In England and Wales, the circumstances in which paternity can be assumed include those where a child was adopted by the man in question and also where there is a court declaration that the man is the child's father. However, in Scotland, there is also a presumption that a man is the father of a child if he was married to the child's mother at any time between the date of conception and the child's birth. This section makes clear that the presumption of paternity arising from marriage, already recognised by the courts in England and Wales, can be applied for child support purposes.

163. A person who is treated as a non-resident parent as a result of these presumptions can challenge his child support liability by applying to court. The provision for such applications is in secondary legislation made under section 45 of the 1991 Act. Section 83 of this Act introduces a new, simplified route specifically for the courts to determine whether or not one person is the parent of another. This will be of general application.

164. This section amends section 26 of the 1991 Act to add four new cases in which child support liability can be worked out on the basis that a person who denies he or she is a parent is in fact the parent of the qualifying child.

- *Case A1* allows the Secretary of State to presume that a man is the father of a child living in England and Wales if the man was married to the child's mother at any time between the date of conception and the child's birth. This follows the existing presumption in Scottish law.
- *Case A2* provides a presumption that a man who is named on the child's birth certificate is the child's father even if he was not married to the mother. This will apply also to children registered in Northern Ireland or in Scotland.
- *Case A3* enables the Secretary of State to presume parentage if either:
  - — the alleged parent has refused to take a DNA test; or
  - — the result of a DNA test shows that he is a parent of the child but he refuses to accept it.
- *Case B1* provides that the alleged parent may be presumed to be the parent of the child where section 27 or 28 of the Human Fertilisation and Embryology Act 1990 applies. These sections relate to children born as a result of fertility treatment or artificial insemination. Section 27 provides that a woman who gives birth as a result of such treatment will be treated as the child's mother unless the child is adopted. Section 28 provides that a man who is married to a woman who has received such treatment (or a man who is himself taking part in the treatment) will normally be the father of the child in law. This provision does not apply if the man did not consent to the treatment, or where the child is adopted.

The following two sections appear in the Act in Part V: Miscellaneous and Supplemental.

Section 82: Tests for determining parentage

165. Part III of the Family Law Reform Act 1969 enables the court to direct the use of blood tests in order to resolve a dispute about paternity which has arisen in the course of civil proceedings.

166. Regulations under the Act provide that samples may only be taken by a registered medical practitioner, or someone who has been appointed as a tester under the Act. They also prescribe the procedure for the taking of samples, set conditions for the secure despatch of samples to a tester, and prescribe the fees payable to samplers.

167. Blood testing under the Act is carried out by authorised testers who are appointed by the Lord Chancellor. There is no regulation of the laboratory conditions and standards under which testers work, or the frequency with which they undertake the work. Once a person is appointed as a tester, there is no mechanism to review his or her suitability.

168. This section replaces the present system of approving individual paternity testers by one based on the accreditation of laboratories. This will allow the Lord Chancellor to regulate laboratory conditions and set minimum qualifications for the individual testers.

169. This section also amends the legislation to address the issue raised by a High Court judgment (*re O and re J(Minors)(Blood Tests: Constraint) [2000] 2 W.L.R. 1284*). Section 21(3) of the 1969 Act provides that a blood sample may be taken from a person

under the age of 16 if the person who has care and control of the child consents. In the judgement, it was held that the effect of this provision is that the court has no power to enforce a direction for the taking from a child under 16 of a blood sample to establish paternity, if the person with care of the child refuses to consent to the sample being taken.

170. *Subsection (2)* amends section 20 of the 1969 Act to provide for tests to be carried out by a body which has been accredited either by the Lord Chancellor or by a body appointed by him for that purpose.

171. *Subsection (3)* amends section 21(3) of the 1969 Act to provide that, where the person with care and control of a child under 16 does not consent to the taking of a blood sample, the sample may be taken if the court considers that it would be in the best interests of the child to do so.

172. *Subsection (4)* amends section 22 of the 1969 Act, which sets out procedural matters on which the Lord Chancellor may make regulations, in two respects. First, an amendment replaces the current requirement that samples be taken by appointed individual medical practitioners with a provision enabling samples to be taken by registered medical practitioners or members of such professional bodies as may be prescribed by the regulations. Secondly, an amendment enables the Lord Chancellor to prescribe conditions which a body must meet to be eligible for accreditation.

173. *Subsection (5*) provides that neither this section nor anything else in the Act will affect proceedings to determine declarations of parentage which are pending when these provisions take effect.

174. The Government also intends to bring section 23 of the Family Law Reform Act 1987 into force by commencement order in conjunction with these new provisions. Section 23 amended the 1969 Act to allow for other bodily samples as well as blood to be taken from the categories of people specified in the 1969 Act (the child, the mother and the putative father) and from any other party to the proceedings, to resolve a dispute about parentage.

Section 83: Declarations of status

175. Anyone who is living in England or Wales (or who has been habitually resident there for at least a year) can seek a declaration from the High Court or a county court that:

- a named person is or was his parent; or
- he is legitimate; or
- he has or has not become a legitimated person (that is, in the same position as being born legitimate).

176. Declarations may be sought, for example, to acquire nationality or citizenship, to establish rights of inheritance or to amend a birth certification. Only the "child" in question (who may in fact be an adult) is entitled to apply for such a declaration. Both the child's parents, if they are still alive, must be joined as respondents to the proceedings.

177. Section 56 of the Family Law Reform Act 1986 (as substituted by section 22 of the Family Law Reform Act 1987) provides for the declaration. The Family Proceedings Rules provide that both parents must be respondents.

178. A "section 56" declaration is binding on the Crown and on all other persons. The declaration is without limit in time in the UK whether for the purpose of legal proceedings or for any other purpose. The legislation makes no provision for a declaration from the court that a named person is *not* the child's parent.

179. This section replaces part of the existing section 56 of the Family Law Act 1986, and also amends sections 58 and 60 of that Act. The section provides for any person to apply

to a civil court for a declaration as to whether or not a person named in the application is or was the parent of another person so named. The intention of the new section is to provide a single procedure for obtaining a declaration of parentage to replace the two free-standing provisions contained in the 1986 Act and in section 27 of the Child Support Act 1991 (which is modified to take account of the new procedure), and to widen the power to make such declarations.

180. *Subsection (2)* inserts a new section 55A in the 1986 Act which allows for an application for a declaration that a person is or is not the parent of another person.

New section 55A: Declarations of parentage

181. *New section 55A(1)* provides that any person may apply for a declaration as to whether or not a person named in the application is or was the parent of another person named in the application. The application may be made to the High Court, a county court or a magistrates' court.

182. *New section 55A(2)* provides that the court can consider such an application only if either of the persons named in the application is domiciled in England and Wales on the date of the application, or has been habitually resident in England and Wales throughout the period of one year ending with that date; or if either of the persons named in the application died before the period of one year ended and was at death domiciled in England and Wales, or had been habitually resident in England and Wales for one year preceding their death.

183. *New section 55A(3) and (4)* will enable any person to apply for a declaration of parentage, subject to the requirement that if the applicant is not the child or one of the alleged parents concerned, then he or she will have to show a sufficient personal interest in the determination of the application. If the court is not satisfied that this is the case, it must refuse to hear the application. A person with care must automatically be treated as having a sufficient personal interest. This requirement does not apply when the application is made by the Secretary of State.

184. *New section 55A(5)* provides that the court may refuse to determine an application where one of the persons named in it is a child, and it considers that to determine the matter would not be in the best interests of the child.

185. *New section 55A(6)* provides that where the court has refused to hear an application, it may order that the applicant requires the leave of the court to apply again for the same declaration.

186. *New section 55A(7)* provides for notification of a declaration of parentage to the Registrar General.

187. *Subsection (3)* of section 83 removes the provision of section 58 of the 1986 Act that no declaration may be made by any court that any person is or was illegitimate. This is because the effect of a declaration of parentage could be that a child is or was illegitimate, which is inconsistent with the existing provision of section 58(5)(b).

188. *Subsection (4)* provides for a right of appeal from the magistrates' court to the High Court. This is in addition to the right of appeal to the High Court by way of case stated, that is, on the basis that the decision is wrong in law or magistrates have acted in excess of jurisdiction; or to apply to the High Court for leave to apply for judicial review. This right of appeal must be conferred expressly. Appeals to the Court of Appeal from the High Court and the county courts are governed by existing provisions in the Supreme Court Act 1981 and the County Courts Act 1984.

189. *Subsection (5)* introduces Schedule 8 which provides for consequential amendments.

190. *Subsection (6)* provides that neither this section nor anything else in the Act will affect proceedings about declarations of parentage which are pending when these provisions take effect.

Disqualification from driving

Section 16: Disqualification from driving

191. Currently section 40 of the Child Support Act 1991, which applies only in England and Wales, enables the Secretary of State to apply to a magistrates' court for the issue of a warrant committing a non-resident parent to prison where distress action, garnishee proceedings or a charging order have failed to recover some, or all, of the child support maintenance outstanding.

192. If the court is satisfied that there has been wilful refusal or culpable neglect, it may issue a warrant for committal to prison for a maximum period of six weeks, or suspend the sentence. It has previously been held that the term "wilful refusal or culpable neglect" means that the conduct of the non-resident parent must amount to deliberate defiance or reckless disregard. The non-resident parent may be released from prison on payment of the amount stated on the warrant or have the period reduced for part payment.

193. This section provides for a disqualification order to be made in relation to holding or obtaining a driving licence as an alternative to committal. *Subsections (2) and (3)* amend section 40 (the provision for committal) and insert a new section 40B (the further provision of disqualification from driving).

194. *Subsection (1)* inserts a new section 39A in the 1991 Act.

New section 39A: Commitment to prison and disqualification from driving

195. *New section 39A(1)* provides that this section applies where the Secretary of State has tried to obtain the amount outstanding by distress or enforcement through the county or sheriff courts.

196. *New section 39A(2)* provides for the courts to be able to consider either committal or disqualification from driving.

197. *New section 39A(3)* provides for the courts to consider:

- whether a driving licence is needed by the liable person to earn a living;
- the financial circumstances of the liable person; and
- whether there has been wilful refusal or culpable neglect.

198. *New section 39A(4)* provides for the Secretary of State and the liable person to make representations to court on which penalty should be imposed.

199. *New section 39A(5)* defines "driving licence".

200. *New section 39A(6)* defines "court".

201. *Subsection (2)* of section 16 amends section 40 of the 1991 Act which provides for committal by omitting subsections (1) and (2) which set out the present powers of the court and what must be considered. These matters are now covered by the new section 39A(1) and (3) above.

202. *Subsection (3)* provides for a new section 40B to be inserted before section 41.

New section 40B: Disqualification from driving: further provision

203. *New section 40B(1)* provides a power for the court to disqualify the liable person from driving if the courts agree that he has wilfully refused to pay or been guilty of culpable neglect in connection with paying maintenance.

(1)(a) provides for the disqualification order to apply for a period not exceeding two years.

(1)(b) provides that the disqualification order may be suspended.

204. *New section 40B(2)* provides that the courts cannot make both a disqualification order and warrant for committal at the same time.

205. *New section 40B(3)* provides that the order should include the amount of the arrears included in the liability order and the court costs.

206. *New section 40B(4)* provides for the courts to require the liable person to produce his driving licence (defined in section 108(1) of the Road Traffic Act 1988).

207. *New section 40B(5)* provides that the courts may lift the order, or substitute a shorter disqualification period, if part of the amount outstanding is paid, and must revoke the disqualification if payment is made in full before the end of the disqualification period.

208. *New section 40B(6)* provides for the Secretary of State to be able to give his views to the court on the amount that should be paid before the disqualification order is lifted. It also provides for the liable person to reply to the representations.

209. *New section 40B(7)* provides for a further application to be made to the courts if any amount remains outstanding at the end of the disqualification period.

210. *New section 40B(8)* provides for the court, on imposing the disqualification, to notify the Secretary of State of the fact that a disqualification order has been made, amended or lifted, and the *new section 40B(9)* provides that a licence produced to the court should be sent to the Secretary of State. In practice, the notice and the licence will be sent to the DVLA.

211. *New section 40B(10)* provides for section 80 of the Magistrates Court Act 1980 to apply to a disqualification order, to reflect provisions currently in section 40. This will enable a liable person to be searched in court and money found applied against the amount owing.

212. *New section 40B(11)* provides for regulations to be made, prescribing the way in which disqualification orders will operate, and *new section 40B(12)* modifies this section in its application to Scotland.

213. *Subsections (4) and (5)* of section 16 provide for references to the disqualification to be made in the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988. This will enable the police to require production of the licence if it is not given to the courts. Failure to produce the licence in these circumstances is a criminal offence punishable by a fine of up to £1,000.

Section 17: Civil Imprisonment: Scotland

214. *Subsection (1)* provides that section 40 does not apply to Scotland.

215. *Subsection (2)* inserts new section 40A into the 1991 Act. The new section provides the procedure for the sheriff to follow if he is satisfied that it is appropriate to commit a liable person to prison. The new section is comparable in its scope to section 40 of the 1991 Act for England and Wales (see the introduction to section 16).

New section 40A: Commitment to Prison – Scotland

216. *New section 40A(1)* provides that where the sheriff is satisfied that the liable person has wilfully refused or culpably neglected to pay, the sheriff may issue a warrant for his committal to prison or may fix a term of imprisonment but postpone the committal of the liable person to prison. The sheriff may impose conditions on the postponement, for example, that the liable person makes regular payments of maintenance.

217. *New section 40A(2)* provides that the warrant which the sheriff issues will be in respect of the arrears of maintenance and the Secretary of State's expenses in raising the proceedings for committal to prison. The warrant must state what the total amount is.

218. *New section 40A(3)* prohibits a warrant being issued in respect of a person who is under 18 years of age.

219. *New section 40A(4)* provides that the warrant will order the imprisonment of the liable person for a specified period but that he may be released on payment of the amount stated in the warrant – unless he is in custody for some other reason.

220. *New section 40A(5)* provides that the maximum period of imprisonment is 6 weeks.

221. *New section 40A(6)* gives the Secretary of State power in regulations to provide for the period of imprisonment to be reduced where the outstanding amount has been partly paid.

222. *New section 40A(7)* provides that the warrant may be directed to such person as the sheriff thinks fit.

223. *New section 40A(8)* gives the Court of Session power to make subordinate legislation regulating practice and procedure in the Sheriff Court in relation to civil imprisonment for child support purposes. The power will be exercised through Rules of Court made in Acts of Sederunt. The Court of Session will have power to make provision:

- about the form of any warrant issued;
- with respect to renewing applications where no warrant is issued or no term of imprisonment has been fixed;
- that an employer's statement about a liable person's wages is to be sufficient evidence of the amount of those wages;
- for the sheriff citing a liable person to appear before him for the purposes of an inquiry into the liable person's behaviour and means; and, if the liable person does not obey the citation, for the sheriff issuing a citation for him to appear before the sheriff and, if necessary, warrant for his arrest;
- for the sheriff issuing a warrant for the liable person's arrest, without issuing a citation, for the purposes of enabling the inquiry into his means and conduct to be heard;
- as to the execution of the warrant of arrest.

Financial penalties

Section 18: Financial Penalties

224. Early attempts to implement interest charges on arrears of child support maintenance were abandoned from April 1995. The calculations were complex and difficult to explain to clients. An alternative provision to interest was introduced by the Child Support Act 1995 but did not come into force. Neither of these provisions will have effect in the new scheme.

225. Instead, a simpler, discretionary financial penalty will be introduced. The intention is for the Secretary of State to have discretion to impose a financial penalty of up to 25 per cent of the amount owed. This will be levied for each week in which payment was not made, but will not be compounded. The charge will not be child support maintenance but will be an administrative penalty payable to the Department of Social Security in recognition of the additional work involved in pursuing late or non-payment and will be paid into the Consolidated Fund.

226. It is intended that the penalty will not be imposed if a missed payment is paid within a reasonable period, or the payment was missed for good reason, such as sickness, or acceptable arrangements are made to pay the missing amount and to continue to pay over an agreed period.

227. It is envisaged that the penalty will rarely need to be applied, but that it will provide a useful incentive for persuading non-resident parents to meet their responsibilities.

228. This section makes an amendment to section 41 and replaces section 41A of the 1991 Act. It removes the provisions on charging interest and inserts new provisions for financial penalties to be charged.

229. *Subsection (1)* amends section 41 of the 1991 Act to remove the charging of interest on arrears. Transitional provisions will allow the Secretary of State to continue to collect and enforce interest charges already imposed.

230. *Subsection (2)* substitutes section 41A of the 1991 Act with a new provision on financial penalties.

New section 41A: Penalty payments

231. *New section 41A(1)* provides for regulations that allow the Secretary of State to require a non-resident parent who is late in paying child support maintenance to make a penalty payment. Regulations will further provide the way in which penalties are calculated.

232. *New section 41A(2)* makes the amount of a penalty payment discretionary but limits the amount to be charged to 25 per cent of the amount due for that week.

233. *New section 41A(3)* provides that the amount of the child support maintenance arrears remains due even when a financial penalty has been imposed. The financial penalty is not child support maintenance and is not passed on to the parent with care.

234. *New section 41A(4)* provides for regulations to:

(a) state at what point in time a financial penalty becomes payable; and

(b) allow all or part of the penalty to be waived at the discretion of the Secretary of State. This will depend on reasons given for late or non-payment and the level of co-operation in paying the arrears.

235. *New section 41A(5)* allows regulations on collection and enforcement to apply to penalty payments in the same way as they do to child maintenance payments. Therefore the Secretary of State will have exactly the same powers to collect and enforce penalty payments and may combine this action with action to collect and enforce child maintenance.

236. *New section 41A(6)* provides that any payment collected must be paid into the Consolidated Fund and is therefore not paid over to the parent with care.

Section 19: Reduced benefit decisions

237. This section replaces section 46 of the Child Support Act 1991.

New section 46: Reduced benefit decisions

238. *New section 46(1)* applies where a parent with care has asked the Secretary of State not to pursue child maintenance, or failed to provide information or refused to take a scientific test such as a DNA test. For example, where the parent with care fears violence from the non-resident parent if he were to be pursued for maintenance.

239. *New section 46(2)* enables the Secretary of State to require the parent with care to provide reasons why she has "good cause" either to ask the Secretary of State not to act under section 6, or to fail to give information as required by section 6, or to refuse to take a scientific test. When a parent with care is in receipt of a benefit referred to in, or prescribed for, the purposes of section 6(1) and asks the Secretary of State not to act, or refuses to take a test, the parent with care will be interviewed. If she is unsure whether she wants to ask the Secretary of State not to act she will be given a specified period to make her decision and give her reasons.

240. *New section 46(3)* provides that when the specified period has expired the Secretary of State must make a decision, based on the information provided by the parent with care, on whether there are reasonable grounds for believing that she or her child(ren) would be at a risk of harm or undue distress as a consequence of the Secretary of State recovering child support maintenance from the non-resident parent, insisting on the provision of information or if she were to agree to a scientific test. The term "reduced benefit decision" will replace the term "reduced benefit direction" in the existing Act.

241. "Specified" is defined in section 46(10), which gives power to prescribe a period. The Government intends to prescribe four weeks, from the date when the parent with care is given notice asking for her reasons under section 46(2).

242. *New section 46(4)* provides that if the Secretary of State considers that there are reasonable grounds for believing that the parent with care or her child would be at risk of harm or undue distress, then he is to take no further action under section 46, and that she will be notified of this.

243. *New section 46(5) to (10)* set out the same provisions as section 46 of the 1991 Child Support Act, but substitutes some of the existing terminology. For example, reduced benefit direction in section 46 is changed to reduced benefit decision under this legislation.

244. *New section 46(6)* enables the Secretary of State to require the parent to state whether she still does not wish him to act under section 6(3) and to give her reasons.

Miscellaneous

Section 20: Voluntary payments

245. Liability to pay child support usually begins on the day that the non-resident parent is told about the application for a maintenance calculation. However, there will usually be some delay between this date and the date that a maintenance calculation is completed. This means that arrears of maintenance build before parents know how much they should be paying. Voluntary payments made during this period can reduce the debt and provide financial support for the children while child maintenance is being worked out.

246. However, at present voluntary payments are not defined and have no statutory status. The CSA follows policy guidelines in determining which payments can be set off against arrears of maintenance. The Government considers that the use of the discretion is not providing sufficient reassurance to parents that all cases are being treated in the same way. This in turn provides a disincentive to make payments for the children before the maintenance calculation is completed. The Government therefore proposes to give statutory recognition to voluntary payments.

247. This section gives statutory recognition to voluntary payments by inserting a new section in the 1991 Act which establishes clearly the range of payments to be covered and allowing such payments to be offset against child support arrears and current maintenance. *Subsections (2) and (3)* of this section amend the provision for repayments of overpaid child support to cover the voluntary payments that exceed any child maintenance due.

248. *Subsection (1)* inserts a new section 28J in the 1991 Act.

New section 28J: Voluntary payments

249. *New section 28J(1)* provides that this section applies where: a person has made an application for a maintenance calculation, or is treated as having made an application, under section 6 of the 1991 Act; the application has not yet been determined; and the non-resident parent actually makes a voluntary payment.

250. Section 6 of the 1991 Act is substituted by section 3 of this Act. It provides that a parent with care who claims or receives Income Support or income-based Jobseeker's Allowance can be treated as having applied for a maintenance calculation.

251. *New section 28J(2)* defines the term "voluntary payment" as:

subsection (2)(a): a payment on account of child maintenance which the non-resident parent expects to pay. The payment may be based on an estimate provided to him by the Secretary of State or based on an amount he has worked out for himself as being due; and

subsection (2)(b): a payment which is made before the actual calculation has been notified, or the application for maintenance determined.

252. *New section 28J(3)* provides for regulations that will set out circumstances in which voluntary payments can be taken into account.

Subsection (3)(a) provides for voluntary payments to be offset against the arrears which have built up before the non-resident parent was notified of the calculation.

Subsection (3)(b) provides for the balance to be offset against future liability, to the extent that the voluntary payments exceed any outstanding debt.

253. *New section 28J(4)* provides for conditions to be set regarding payments and to whom they can be paid. It allows for voluntary payments to be made via the CSA, direct to the parent with care, or another specified party.

254. *New section 28J(5)* provides a general power for regulations about voluntary payments and, in particular, about the type of payment that can be accepted.

Subsection (5)(a) provides for regulations to specify which payments are, and which are not, to be treated as a voluntary payment. This will relate to all payments whether they are paid to the parent with care or any other party. It is intended that as well as cash payments, any payment that is made for food, shelter and warmth will normally be taken into account. However, payments in kind, that is, where the non-resident parent spends money on other items for the child, will not be taken into account.

Subsection (5)(b) provides for regulations to specify the extent and the circumstances in which these payments can be taken into account once it is accepted that the payment is of the right type to be counted as a voluntary payment.

255. *Subsections (2)* to *(4)* of section 20 amend section 41B of the 1991 Act which provides for the lump-sum repayment to the non-resident parent of maintenance that he has overpaid. This provision takes effect when the overpayment cannot be repaid in a reasonable time by offsetting it against future child support liability. The intention of

this amendment is to treat overpayments of voluntary payments in the same way as overpayments of child support maintenance.

256. *Subsection (3)* provides for a new subsection to be inserted after subsection (1) of section 41B, which allows the provisions of section 41B to apply where a voluntary payment has been made, and:

- it subsequently turns out that there is no maintenance liability due at all; or
- the non-resident parent has paid more, in voluntary payments, than the total of arrears.

257. *Subsection (4)* substitutes subsection (7) of section 41B. The substituted subsection (7) will provide that a payment is to be treated as being an overpayment of child support maintenance made by a non-resident parent where:

- a payment was made but the maintenance calculation turns out not to be valid (for example where a person who believes himself to be the non-resident parent turns out not to be the non-resident parent or where the CSA do not have jurisdiction over a case); and
- a voluntary payment has been made but there is no liability to pay child maintenance.

Section 21: Recovery of child support maintenance by deduction from benefit

258. In the current scheme, where a non-resident parent has no assessable income because he is in receipt of an income-related benefit, a contribution to maintenance can be deducted in certain circumstances. However, there are many exempt categories and, in practice, only around 23,000 non-resident parents make a contribution to maintenance.

259. In the reformed scheme most non-resident parents in receipt of certain prescribed benefits, including income-related benefits and war pensions, will be liable to pay a minimum amount of maintenance (£5) a week. The vast majority of exemptions will be removed.

260. In addition, the parent with care may make an application for a variation against a non-resident parent in receipt of certain prescribed benefits where he has, for example, earnings, an occupational pension or assets. Provision is therefore made to deduct from benefit the amount of child maintenance determined in these cases. Where arrears of maintenance have accrued, an amount may also be deducted from benefit.

261. This section substitutes section 43 of the 1991 Act (contribution to maintenance by deduction from benefit) with a new section on the recovery of maintenance by deduction from benefits. It increases the range of benefits from which deductions can be made in respect of current maintenance and arrears, and includes deductions from war pensions.

New section 43 – recovery of child support maintenance by deduction from benefit

262. *New section 43(1)* states that the section applies where the non-resident parent is liable to pay a flat rate of child support maintenance because he (or his partner) is receiving one of a range of prescribed benefits or a war pension. This subsection also allows regulations to prescribe additional conditions which may have to be satisfied before a deduction can be made.

263. *New section 43(2)* is an enabling provision which allows maintenance or arrears to be deducted from benefits, by means of regulations under subsection (1)(p) of section 5 of the Social Security Administration Act 1992*).

264. *New section 43(3)* provides that, for the purposes of making deductions from benefit, a war pension is to be included as a benefit.

Section 22: Child Support jurisdiction

265. This section amends section 44 of the 1991 Act to extend child support jurisdiction to non-resident parents who are not habitually resident in the United Kingdom but who are employed by a UK-based employer. This will mean that certain non-resident parents who are employed abroad will be required to pay child support for their children who live in the United Kingdom.

266. *Subsection (2)* amends section 44(1) of 1991 Act (which limits child support jurisdiction) to refer to a new subsection (2A), inserted by subsection (3).

267. *Subsection (3)* adds a new subsection (2A) which lists the cases where, even though the non-resident parent is living abroad, the CSA will have jurisdiction to calculate and collect maintenance. These cases cover people employed abroad:

(a) in the civil service;

(b) in the armed services;

(c) by a UK-based company, the description of which will be prescribed in regulations, or

(d) by a body prescribed in regulations. These regulations are intended to be used to cover employment comparable to those listed in this subsection which are subsequently identified.

268. *Subsection (4)* removes the provision in subsection (3) of section 44 to cancel a maintenance assessment when there is no longer jurisdiction to make an assessment. Cancellations in these circumstances are to become supersession decisions in the new scheme, provisions for which are in section 17 of the 1991 Act, as amended by section 9 of this Act.

Section 23: Abolition of the child maintenance bonus

269. The child maintenance bonus is a lump sum payment of up to £1,000 which can be paid to a parent with care who has been receiving Income Support (or income-based Jobseeker's Allowance) when she leaves benefit to take up work. The payment is based on the amount of maintenance paid for the parent with care's children during her time on benefit: it accrues at up to £5 for each week in which maintenance is paid. This allows families to see some gain from maintenance payments which reduce benefit entitlement pound for pound. The bonus is also intended as a work incentive.

270. In practice, relatively few lone parents gain from the child maintenance bonus. Around 1,000 payments are made each month.

271. Under the reformed scheme, the Government intends to replace the child maintenance bonus by a child maintenance premium, which will allow all families on Income Support or income-based Jobseeker's Allowance to keep up to £10 per week of any child maintenance paid. When a parent with care transfers to the new scheme and so becomes entitled to the child maintenance premium, she will no longer be able to receive a child maintenance bonus.

272. This Act contains no provision for the child maintenance premium. Existing legislation which governs Income Support and income-based Jobseeker's Allowance already allows for regulations to provide that income can be disregarded.

273. This section repeals the legislation governing the child maintenance bonus. Regulations will bring the child maintenance premium into effect for parents with care with an existing child support assessment when they are transferred to the new scheme.

Section 24: Periodical reviews.

274. When the 1991 Act was passed by Parliament, it included a provision for the periodical review of child support assessments. When an assessment had been in force for a prescribed period (initially a year, subsequently extended to two years) the Secretary of State was required by this provision to write to both parents to find out if their circumstances had changed. When all the information needed to make an assessment had been checked, a new assessment of child support liability would be made.

275. In practice, this process proved difficult to operate. Parents, many of whom had been unwilling to co-operate in making the first assessment, failed to reply to requests for further information. Others were unable to provide all the information which the Secretary of State required. Since it was impossible to clear the periodical review without this information, substantial backlogs of work built up. The problem became even worse as cases where a review was stalled became due for another review.

276. In June 1999, the decision-making and appeal processes in CSA were improved and streamlined. Section 16 of the 1991 Act, which provided for periodical reviews, was replaced by a provision for revision of decisions. However, transitional provisions ensured that outstanding periodical reviews could still be completed.

277. There are still some 350,000 periodical reviews outstanding. The CSA has made it clear that it will complete any review where either parent requests this. There is, however, little sign that parents want past periodical reviews completed. The effect of these reviews is difficult to predict – some will increase liability, thus creating substantial debts for the non-resident parent, while others reduce liability, creating overpayments which have to be recovered from the parent with care.

278. This section removes the requirement on the CSA to complete outstanding periodic reviews. This provision will come into effect when the Act receives Royal Assent.

Section 25: Regulations

279. Section 52 of the Child Support Act 1991 provides for the Parliamentary control of regulations and orders made under this Act. Many of the delegated powers in the 1991 Act require a resolution of both Houses before any regulations made under them can come into effect (the "affirmative procedure").

280. This section amends section 52 to provide for Parliamentary control of regulations made under new child support delegated powers in this Act.

281. The substituted*subsection (2)* alters the list of regulation making powers which follow the affirmative procedure.

282. This subsection also amends the reference to Part I of Schedule 1 to refer specifically to the new paragraph 3(2) (regulations prescribing how the reduced rate of liability is worked out) and 10A(1) (regulations amending the way that liability is worked out) – see commentary on Schedule 1 above.

283. *New subsection (2A)* in section 52 provides that the first set of regulations under paragraph 10(1) of Schedule 1 to the 1991 Act (regulations defining net weekly income for the maintenance calculation) will follow the affirmative procedure. Subsequent regulations will follow the negative procedure.

Section 26: Amendments

284. This section introduces Schedule 3 which makes minor and consequential amendments to the 1991 and 1995 Child Support Acts and a number of other Acts.

Schedule 3

285. **Paragraphs 1 to 10 and 14** provide for changes to other Acts (ie non-child support and Social Security Acts) covering England, Wales and Scotland, to reflect changes in this Act. These Acts make reference to child maintenance, and in all of them a change is being made in terminology to refer to "maintenance calculation" in place of "maintenance assessment".

286. The Army Act 1955 and The Air Force Act 1955 allow for the deduction from pay in respect of a wife or child to such extent as is specified in the Order of Council. They set out how child maintenance will be deducted from a serviceman's pay and are amended for child support purposes. It is being amended to reflect changes in terminology in this Act.

287. The Matrimonial Causes Act 1973 provides for the duration of continuing financial provision orders in favour of children and the age limit on making such orders. Where the court has made an order, it may vary or discharge it, as well as suspend or revive any provision in the order. It is being amended to reflect changes in terminology in this Act.

288. The Domestic Proceedings and Magistrates Courts Act 1978 sets out the age at which responsibility for financial provisions in favour of children ceases, and the duration of such orders. It is being amended to reflect changes in terminology in this Act.

289. The Family Law (Scotland) Act 1985 is amended to reflect changes in terminology provided by section 1(2) of this Act.

290. The Insolvency Act 1986 sets out the effects of discharging a bankruptcy on various monies owed. It is amended to reflect changes in terminology in this Act.

291. The Debtors (Scotland) Act 1987 is amended to provide that when a liable person is sequestrated in Scotland, it will not be possible to use a Deduction from Earnings Order under the 1991 Act to enforce a child support maintenance calculation (previously a maintenance assessment). The 1987 Act is also amended to define "maintenance order", and to reflect the changes in terminology provided by section 1(2) of this Act.

292. The Income and Corporation Taxes Act 1988 sets out which Social Security benefits shall and shall not be charged to income tax and what payments shall not be treated as income. It is being amended to reflect changes in terminology in this Act. It is also being amended to reflect the repeal of section 24 of the Child Support Act 1995.

293. Sections 36 and 38 of The Finance Act 1988 are amended to reflect changes in terminology in this Act.

294. Schedule 1 of The Children Act 1989 is amended to reflect changes in terminology provided by section 1(2) of this Act.

295. The Prisoners Earnings Act (paragraph 14) sets out the powers of the prison Governor to make deductions and impose levies on prisoners who are paid "enhanced" wages or "net weekly earnings", including for child support purposes. It is being amended to reflect changes in terminology in this Act.

296. **Paragraph 11** amends the Child Support Act 1991.

Sub-paragraph (2) replaces the term "absent parent" in the 1991 Act with the term "non-resident parent".

Sub-paragraph (3) amends section 4 of the 1991 Act to make it clear that the information that must be provided when applying for child support includes information which enables the non-resident parent to be identified.

Sub-paragraph (4) amends section 7 of the 1991 Act, which currently gives a child in Scotland the right to apply for an assessment.

Sub-paragraph (4)(a) will enable a child to apply for a maintenance calculation if no parent has been treated under the new section 6(3) of the 1991 Act as having applied for a maintenance calculation with respect to the child.

Sub-paragraph (4)(b), which amends section 7(10), alters the restrictions on when an application may be made by a qualifying child. The effect of the amendment is that the child may not apply if there is a maintenance order in force in respect of him which was made after a prescribed date, and which has been in force for less than a year.

Sub-paragraph (5) amends section 8 of the 1991 Act, which governs the role of the courts in dealing with child maintenance.

Sub-paragraph (5)(a) amends section 8(1) in consequence of the changes to section 6.

Sub-paragraph (5)(b) inserts a reference to the new substituted section 8(3A) in section 8.

Sub-paragraph (5)(c) substitutes subsection 8(3A). The new subsection (3A) allows the courts to vary court orders made after the date that the child support reforms are introduced even where, in accordance with the provisions of section 2 of this Act, the Child Support Agency could accept an application for child support as a result of more than one year having passed after the order was made. This power, like the court order itself, would cease if a maintenance calculation is made.

Sub-paragraph (5)(d) inserts a cross-reference to the "cap" on maintenance provided by paragraph 10(3) of Schedule 1. This means that the courts can make top-up orders for child maintenance where the non-resident parent has net weekly income of more than £2,000 per week.

Sub-paragraphs (6) to (10) amend sections 9, 14, 26, 27A and 28 respectively, in consequence of the changes to section 6.

Sub-paragraph (11) amends section 28ZA of the 1991 Act which covers decisions made under section 11, 12, 16 or 17 and which involves issues that arise on appeal in other cases. These amendments consolidate provisions that were inserted into the 1991 Act by the Social Security Act 1998.

Sub-paragraph (11)(a) reproduces part of paragraph 4 of Schedule 4C to the 1991 Act by moving a provision relating to reduced benefit decisions under section 46 to section 28ZA and generalising the reference to decisions in section 28ZA(1). Section 28ZA already allows for section 46 decisions to be held back pending resolution of a lead case.

Sub-paragraph (11)(b) consolidates Schedule 4C paragraph 4 by including a reference to appeals that are pending against reduced benefit decisions to section 28ZA.

Sub-paragraph (12) amends section 28ZB of the 1991 Act which covers appeals made under section 20 of the 1991 Act which involve issues that arise on appeals in other cases. This consolidates provisions that were inserted into the 1991 Act by the Social Security Act 1998.

Sub-paragraphs (12)(a) and (b) amend section 28ZB to include reduced benefit direction appeals and appeals against the imposition of fees, partly by moving these provisions from paragraph 5 of Schedule 4C.

Sub-paragraph (13) amends section 28ZC of the 1991 Act. Section 28ZC limits the retrospective effects of decisions in certain cases of error. For example, where an understanding of law has been overturned by a decision on appeal it cannot affect liability or other decisions for a period before the new interpretation was determined. This consolidates provisions that were inserted into the 1991 Act by the Social Security Act 1998.

Sub-paragraphs (13)(a) to (e) reproduce the effect of existing provisions in paragraph 6 of Schedule 4C of the 1991 Act in section 28ZC

Sub-paragraph (14) provides that sections 28H and 28I will no longer have effect. This is because the departures scheme is to be replaced by new provisions for variations in child support liability – see sections 5 to 7.

Sub-paragraph (15) amends section 30 of 1991 Act. Section 30 is about collection and enforcement of forms of maintenance other than child maintenance. It amends this so as to avoid doubts about the meaning. It clarifies that regulations can be made for both periodical payments and secured periodical payments.

Sub-paragraph (16) amends section 32 of 1991 Act. Section 32 concerns deductions from earnings orders. This provision amends section 32 to provide for regulations to say that the non-resident parent will always retain a set percentage of his earnings after a deduction has been made for maintenance.

Sub-paragraph (17) amends section 33 of 1191 Act. This section concerns liability orders. The amendment is intended to put beyond doubt that payments of child maintenance can only be classed as having been made if they have been paid to, or through, the person specified in, or in accordance with, regulations.

Sub-paragraph (18) amends section 47 of 1991 Act which relates to fees. Although section 47 is in force, the ability to charge fees has not been used since April 1995, pending improvements in the CSA's performance. The Government intends to consider charging fees again when the new system is running smoothly. Sub-paragraph (18) inserts a new subsection (4) in section 47 that enables payments of fees to be recovered in the same way as maintenance, for example, by a deduction from earnings order*.

Sub-paragraph (19) amends section 51 of 1991 Act to reflect the more streamlined decision-making process in the new scheme. This provision allows for regulations to set out the procedure to be followed in making a maintenance calculation (under section 11) or, when superseding an existing calculation, (under section 17). It also covers decisions relating to the revision and supersession of maintenance calculations, default rates and interim maintenance decisions.

Sub-paragraph (20) amends section 54 of 1991 Act as regards definitions. For example, "assessable income" and "departure direction" are omitted, and "voluntary payments" are added.

Sub-paragraph (21) amends section 58(9) and (10) of the 1991 Act (the extent provision) so that section 40 does not extend to Scotland but section 40A (as introduced by section 17 of this Act) extends only to Scotland. Section 40 concerns commitment to prison: section 40A concerns the different provisions which apply in Scotland.

Sub-paragraph (22) amends paragraphs 13, 14 and 16 of Schedule 1 of the 1991 Act which covers general provisions about maintenance assessments.

Sub-paragraph (22)(a) repeals paragraph 13 of Schedule 1. Paragraph 13 enables the Secretary of State to make nil assessments of child support liability. For example, where the non-resident parent has net income of £5 or less or is a student. Schedule 1, paragraph 5, now provides for such nil rates of liability in the new scheme.

Sub-paragraph 22(b) amends paragraph 14 of Schedule 1 to the 1991 Act. The purpose is to ensure that the drafting is consistent with other parts of this Act. It reflects the new section 6 of the 1991 Act, introduced by section 3 of this Act, under which a maintenance application can be "treated as made". Paragraph 14 of Schedule 1 allows for two or more maintenance applications for the same child from different parents with care to be treated as the same claim. This could arise where there is a dispute about who is the parent with care. Paragraph 14 also allows for the replacement of an earlier maintenance calculation by a later one.

Sub-paragraph (22)(c) removes provisions that enable the Secretary of State to cancel assessments in certain circumstances. For example where there is no longer a person with care or where the parents are back together again. In the new scheme, such changes will be supersession decisions using section 17 of the 1991 Act. Schedule 1 paragraph 16(3) enables the Secretary of State to cancel an assessment where the parent with care is no longer on benefit and requests that he does so. This provision is being replaced by the new section 6(9) which is inserted by section 3 of this Act.

297. **Paragraph 12** amends the Social Security Administration Act 1992.

298. **Paragraph 13** amends the Child Support Act 1995.

Sub-paragraph (2) amends section 18 to remove the delegated power which enabled the Secretary of State to bring parents with court orders into the CSA's jurisdiction. This repeal is consequential on the changes to section 4(10) of the 1991 Act introduced by section 2.

Sub-paragraph (3) repeals section 24 of the 1995 Act, which provides for compensation payments in respect of people receiving Family Credit or Disability Working Allowance.

299. **Paragraph 15**amends the Social Security Act 1998.

Sub-paragraph (2) amends Schedule 2 to the Social Security Act 1998 to reflect the terminology of the new child support scheme. "Reduced benefit directions" will become "reduced benefit decisions". Appeals against reduced benefit decisions will, as now, be against the decision to make a reduced benefit decision under section 46 of the 1991 Act (see sections 10 and 19).

Section 27: Temporary compensation payment scheme

300. Some arrears of maintenance will normally accrue after the start-date for liability but before a maintenance assessment has been made. However, in recognition of the significant backlogs that developed in the early years of the CSA, the 1995 Child Support White Paper *Improving Child Support* (Cm 2745) paved the way for the CSA to introduce a scheme which allowed the Agency to agree not to enforce more than six months' worth of arrears, providing the non-resident parent met his responsibilities for a year. After a year, the Agency makes payments to the parent with care in lieu of those she would have received had the non-resident parent paid in full.

301. The scheme was never intended to become a catch-all for individual cases of delay or maladministration. It was part of a strategy to tackle the backlogs, improve compliance and get the Agency on its feet. The scheme was not therefore translated into primary legislation, and authority for compensation payments was accordingly granted by HM Treasury on a non-statutory basis, with payments approved annually in the Appropriation Act.

302. However, the CSA did not start to clear backlogs to the expected timescales. The scheme was expanded, to include arrears arising from delayed periodic reviews (section 16 of the 1991 Act), and change of circumstance reviews (section 17 of the 1991 Act), because it was accepted that, on balance, the lack of transparency and the complexity of the current system often produced changes in maintenance assessments which were difficult for non-resident parents to predict. Because the scheme was still non-statutory, a condition of the extension was that the Government should seek legislative powers if the arrangements needed to continue further.

303. This section provides a statutory basis for continuing a scheme under which, in certain circumstances, a non-resident parent will not be required to pay the whole of the arrears of maintenance. It is intended that the circumstances should be where significant delay by the CSA has arisen under the current scheme, but only where the non-resident parent

gives a commitment to meet his ongoing liabilities and pay the arrears specified in the agreement, and meets this commitment.

304. *Subsection (1)* provides the circumstances where this section applies. These are where the effective date of an assessment following an application or a review under the current scheme, before the introduction of the new decision-making provisions in June 1999 following the Social Security Act 1998, means that arrears have built up.

305. *Subsection (2)* enables the Secretary of State to apply this section to different cases of arrears from those in subsection (1), and to disapply the section to specified cases in subsection (1).

306. *Subsection (3)* provides the powers for an agreement between the Secretary of State and the non-resident parent, in order for the Secretary of State not to require him to pay, and not to take action to recover, the whole of the arrears in prescribed circumstances.

307. *Subsection (4)* provides the Secretary of State with the power to prescribe the terms of the agreement referred to in subsection (3).

308. *Subsection (5)* provides that the section will only apply to agreements made before 1st April 2002 and expiring before 1st April 2003.

309. *Subsection (6)* provides that the Secretary of State has power not to seek to recover the arrears provided the non-resident parent meets the terms of that agreement.

310. *Subsection (7)* provides that if the non-resident parent has complied with the agreement, then when it expires the Secretary of State may make payments to the person with care, and the non-resident parent will cease to be liable for the full amount of the arrears of maintenance.

311. *Subsection (8)* provides if the non-resident parent defaults under the agreement he becomes liable to pay all the outstanding arrears.

312. *Subsection (9)* provides the Secretary of State with the power to regulate for agreements made on or after 1st April 2002. This is subject to approval by resolution in each House of Parliament. *Subsection (10)* defines "prescribed".

313. *Subsections (11) and (12)* concern the procedure for regulations under this section.

Section 28: Pilot schemes

314. This section provides a power for pilot schemes to be set up for specific elements of the child support provisions in the Act. This will enable the CSA to test discrete elements of the new scheme on a smaller scale before introducing them nationwide, or test operational provisions for limited periods of time and in limited geographical areas to establish the best way of delivering detailed aspects of the reforms.

315. At present, the Government has no specific plans to pilot any of the provisions. The intention is that all cases taken on by the CSA after the reforms have been implemented will have maintenance liability worked out using the new rules. However, the Government considers it prudent to provide for the option to pilot provisions if and when it appears necessary.

316. *Subsection (1)* provides that regulations made under provisions inserted or substituted in the 1991 Act by this Part of this Act, or under the Schedules relating to the Child Support provision, may be made so that they have effect for a specified period up to, but not exceeding, 12 months. *Subsection (2)* provides that any regulations made under the provisions of subsection (1) will be referred to as "a pilot scheme". *Subsection (3)* allows for pilot schemes to have effect in one or more specified areas, to apply to one or more specified classes of person or to people selected by prescribed criteria or on a sampling basis.

317. *Subsection (4)* provides for a pilot scheme to be able to make consequential or transitional provision for the way that the pilot scheme would be wound up. *Subsection (5)* provides that a pilot scheme can be replaced by a further scheme making the same, or similar provisions.

318. *Subsection (6)* provides that any regulations providing for a pilot scheme will need to be approved by a resolution of each House of Parliament (the affirmative procedure).

Section 29: Interpretation, transitional provisions, savings, etc.

319. The Government has stated that the new scheme will deal with new applications first. Existing cases will be transferred at a later date when the scheme has bedded in and the new rates will be phased in over time. Transitional provisions will therefore be introduced to facilitate the conversion of cases and the phasing of amounts payable.

320. This wide-ranging general power introduces the ability to make regulations which will allow cases to be transferred from the existing scheme to the new scheme. The Act does not provide detail on all aspects of the new scheme or state exactly how it will work. The detail will be set out in regulations.

321. It is intended that provisions will also be introduced to safeguard the way in which aspects of current liability have been calculated, and to ensure that amounts can be carried forward to the new scheme. New child support legislation will have a knock-on effect on other legislation and the ability to make consequential provisions is therefore also introduced in this section.

322. *Subsection (2)* provides for regulations to ensure that the new legislation can be brought into being as smoothly as possible. Such regulations may cover the transition to the new scheme, the ability to save any current provisions so that they can continue to be used in the new scheme, amending other legislation which is affected by the new scheme and making any other regulations that may be required.

323. *Subsection (3)* provides examples of the regulations that may be introduced. *Subsection (3)(a)* enables regulations to provide for a transitional rate of liability to be payable, including the phasing-in of the amount due when the provisions come into effect. *Subsection (3)(b)* provides that regulations may allow departure directions and any other finding in relation to a previous determination to be taken into account when determining the amount of maintenance payable.

324. *Subsection (4)* provides that section 175(3) and (5) of the Social Security Contributions and Benefits Act 1992* (the "Contributions and Benefits Act") applies to the regulation-making power of this section, to allow for different provisions to be made for different cases and for different purposes. It also provides powers for discretion to be exercised in dealing with various matters.

325. *Subsections (5) and (6)* provide that regulations will be made by Statutory Instrument, and subject to the negative procedure.