

1992 No. 1816

FAMILY LAW

CHILD SUPPORT

**The Child Support (Arrears, Interest and Adjustment of
Maintenance Assessments) Regulations 1992**

Made - - - -

20th July 1992

Coming into force -

5th April 1993

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Whereas a draft of this instrument was laid before Parliament in accordance with section 52(2) of the Child Support Act 1991(a) and approved by a resolution of each House of Parliament:

Now therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 41, 51, 52(4) and 54 of the Child Support Act 1991(b) and of all other powers enabling him in that behalf hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992 and shall come into force on 5th April 1993.

(2) In these Regulations, unless the context otherwise requires—

(a) Defn. “absent parent”, “due date”, “Maintenance Assessment and Special Cases Regulations” and “Maintenance Assessment Procedure Regulations” omitted by reg. 5(2) of S.I. 2001/162, subject to the savings provision in reg. 6 of that S.I.. See reg. 1 of S.I. 2001/162 for the relevant effective date.



For cases where the savings provisions in reg. 6 of S.I. 2001/162 apply, defn. of “absent parent” is reproduced below.

“absent parent” includes a person treated as an absent parent by virtue of regulation 20 of the Maintenance Assessments and Special Cases Regulations;

“the Act” means the Child Support Act 1991;

“arrears” means arrears of child support maintenance;

“arrears of child support maintenance” is to be construed in accordance with section 41(1) and (2) of the Act;

“arrears notice” has the meaning prescribed in regulation 2;

▶“Maintenance Calculations Procedure Regulations” means Child Support (Maintenance Calculations Procedure) Regulations 2000(c)◀



(b) Defn. “Maintenance Calculation Procedure Regulations” and “non-resident parent” inserted, by reg. 5(2) of S.I. 2001/162, subject to savings provision in reg. 6 of that S.I.. See reg. 1 of S.I. 2001/162 for relevant effective date.

See note (a) above.

For cases where the savings provisions in reg. 6 of S.I. 2001/162 apply, defn. of “due date”, “Maintenance Assessments and Special Cases Regulations” and “Maintenance Assessment Procedure Regulations” are reproduced below.

“due date” has the meaning prescribed in regulation 3;

“Maintenance Assessments and Special cases Regulations” means the Child Support (Maintenance Assessments and Special Cases) Regulations 1992(d);

“Maintenance Assessment Procedure Regulations” means the Child Support (Maintenance Assessment Procedure) Regulations 1992(e);

See note (b) above.

▶“non-resident parent” includes a person treated as such under regulation 8 of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000(f)◀

“parent with care” means a person who, in respect of the same child or children, is both a parent and a person with care;

(a) 1991 c. 48.

(b) Section 54 is cited because of the meaning ascribed to the word “prescribed”.

(c) S.I. 2001/157.

(d) S.I. 1992/1815.

(e) S.I. 1992/1813.

(f) S.I. 2001/155.

“relevant person” has the same meaning as in the ►¹Maintenance Calculation Procedure Regulations◄.

►²“state pension credit” means the social security benefit of that name payable under the State Pension Credit Act 2002(a).◄

(3) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
- (b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number;
- (c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

¹Words substituted in defn of “relevant person” & omitted in the heading to Part II by reg. 5(2) & (3) of S.I. 2001/162 subject to savings provision in reg. 6 of that S.I. See reg. 1 of S.I. 2001/162 for relevant effective date.

²Defn. of “state pension credit” inserted in reg. 1(2) by reg. 26(2) of S.I. 2002/3019 as from 6.10.03.

PART II

ARREARS OF CHILD SUPPORT MAINTENANCE ►¹◄

[Regs. 2-7 revoked by Sch. to S.I. 2009/3151 as from 25.1.10.]

►³Retention of recovered arrears of child support maintenance by the Secretary of State

8.—(1) This regulation applies where—

- (i) the Secretary of State recovers arrears from an ►⁴non-resident parent◄ under section 41 of the Act; and
- (ii) income support ►⁵or income-based jobseeker’s allowance◄ is paid to or in respect of the person with care or was paid to or in respect of that person at the date or dates upon which the payment or payments of child support maintenance referred to in paragraph (2) should have been made.

(2) Where paragraph (1) applies, the Secretary of State may retain such amount of those arrears as is equal to the difference between the amount of income support ►⁵or income-based jobseeker’s allowance◄ that was paid to or in respect of the person with care and the amount of income support ►⁵or income-based jobseeker’s allowance◄ that he is satisfied would have been paid had the ►⁴non-resident parent◄ paid, by the due dates, the amounts due under the child support ►⁴maintenance calculation◄ in force or to be taken to have been in force by virtue of the provisions of section 41(2A) of the Act.◄

³Reg. 8 substituted by reg. 2 of S.I. 1995/3261 as from 22.1.96.

⁴Words substituted in reg. 8 & in heading to Part III, substituted & omitted in regs. 9 & 10 by reg. 5(3) & (4) of S.I. 2001/162, subject to the savings provision in reg. 6 of that S.I.. See reg. 1 of S.I. 2001/162 for the relative effective dates.

⁵Words inserted in reg. 8 by reg. 3(1) and (2)(b) of S.I. 1996/1345 as from 7.10.96.

PART III

ATTRIBUTION OF PAYMENTS AND ADJUSTMENT OF THE AMOUNT PAYABLE UNDER A MAINTENANCE ►⁴CALCULATION◄

[Reg. 9, 10(1), (3A) & (4) revoked by Sch. to S.I. 2009/3151 as from 25.1.10.]

►⁶Adjustment of the amount payable under a maintenance ►⁴calculation◄

10.—

Regs. 10 (2) & (3) below are revoked by reg. 14(1) of S.I. 2000/3185 as from dates provided in reg. 1 of that S.I. (see page 4761). For the purposes of the savings provisions set out in reg. 14(2) of those regs., regs. 10(2) & (3) continue to be reproduced.

(2) Where ►⁷the Secretary of State◄ has adjusted the amount payable under a maintenance assessment under the provisions of paragraph (1) and that maintenance assessment is subsequently ►⁷replaced by a fresh maintenance assessment made by virtue of a revision under section 16 of the Act or of a decision under section 17 of the Act superseding an earlier decision◄ that adjustment shall, subject to paragraph (3), continue to apply to the amount payable under that fresh maintenance assessment unless ►⁷the

⁶Reg. 10 substituted by reg. 8 of S.I. 1995/1045 as from 18.4.95 (see also transl. prov. in reg. 64(4) *ibid.*).

⁷Words substituted by art. 26 of S.I. 1999/1510 as from 1.6.99.

(a) 2002 c.16.

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¹Words substituted by art. 26 of S.I. 1999/1510 as from 16.99.

²Reg. 10A inserted by reg. 3 of S.I. 1995/3261 as from 22.1.96.

³Words in reg. 10A substituted & omitted & reg. 10A(1)(b) omitted by reg. 5 of S.I. 2001/162, subject to savings provision in reg. 6 of that S.I.. See reg. 1 of S.I. 2001/162 for relevant effective date.

⁴Words inserted in reg. 10A(1)(a) by reg. 26(3) of S.I. 2002/3019 as from 6.10.03.

⁵Words inserted in reg. 10A(1)(a) by reg. 3(1) and (2)(c) of S.I. 1996/1345 as from 7.10.96.

⁶Reg. 10B inserted by regs. 5(4) of S.I. 2001/162, subject to the savings provision in reg. 6 of that S.I. See reg. 1 of S.I. 2001/162 for relevant effective date.

⁷Words inserted in reg. 10B by reg. 26(3) of S.I. 2002/3019 as from 6.10.03.

Secretary of State◀ is satisfied that such adjustment would not be appropriate in all the circumstances of the case.

(3) Where ▶¹the Secretary of State◀ is satisfied that the adjustment referred to in paragraph (2) would not be appropriate, he may cancel that adjustment or he may adjust the amount payable under that fresh maintenance assessment as he sees fit, having regard to the matters specified in heads (i) to (iii) of sub-paragraph (b) of paragraph (1).

▶²Reimbursement of a repayment of overpaid child maintenance

10A.—(1) The Secretary of State may require a relevant person to repay the whole or a part of any payment by way of reimbursement made to an ▶³non-resident parent◀ under section 41B(2) of the Act where the overpayment referred to in section 41B(1) of the Act arose—

- (a) in respect of the amount payable under a maintenance ▶³calculation◀ calculated in accordance with Part I of Schedule 1 to the Act and where income support ▶⁴, state pension credit◀ ▶⁵or income-based jobseeker's allowance◀, ▶³◀ was not in payment to that person at any time during the period in which that overpayment occurred or at the date or dates on which the payment by way of reimbursement was made; or

- (b) ▶³◀

For cases where the savings provisions in reg. 6 of S.I. 2001/162 apply, sub-para. 10A(1)(b) are reproduced below.

- (b) in respect of the amount payable under an interim maintenance ▶¹calculation◀ and that amount has not been varied under regulation 8D(1) of the Maintenance Assessment Procedure Regulations following the making of a maintenance ▶¹calculation◀ calculated in accordance with Part I of Schedule 1 to the Act.

(2) In a case falling within section 4 or 7 of the Act, where the circumstances set out in section 41B(6) apply, the Secretary of State may retain out of the child support maintenance collected by him in accordance with section 29 of the Act such sums as cover the amount of any payment by way of reimbursement required by him from the relevant person under section 41B(3) of the Act.◀

▶⁶Repayment of a reimbursement of a voluntary payment

10B. The Secretary of State may require a relevant person to repay the whole or any part of any payment by way of reimbursement made to a non-resident parent under section 41B(2) of the Act where—

- (a) a voluntary payment was made;
- (b) section 41B(1A) applies; and

income support ▶⁷, state pension credit◀ or income-based jobseeker's allowance was not in payment to that person at any time during the period in which the voluntary payment was made or at the date or dates on which the payment by way of reimbursement was made.◀

Regs. 11 to 17 below are revoked by Sch. to S.I. 2009/3151 as from dates provided in reg. 1 of that S.I. (see page 8751). For the purposes of the savings provisions set out in reg. 15 of those regs., regs. 11-17 continue to be reproduced.

PART IV

MISCELLANEOUS

►¹Notifications following a cancellation or adjustment under the provisions of regulation 10◄

11.—►¹(1) Where ►²the Secretary of State◄ has, under the provisions of regulation 10, cancelled an adjustment in accordance with the provisions of paragraph (3) of that regulation or adjusted the amount payable under a maintenance assessment, he shall immediately notify the relevant persons, so far as is reasonably practicable, of the cancellation or, of the amount and period of the adjustment, and the amount payable during the period of the adjustment.◄

(2) A notification under paragraph (1) shall include information as to the provisions of ►²regulations 12 to 15.◄

►³Extension of the application of Schedule 4C to the Act

12. Schedule 4C to the Act is hereby extended so that it applies to any decision with respect to the adjustment of amounts payable under maintenance assessments for the purpose of taking account of overpayments of child support maintenance.

Revision of decisions

13.—(1) A decision may be revised by the Secretary of State—

- (a) if the Secretary of State receives an application for the revision of a decision under section 16 of the Act as extended by regulation 12 above within one month of the date of notification of the decision or within such longer time as may be allowed by regulation 14;
- (b) if the decision arose from an official error;
- (c) if the Secretary of State commences action leading to the revision of a decision within one month of the date of notification of the decision; or

¹Heading to, and para. (1) of, reg. 11 substituted by reg. 9(2) and (3) respectively of S.I. 1995/1045 as from 18.4.95.

²Words substituted in reg. 11(1) & (2) by art. 27 of S.I. 1999/1510 as from 1.6.99.

³Regs. 12-15 substituted and regs. 16-17 inserted by art. 28 of S.I. 1999/1510 as from 1.6.99.

- (d) if the Secretary of State is satisfied that the original decision was erroneous due to a misrepresentation of, or failure to disclose, a material fact and that the decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would otherwise have been but for that error.

(2) In paragraph (1)–

“decision” means a decision of the Secretary of State–

- (a) adjusting the amount payable under a maintenance assessment; or

- (b) cancelling an adjustment of an amount payable under a maintenance assessment,

under regulation 10 and a decision superseding such a decision;

“official error” means an error made by an officer of the Department of Social Security acting as such which no person outside that Department caused or to which no person outside that Department materially contributed.

(3) Paragraph (1) shall not apply in respect of a change of circumstances which occurred since the date as from which the decision had effect.

Late application for revision

14.—(1) The period of one month specified in regulation 13(1)(a) may be extended where the conditions specified in the following provisions of this regulation are satisfied.

(2) An application for an extension of time shall be made by a relevant person or a person acting on his behalf.

(3) An application for an extension of time under this regulation shall–

- (a) be made within 13 months of the date on which notification of the decision which it is sought to have revised was given or sent; and

- (b) contain particulars of the grounds on which the extension of time is sought and shall contain sufficient details of the decision which it is sought to have revised to enable that decision to be identified.

(4) An application for an extension of time shall not be granted unless the person making the application or any person acting for him satisfies the Secretary of State that–

- (a) it is reasonable to grant the application;
- (b) the application for a revision has merit; and
- (c) special circumstances are relevant to the application for an extension of time and as a result of those special circumstances, it was not practicable for the application for a decision to be revised to be made within one month of the date of notification of the decision which it is sought to have revised.

(5) In determining whether it is reasonable to grant an application for an extension of time, the Secretary of State shall have regard to the principle that the greater the time that has elapsed between the expiration of one month described in regulation 13(1)(a) from the date of notification of the decision which it is sought to have revised and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

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

- (a) that the person making the application for an extension of time or any person acting for him was unaware of or misunderstood the law applicable to his case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or

- (b) that the Upper Tribunal or a court has taken a different view of the law from that previously understood and applied.

¹Words substituted in reg. 14(6)(b), by art. 62 of S.I. 2008/2683 as from 3.11.08.

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

Date from which revised decision takes effect

15. Where the date as from which a decision took effect is found to be erroneous on a revision under section 16 of the Act as extended by regulation 12 above, the revision shall take effect as from the date on which the revised decision would have taken effect had the error not been made.

Supersession of decisions

16.—(1) For the purposes of section 17 of the Act as extended by regulation 12 above, the cases and circumstances in which a decision adjusting the amount payable under a maintenance assessment may be superseded by a decision under that section as extended are set out in paragraphs (2) to (4).

(2) A decision may be superseded by a decision made by the Secretary of State acting on his own initiative where he is satisfied that the decision—

- (a) is one in respect of which there has been a material change of circumstances since the decision was made; or
- (b) was made in ignorance of, or was based upon a mistake as to, some material fact.

(3) A decision may be superseded by a decision made by the Secretary of State where an application is made on the basis that—

- (a) there has been a change of circumstances since the decision was made and the Secretary of State is satisfied that the change of circumstances is or would be material; or
- (b) the decision was made in ignorance of, or was based upon a mistake as to, a fact and the Secretary of State is satisfied that the fact is or would be material.

(4) A decision, other than a decision given on appeal, may be superseded by a decision made by the Secretary of State—

- (a) acting on his own initiative where he is satisfied that the decision was erroneous in point of law; or
- (b) where an application is made on the basis that the decision was erroneous in point of law.

(5) The cases and circumstances in which a decision may be superseded under section 17 of the Act as extended by regulation 12 above shall not include any case or circumstance in which a decision may be revised.

Application of regulations 1(6), 10(3) and 53 of the Maintenance Assessment Procedure Regulations

17.—(1) The provisions of regulation 10(3) of the Maintenance Assessment Procedure Regulations shall apply to any notification—

- (a) under regulation 11; and
- (b) of a decision under the provisions of regulation 13, 14 or 16.

(2) Regulations 1(6) and 53 of the Maintenance Assessment Procedure Regulations shall apply to the provisions of these Regulations. ◀

Signed by authority of the Secretary of State for Social Security.

20th July 1992

Alistair Burt
Parliamentary Under-Secretary of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to arrears of child support maintenance payable under the Child Support Act 1991 (“the Act”), interest on such arrears, and the adjustment of maintenance assessments.

Regulation 1 contains interpretation provisions.

Regulations 2, 3 and 4 provide for the service of an arrears notice where arrears of child support maintenance have arisen, and prescribe the circumstances where liability to make payments of interest with respect to arrears arises.

Regulation 5 provides for the payment of arrears by agreement and contains provisions as to interest where such an agreement has been entered into.

Regulation 6 prescribes the rate of interest payable on arrears, and how interest is to be calculated.

Regulation 7 makes provision as to the payment of interest and for the retention of interest by the Secretary of State.

Regulation 8 prescribes circumstances where the Secretary of State may retain recovered arrears of child support maintenance.

Regulation 9 provides for the attribution of payments where there are arrears of child support maintenance.

Regulation 10 provides for the adjustment of amounts payable under a maintenance assessment, and regulation 11 makes provision in respect of notifications following such an adjustment.

Regulation 12 provides for reviews of adjustments under regulation 10 and of the calculation of arrears and of interest payable with respect to arrears.

Regulation 13 makes provision as to procedure and notifications on applications and reviews under regulation 12.

Regulations 14 and 15 apply certain provisions of the Child Support (Maintenance Assessment Procedure) Regulations 1992 to the provisions of these Regulations.

