

Child Support Act 1995

CHAPTER 34

ARRANGEMENT OF SECTIONS

Application for a departure direction

Section

1. Applications for departure directions.
2. Preliminary consideration.
3. Imposition of a regular payments condition.
4. Determination of applications.
5. Matters to be taken into account.
6. Departure directions.
7. Effect and duration.
8. Appeals.
9. Transitional provisions.

The child maintenance bonus

10. The child maintenance bonus.

Reviews of maintenance assessments etc.

11. Reviews: interim maintenance assessments.
12. Reviews on change of circumstances.
13. Continuation of reviews under section 18 of 1991 Act.
14. Cancellation of maintenance assessments on review.
15. Reviews at instigation of child support officers.

Appeals

16. Lapse of appeals to child support appeal tribunals.
17. Determination of questions other than by Child Support Commissioners.

Miscellaneous

18. Deferral of right to apply for maintenance assessment.
19. Non-referral of applications for maintenance assessments.
20. Disputed parentage.
21. Fees for scientific tests.
22. Arrears of child support maintenance: alternative to interest payments.
23. Repayment of overpaid child support maintenance.
24. Compensation payments.
25. Payment of benefit where maintenance payments collected by Secretary of State.

CHILD SUPPORT ACT 1995 (c. 34)

S. 1

Regs. 1-2

Supplemental

- 26. Regulations and orders.
- 27. Interpretation.
- 28. Financial provisions.
- 29. Provision for Northern Ireland.
- 30. Short title, commencement, extent etc.

SCHEDULES:

- Schedule 1 — Departure Directions.
- Schedule 2 — Departure Directions: The Cases and Controls.
 - Part I — The Cases.
 - Part II — Regulatory Controls.
- Schedule 3 — Minor and Consequential Amendments.

An Act to make provision with respect to child support maintenance and other maintenance; and to provide for a child maintenance bonus. [19th July 1995]

[Provisions in this Act which had not been commenced by the date of issue of the latest Supplement to this work are printed below in italic sanserif type.]

Ss. 1-3 are revoked (3.3.03) for the purposes of certain cases only (see S.I. 2003/192 at page 4141) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 9, Part I.

Applications for
departure directions

Application for a departure direction

1.—(1) In the 1991 Act, insert after section 28—

“Departure from usual rules for determining maintenance assessments

“Application for a
departure direction.”

28A.—(1) Where a maintenance assessment (“the current assessment”) is in force—

- (a) the person with care, or absent parent, with respect to whom was made, or
- (b) where the application for the current assessment was made under section 7, either of those persons or the child concerned,

may apply to the Secretary of State for a direction under section 28(F) (a “departure direction”).

(2) An application for a departure direction shall state in writing the grounds on which it is made and shall, in particular, state whether it is based on—

- (a) the effect of the current assessment; or
- (b) a material change in the circumstances of the case since the current assessment was made.

(3) In other respects, an application for a departure direction shall be made in such manner as may be prescribed.

(4) An application may be made under this section even though—

- (a) an application for a review has been made under section 17 or 18 with respect to the current assessment; or
- (b) a child support officer is conducting a review of the current assessment under section 16 or 19.

(5) If the Secretary of State considers it appropriate to do so, he may by regulations provide for the question whether a change of circumstances is material to be determined in accordance with the regulations.

(6) Schedule 4A has effect in relation to departure directions”

(2) Schedule 1 inserts in the 1991 Act a new Schedule 4A which makes supplemental provision with respect to procedural and other matters.

Preliminary
consideration

2. In the 1991 Act, insert after section 28A—

“Preliminary consideration of applications”

28B.—(1) Where an application for a departure direction has been duly made to the Secretary of State, he may give the application a preliminary consideration.

(2) Where the Secretary of State does so he may, on completing the preliminary consideration, reject the application if it appears to him—

- (a) that there are no grounds on which a departure direction could be given in response to the application; or
- (b) that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Secretary of State for the purposes of this subsection and section 28F(4).

(3) In subsection (2)—

“the current amount” means the amount of the child support maintenance fixed by the current assessment; and
 “the revised amount” means the amount of child support maintenance which, but for subsection (2)(b) would be fixed if a fresh maintenance assessment were to be made as a result of a departure direction allowing the departure applied for.

(4) Before completing any preliminary consideration, the Secretary of State may refer the current assessment to a child support officer for it to be reviewed as if an application for a review has been made under section 17 or 18.

(5) A review initiated by a reference under subsection (4) shall be conducted as if subsection (4) of section 17, or (as the case may be) subsection (8) of section 18, were omitted.

(6) *Where, as a result of a review of the current assessment under section 16, 17, 18 or 19 (including a review initiated by a reference under subsection (4)), a fresh maintenance assessment is made, the Secretary of State—*

- (a) *shall notify the applicant and such other persons as may be prescribed that the fresh maintenance assessment has been made; and*
- (b) *may direct that the application is to lapse unless, before the end of such period as may be prescribed, the applicant notifies the Secretary of State that he wishes it to stand.”*

3. In the 1991 Act, insert after section 28B—

28C.—(1) Where an application for a departure direction is made by an absent parent, the Secretary of State may impose on him one of the conditions mentioned in subsection (2) (“a regular payments condition”).

(2) The conditions are that—

- (a) the applicant must make the payments of child support maintenance fixed by the current assessment;
- (b) the applicant must make such reduced payments of child support maintenance as may be determined in accordance with regulations made by the Secretary of State.

(3) Where the Secretary of State imposes a regular payments condition, he shall give written notice to the absent parent and person with care concerned of the imposition of the condition and of the effect of failure to comply with it.

(4) A regular payments condition shall cease to have effect on the failure or determination of the application.

(5) For the purposes of subsection (4), an application for a departure direction fails if—

- (a) it lapses or is withdrawn; or
- (b) the Secretary of State rejects it on completing a preliminary consideration under section 28B.

(6) Where an absent parent has failed to comply with a regular payments condition—

- (a) the Secretary of State may refuse to consider the application; and
- (b) in prescribed circumstances the application shall lapse.

(7) The question whether an absent parent has failed to comply

“Imposition of a regular payments condition”

Imposition of a regular payments condition

CHILD SUPPORT ACT 1995 (c. 34)

Ss. 3-5

with a regular payments condition shall be determined by the Secretary of State.

(8) Where the Secretary of State determines that an absent parent has failed to comply with a regular payments condition he shall give that parent, and the person with care concerned, written notice of his decision."

4. In the 1991 Act, insert after section 28C—

Determination of applications

"Determination of applications"

28D.—(1) Where an application for a departure direction has not failed, the Secretary of State shall—

- (a) determine the application in accordance with the relevant provisions of, or made under, this Act; or
- (b) refer the application to a child support appeal tribunal for the tribunal to determine it in accordance with those provisions.

(2) For the purposes of subsection (1), an application for a departure direction has failed if—

- (a) it has lapsed or been withdrawn; or
- (b) the Secretary of State has rejected it on completing a preliminary consideration under section 28B.

(3) In dealing with an application for a departure direction which has been referred to it under subsection (1)(b), a child support appeal tribunal shall have the same powers, and be subject to the same duties, as would the Secretary of State if he were dealing with the application."

5. In the 1991 Act, insert after section 28D—

Matters to be taken into account

"Matters to be taken into account"

28E.—(1) In determining any application for a departure direction, the Secretary of State shall have regard both to the general principles set out in subsection (2) and to such other considerations as may be prescribed.

(2) The general principles are that—

- (a) parents should be responsible for maintaining their children whenever they can afford to do so;
- (b) where a parent has more than one child, his obligation to maintain any one of them should be no less of an obligation than his obligation to maintain any other of them.

(3) In determining any application for a departure direction, the Secretary of State shall take into account any representations made to him—

- (a) by the person with care or absent parent concerned; or
- (b) where the application for the current assessment was made under section 7, by either of them or the child concerned.

(4) In determining any application for a departure direction, no account shall be taken of the fact that—

- (a) any part of the income of the person with care concerned is, or would be if a departure direction were made, derived from any benefit; or
- (b) some or all of any child support maintenance might be taken into account in any manner in relation to any entitlement to benefit.

(5) In this section "benefit" has such meaning as may be prescribed.*"

**See reg. 12 of S.I. 1996/635.*

Ss. 6-9 revoked (3.3.03) for the purposes of certain cases only (see S.I. 2003/192 at page 4141) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 9, Part 1.

“Departure directions”

6.—(1) In the 1991 Act, insert after section 28E—
28F.—(1) The Secretary of State may give a departure direction if—

Departure directions.

- (a) he is satisfied that the case is one which falls within one or more of the cases set out in Part I of Schedule 4B or in regulations made under that Part; and
- (b) it is his opinion that, in all the circumstances of the case, it would be just and equitable to give a departure direction.

(2) In considering whether it would be just and equitable in any case to give a departure direction, the Secretary of State shall have regard, in particular, to—

- (a) the financial circumstances of the absent parent concerned.
- (b) the financial circumstances of the person with care concerned, and
- (c) the welfare of any child likely to be affected by the direction.

(3) The Secretary of State may by regulations make provision—

- (a) for factors which are to be taken into account in determining whether it would be just and equitable to give a departure direction in any case;
- (b) for factors which are not to be taken into account in determining such question.

(4) The Secretary of State shall not give a departure direction if he is satisfied that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Secretary of State for the purposes of this subsection and section 28B(2).

(5) In subsection (4)—

“the current amount” means the amount of the child support maintenance fixed by the current assessment, and
“the revised amount” means the amount of child support maintenance which would be fixed if a fresh maintenance assessment were to be made as a result of the departure direction which the Secretary of State would give in response to the application but for subsection (4).

(6) A departure direction shall—

- (a) require a child support officer to make one or more fresh maintenance assessments; and
- (b) specify the basis on which the amount of child support maintenance is to be fixed by any assessment made in consequence of the direction.

(7) In giving a departure direction, the Secretary of State shall comply with the provisions of regulations made under Part II of Schedule 4B.

(8) Before the end of such period as may be prescribed, the Secretary of State shall notify the applicant for a departure direction, and such other persons as may be prescribed—

- (a) of his decision in relation to the application, and
- (b) of the reasons for his decision.”

(2) Schedule 2 inserts in the 1991 Act the new Schedule 4B which is referred to in subsections (1)(a) and (7) of the new section 28F inserted by this section.

7 In the 1991 Act, insert after section 28F—

Effect and duration.

“Effect and duration of departure directions”

28G.—(1) Where a departure direction is given, it shall be the duty of the child support officer to whom the case is referred to comply with the direction as soon as is reasonably practicable.

(2) A departure direction may be given so as to have effect—

- (a) for a specified period; or
- (b) until the occurrence of a specified event.

(3) The Secretary of State may by regulations make provision for the cancellation of a departure direction in prescribed circumstances.

(4) The Secretary of State may by regulations make provision as to when a departure direction is to take effect.

CHILD SUPPORT ACT 1995 (c. 34)

S. 7-10

Appeals.

“Appeals in relation to applications for departure directions”

(5) Regulations under subsection (4) may provide for a departure direction to have effect from a date earlier than that on which the direction is given.”

8. In the 1991 Act, insert after section 28G–

28H.—(1) Any qualifying person who is aggrieved by any decision of the Secretary of State on an application for a departure direction may appeal to a child support appeal tribunal against that decision.

(2) In subsection (1), “qualifying person” means–

- (a) the person with care, or absent parent, with respect to whom the current assessment was made, or
- (b) where the application for the current assessment was made under section 7, either of those persons or the child concerned.

(3) Except with leave of the chairman of a child support appeal tribunal, no appeal under this section shall be brought after the end of the period of 28 days beginning with the date on which notification was given of the decision in question.

(4) On an appeal under this section, the tribunal shall–

- (a) consider the matter–
 - (i) as if it were exercising the powers of the Secretary of State in relation to the application in question; and
 - (ii) as if it were subject to the duties imposed on him in relation to that application;
- (b) having regard to any representations made to it by the Secretary of State; and
- (c) confirm the decision or replace it with such decision as the tribunal considers appropriate.”

Transitional provisions

“Transitional provisions”

9. In the 1991 Act, insert after section 28H–

28I.—(1) In the case of an application for a departure direction relating to a maintenance assessment which was made before the coming into force of section 28A, the period within which the application must be made shall be such period as may be prescribed.

(2) The Secretary of State may by regulations make provision for applications for departure directions to be dealt with according to an order determined in accordance with the regulations.

(3) The regulations may, for example, provide for–

- (a) applications relating to prescribed descriptions of maintenance assessment, or
- (b) prescribed descriptions of application,

to be dealt with before applications relating to other prescribed descriptions of assessment or (as the case may be) other prescribed descriptions of application.

(4) The Secretary of State may by regulations make provision–

- (a) enabling applications for departure directions made before the coming into force of section 28A to be considered even though that section is not in force;
- (b) for the determination of any such application as if section 28A and the other provisions of this Act relating to departure directions were in force; and
- (c) as to the effect of any departure direction given before the coming into force of section 28A.

(5) Regulations under section 28G(4) may not provide for a departure direction to have effect from a date earlier than that on which that section came into force.”

S. 10 ceases to have effect (3.3.03) for the purposes of certain cases only (see S.I. 2003/192 at page 4141) by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 23.

The child maintenance bonus

The child maintenance bonus

10.—(1) The Secretary of State may by regulations make provision for payment, in prescribed circumstances, of sums to persons–

- (a) who are or have been in receipt of child maintenance; and
- (b) to or in respect of whom income support or a jobseeker's allowance is or has been paid.

(2) A sum payable under the regulations shall be known as "a child maintenance bonus".

(3) A child maintenance bonus shall be treated for all purposes as payable by way of income support or (as the case may be) a jobseeker's allowance.

(4) Subsection (3) is subject to section 617 of the Income and Corporation Taxes Act 1988 (which, as amended by paragraph 1 of Schedule 3, provides for a child maintenance bonus not to be taxable).

1988 c. 1

(5) The regulations may, in particular, provide for—

- (a) a child maintenance bonus to be payable only on the occurrence of a prescribed event;
- (b) a bonus not to be payable unless a claim is made before the end of the prescribed period;
- (c) the amount of a bonus (subject to any maximum prescribed by virtue of paragraph (f)) to be determined in accordance with the regulations;
- (d) enabling amounts to be calculated by reference to periods of entitlement to income support and periods of entitlement to a jobseeker's allowance;
- (e) treating a bonus as payable wholly by way of a jobseeker's allowance or wholly by way of income support, in a case where amounts have been calculated in accordance with provision made by virtue of paragraph (d);
- (f) the amount of a bonus not to exceed a prescribed maximum;
- (g) a bonus not to be payable if the amount of the bonus which would otherwise be payable is less than the prescribed minimum;
- (h) prescribed periods to be disregarded for prescribed purposes;
- (i) a bonus which has been paid to a person to be treated, in prescribed circumstances and for prescribed purposes, as income or capital of hers or of any other member of her family;
- (j) treating the whole or a prescribed part of an amount which has accrued towards a person's bonus—
 - (i) as not having accrued towards her bonus; but
 - (ii) as having accrued towards the bonus of another person.

(6) The Secretary of State may by regulations provide—

- (a) for the whole or a prescribed part of a child maintenance bonus to be paid in such circumstances as may be prescribed to such person, other than the person who is or had been in receipt of child maintenance, as may be determined in accordance with the regulations;
- (b) for any payments of a prescribed kind which have been collected by the Secretary of State, and retained by him, to be treated for the purposes of this section as having been received by the appropriate person as payments of child maintenance.

(7) In this section—

"appropriate person" has such meaning as may be prescribed;
 "child" means a person under the age of 16;
 "child maintenance" has such meaning as may be prescribed;
 ["couple" means—

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances;

¹ Defn. of "couple" inserted (5.12.05) by the Civil Partnership Act 2004 (c. 33) Sch. 24, Part 8.

Ss. 10-18

- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
 - (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners otherwise than in prescribed circumstances;]
- “family” means–
- (a) a [‘couple];
 - (b) a [‘couple] and a member of the same household for whom one of them is, or both are, responsible and who is a child or a person of a prescribed description.
 - (c) except in prescribed circumstances, a person who is not a member of a [‘couple] and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;
- [...’]

[‘(7A) For the purposes of this section, two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.]

- (8) For the purposes of this section, the Secretary of State may by regulations make provision as to the circumstances in which–
- (a) persons are to be treated as being or not being members of the same household;
 - (b) one person is to be treated as responsible or not responsible for another.

Reviews of maintenance assessments etc.

11–15. amend 1991 c.48, see Annex 1, page 591

Appeals

Lapse of appeals to child support appeal tribunals.
Determination of questions other than by Child Support Commissioners.

16. amends 1991 c.48, see Annex 1, page 591

17. amends 1991 c.48, see Annex 1, page 591

Miscellaneous

Deferral of right to apply for maintenance assessment.

18.—(1)–(4) amend 1991 c.48, see Annex 1, page 591

S. 18(5) ceases to have effect (3.3.03.) for the purposes of certain cases only (see S.I. 2003/192 at page 4141) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 3, para. 13(2)

(5) The Secretary of State may by order repeal any of the provisions of this section.

(6) Neither section 4(10) nor section 7(10) of the 1991 Act shall apply in relation to a maintenance order made in the circumstances mentioned in sub-section (7) or (8) of section 8 of the 1991 Act.

(7) The Secretary of State may by regulations make provision for section 4(10), or section 7(10), of the 1991 Act not to apply in relation to such other cases as may be prescribed.

(8) Part I of the Schedule to the Child Support Act 1991 (Commencement No. 3 and Transitional Provisions) Order 1992 (phased take-on of certain cases) is hereby revoked.

S.I. 1992/2644.

(9) At any time before 7th April 1997, neither section 8(3), nor section 9(5)(b), of the 1991 Act shall apply in relation to any case which fell within paragraph 5(2) of the Schedule to the 1992 order (pending cases during the transitional period set by that order).

¹ Words substituted in defn. of “family”, defns. of “married couple” & “unmarried couple” omitted & s. 10(7A) inserted (5.12.05) of the Civil Partnership Act 2004 (c. 33) Sch. 24, Pt. 8.

- 19. amends 1991 c. 48, see Annex I, page 591
- 20. amends 1991 c. 48, see Annex I, page 591
- 21. amends 1991 c. 48, see Annex I, page 591

Non-referral of applications for maintenance assessments.
Disputed parentage.
Fees for scientific tests.

S. 22 revoked (3.3.03) for the purposes of certain cases only (see S.I. 2003/192 at page 4141) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 9, Part I.

“Arrears of child support maintenance alternative to interest payments”

22. In the 1991 Act, insert after section 41–

41A.—(1) The Secretary of State may by regulations make provision for the payment by absent parents who are in arrears with payments of child support maintenance of sums determined in accordance with the regulations.

Arrears of child support maintenance alternative to interest payments.

(2) A sum payable under any such regulations is referred to in this section as an “additional sum”.

(3) Any liability of an absent parent to pay an additional sum shall not affect any liability of his to pay the arrears of child support maintenance concerned.

(4) The Secretary of State shall exercise his powers under this section and those under section 41(3) in such a way as to ensure that no absent parent is liable to pay both interest and an additional sum in respect of the same period (except by reference to different maintenance assessments).

(5) Regulations under subsection (1) may, in particular, make provision–

- (a) as to the calculation of any additional sum;
- (b) as to the time at which, and person to whom, any additional sum shall be payable;
- (c) as to the circumstances in which, in a case where the Secretary of State has been acting under section 6, any additional sum may be retained by him;
- (d) for the Secretary of State, in a case where he has been acting under section 6 and in such circumstances may be prescribed, to waive any additional sum (or part of any additional sum).

(6) The provisions of this Act with respect to–

- (a) the collection of child support maintenance;
- (b) the enforcement of any obligation to pay child support maintenance,

shall apply equally to additional sums payable by virtue of regulations made under this section.

(7) Any sum retained by the Secretary of State by virtue of this section shall be paid by him into the Consolidated Fund.”

- 23. amends 1991 c. 48, see Annex I, page 591

Repayment of overpaid child support maintenance.

- 24. [...¹]

- 25. amends 1991 c. 48, see Annex I, page 591

Payment of benefit where maintenance payments collected by Secretary of State.

Supplemental

26.—(1) Any power under this Act to make regulations or orders shall be exercisable by statutory instrument.

Regulations and Orders.

(2) Any such power may be exercised to make different provision for different cases, including different provision for different areas.

(3) Any such power includes power–

¹ S. 24 revoked (2.4.01) by para. 13 of Sch. 9 to the Child Support, Pensions and Social Security Act 2000 (c. 19).

CHILD SUPPORT ACT 1995 (c. 34)

S. 26

- (a) to make such incidental, supplemental, consequential or transitional provision as appears to the Secretary of State to be expedient; and
- (b) to provide for a person to exercise a discretion in dealing with any matter.

(4) Subsection (5) applies to—

- (a) the first regulations made under section 10;
- (b) any order made under section 18(5);

S. 26(4)(c) revoked (3.3.03) for the purposes of certain cases only (see S.I. 2003/192 at page 4141) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 9, Part I.

- (c) the first regulations made under section 24.

(5) No regulations or order to which this subsection applies shall be made unless a draft of the statutory instrument containing the regulations or order has been laid before Parliament and approved by a resolution of each House.

(6) Any other statutory instrument made under this Act, other than one made under section 30(4), shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- 27.**—(1) In this Act “the 1991 Act” means the Child Support Act 1991.
- (2) Expressions in this Act which are used in the 1991 Act have the same meaning in this Act as they have in that Act. Interpretation
1991 c.48
- 28.** There shall be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Secretary of State under or by virtue of this Act;
 - (b) any increase attributable to this Act in the sums payable out of money so provided under or by virtue of any other enactment. Financial provisions
- 29.**—(1) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act—
- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament. Provision for Northern Ireland 1974 c.28
- (2) The Secretary of State may make arrangements with the Department of Health and Social Services for Northern Ireland with a view to securing, to the extent allowed for in the arrangements, that—
- (a) the provision made by or under sections 10 and 24 (“the provision made for Great Britain”); and
 - (b) the provision made by or under any corresponding enactment having effect with respect to Northern Ireland (“the provision made for Northern Ireland”),
- provide for a single system within the United Kingdom.
- (3) The Secretary of State may make regulations for giving effect to any such arrangements.
- (4) The regulations may, in particular—
- (a) adapt legislation (including subordinate legislation) for the time being in force in Great Britain so as to secure its reciprocal operation with the provision made for Northern Ireland; and
 - (b) make provision to secure that acts, omissions and events which have any effect for the purposes of the provision made for Northern Ireland have a corresponding effect for the purposes of the provision made for Great Britain.
- 30.**—(1) This Act may be cited as the Child Support Act 1995. Short title, commencement, extent, etc.
- (2) This Act and the 1991 Act may be cited together as the Child Support Acts 1991 and 1995.
- (3) Section 29 and this section (apart from subsection (5)) come into force on the passing of this Act.
- (4) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint and different days may be appointed for different purposes.
- (5) Schedule 3 makes minor and consequential amendments.
- (6) This Act, except for—
- (a) sections 17, 27 and 29,
 - (b) this section, and
 - (c) paragraphs 1, 18, 19 and 20 of Schedule 3,
- does not extend to Northern Ireland.

CHILD SUPPORT ACT 1995 (c. 34)

Ss. 30

Schs. 1 & 2 revoked (3.3.03) for the purposes of certain cases only, (see S.I. 2003/192 at page 4141) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 9, Part 1.

SCHEDULES

SCHEDULE 1

Departure Directions

The following Schedule is inserted in the 1991 Act, after Schedule 4-

"SCHEDULE 4A

Departure Directions

Interpretation

1. In this Schedule-
 - "departure application" means an application for a departure direction;
 - "regulations" means regulations made by the Secretary of State;
 - "review" means a review under section 16, 17, 18 or 19.

Applications for departure directions

2. Regulations may make provision- Section 1(2)
 - (a) as to the procedure to be followed in considering a departure application;
 - (b) as to the procedure to be followed when a departure application is referred to a child support appeal tribunal under section 28D(1)(b);
 - (c) for the giving of a direction by the Secretary of State as to the order in which, in a particular case, a departure application and a review are to be dealt with;
 - (d) for the reconsideration of a departure application in a case where further information becomes available to the Secretary of State after the application has been determined.

Completion of preliminary consideration

3. Regulations may provide for determining when the preliminary consideration of a departure application is to be taken to have been completed.

Information

- 4.-(1) Regulations may make provision for the use for any purpose of this Act of-
 - (a) information acquired by the Secretary of State in connection with an application for, or the making of, a departure direction;
 - (b) information acquired by a child support officer or the Secretary of State in connection with an application for, or the making of, a maintenance assessment.
- (2) If any information which is required (by regulations under this Act) to be furnished to the Secretary of State in connection with a departure application has not been furnished within such period as may be prescribed, the Secretary of State may nevertheless proceed to determine the application.

Anticipation of change of circumstances

- 5.-(1) A departure direction may be given so as to provide that if the circumstances of the case change in such manner as may be specified in the direction a fresh maintenance assessment is to be made.
- (2) Where any such provision is made, the departure direction may provide for the basis on which the amount of child support maintenance is to be fixed by the fresh maintenance assessment to differ from the basis on which the amount of child support maintenance was fixed by any earlier maintenance assessment made as a result of the direction.

Reviews and departure directions

6. Regulations may make provision-

- (a) with respect to cases in which a child support officer is conducting a review of a maintenance assessment which was made as a result of a departure direction;
- (b) with respect to cases in which a departure direction is made at a time when a child support officer is conducting a review.

Subsequent departure directions

7.—(1) Regulations may make provision with respect to any departure application made with respect to a maintenance assessment which was made as a result of a departure direction.

(2) The regulations may, in particular, provide for the application to be considered by reference to the maintenance assessment which would have been made had the departure direction not been given.

Joint consideration of departure applications and appeals

8.—(1) Regulations may provide for two or more departure applications with respect to the same current assessment to be considered together.

(2) A child support appeal tribunal considering-

- (a) a departure application referred to it under section 28D(1)(b), or
- (b) an appeal under section 28H,

may consider it at the same time as hearing an appeal under section 20 in respect of the current assessment, if it considers that to be appropriate.

Child support appeal tribunals

9.—(1) Regulations may provide that, in prescribed circumstances, where-

- (a) a departure application is referred to a child support appeal tribunal under section 28D(1)(b), or
- (b) an appeal is brought under section 28H,

the application or appeal may be dealt with by a tribunal constituted by the chairman sitting alone.

(2) Sub-paragraph (1) does not apply in relation to any appeal which is being heard together with an appeal under section 20.

Current assessments which are replaced by fresh assessments

10. Regulations may make provision as to the circumstances in which prescribed references in this Act to a current assessment are to have effect as if they were references to any later maintenance assessment made with respect to the same persons as the current assessment."

SCHEDULE 2

Departure Directions: The Cases and Controls

Section 6(2)

The following Schedule is inserted in the 1991 Act, after Schedule 4A—

“SCHEDULE 4B

Departure Directions: The Cases and Controls

Part I

The Cases

General

1.—(1) The cases in which a departure direction may be given are those set out in this Part of this Schedule or in regulations made under this Part.

(2) In this Schedule “applicant” means the person whose application for a departure direction is being considered.

Special expenses

2.—(1) A departure direction may be given with respect to special expenses of the applicant which were not, and could not have been, taken into account in determining the current assessment in accordance with the provisions of, or made under, Part I of Schedule 1.

(2) In this paragraph “special expenses” means the whole, or any prescribed part, of expenses which fall within a prescribed description of expenses.

(3) In prescribing descriptions of expenses for the purposes of this paragraph, the Secretary of State may, in particular, make provision with respect to—

- (a) costs incurred in travelling to work;
- (b) costs incurred by an absent parent in maintaining contact with the child, or with any of the children, with respect to whom he is liable to pay child support maintenance under the current assessment;
- (c) costs attributable to a long-term illness or disability of the applicant or of a dependant of the applicant;
- (d) debts incurred, before the absent parent became an absent parent in relation to a child with respect to whom the current assessment was made—
 - (i) for the joint benefit of both parents;
 - (ii) for the benefit of any child with respect to whom the current assessment was made; or
 - (iii) for the benefit of any other child falling within a prescribed category;
- (e) pre-1993 financial commitments from which it is impossible for the parent concerned to withdraw or from which it would be unreasonable to expect that parent to have to withdraw;
- (f) costs incurred by a parent in supporting a child who is not his child but who is part of his family.

(4) For the purposes of sub-paragraph (3)(c)—

- (a) the question whether one person is a dependent of another shall be determined in accordance with regulations made by the Secretary of State;
- (b) “disability” and “illness” have such meaning as may be prescribed; and
- (c) the question whether an illness or disability is long-term shall be determined in accordance with regulations made by the Secretary of State.

(5) For the purposes of sub-paragraph (3)(e), “pre-1993 financial commitments” means financial commitments of a prescribed kind entered into before 5th April 1993 in any case where—

- (a) a court order of a prescribed kind was in force with respect to the absent parent and the person with care concerned at the time when they were entered into; or
- (b) an agreement between them of a prescribed kind was in force at that time.

Sch. 2

(6) For the purposes of sub-paragraph (3)(f), a child who is not the child of a particular person is a part of that person's family in such circumstances as may be prescribed.

Property or capital transfers

3.—(1) A departure direction may be given if—

- (a) before 5th April 1993—
 - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made; or
 - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;
- (b) in consequence of one or more transfers of property of a prescribed kind
 - (i) the amount payable by the absent parent by way of maintenance was less than would have been the case had that transfer or those transfers not been made; or
 - (ii) no amount was payable by the absent parent by way of maintenance; and
- (c) the effect of that transfer, or those transfers, is not properly reflected in the current assessment;

(2) For the purposes of sub-paragraph (1)(b), "maintenance" means periodical payments of maintenance made (otherwise than under this Act) with respect to the child, or any of the children, with respect to whom the current assessment was made.

(3) For the purposes of sub-paragraph (1)(c), the question whether the effect of one or more transfers of property is properly reflected in the current assessment shall be determined in accordance with regulations made by the Secretary of State.

4.—(1) A departure direction may be given if—

- (a) before 5th April 1993—
 - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made, or
 - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;
- (b) in pursuance of the court order or agreement, the absent parent has made one or more transfers of property of a prescribed kind;
- (c) the amount payable by the absent parent by way of maintenance was not reduced as a result of that transfer or those transfers;
- (d) the amount payable by the absent parent by way of child support maintenance under the current assessment has been reduced as a result of that transfer or those transfers, in accordance with provisions of or made under this Act; and
- (e) it is nevertheless inappropriate, having regard to the purposes for which the transfer or transfers was or were made, for that reduction to have been made.

(2) For the purposes of sub-paragraph (1)(c), "maintenance" means periodical payments of maintenance made (otherwise than under this Act) with respect to the child, or any of the children, with respect to whom the current assessment was made.

Additional cases

5.—(1) The Secretary of State may by regulations prescribe other cases in which a departure direction may be given.

(2) Regulations under this paragraph may, for example, make provision with respect to cases where—

- (a) assets which do not produce income are capable of producing income;
- (b) a person's life style is inconsistent with the level of his income;
- (c) housing costs are unreasonably high;
- (d) housing costs are in part attributable to housing persons whose circumstances are such as to justify disregarding a part of those costs;
- (e) travel costs are unreasonably high; or
- (f) travel costs should be disregarded.

**PART II
REGULATORY CONTROLS**

6.—(1) The Secretary of State may by regulations make provision with respect to the directions which may be given in a departure direction.

(2) No directions may be given other than those which are permitted by the regulations.

(3) Regulations under this paragraph may, in particular, make provision for a departure direction to require—

- (a) the substitution, for any formula set out in Part I of Schedule 1, of such other formula as may be prescribed;
- (b) any prescribed amount by reference to which any calculation is to be made in fixing the amount of child support maintenance to be increased or reduced in accordance with the regulations;
- (c) the substitution, for any provision in accordance with which any such calculation is to be made, of such other provision as may be prescribed.

(4) Regulations may limit the extent to which the amount of the child support maintenance fixed by a maintenance assessment made as a result of a departure direction may differ from the amount of the child support maintenance which would be fixed by a maintenance assessment made otherwise than as a result of the direction.

(5) Regulations may provide for the amount of any special expenses to be taken into account in a case falling within paragraph 2, for the purposes of a departure direction, not to exceed such amount as may be prescribed or as may be determined in accordance with the regulations.

(6) No departure direction may be given so as to have the effect of denying to an absent parent the protection of paragraph 6 of Schedule 1.

(7) Sub-paragraph (6) does not prevent the modification of the provisions of, or made under, paragraph 6 of Schedule 1 to the extent permitted by regulations under this paragraph.

(8) Any regulations under this paragraph may make different provision with respect to different levels of income.

SCHEDULE 3

MINOR AND CONSEQUENTIAL AMENDMENTS

Income and Corporation Taxes Act 1988 (c. 1)

1. In section 617(2) of the Income and Corporation Taxes Act 1988 (social security and other benefits which are not treated as income for purposes of the Income Tax Acts), insert after paragraph (ac)–

- “(ad) payments of a child maintenance bonus;
- (ae) compensation payments made under regulations under section 24 of the Child Support Act 1995 or under any corresponding enactment having effect with respect to Northern Ireland;”.

Child Support Act 1991 (c. 48)

2. The 1991 Act is amended as follows.

3 [...] amend 1991 c. 48, see Annex I, page 591

4–6. [...]

7.—(1) Section 24 (appeal to Child Support Commissioner) is amended as follows.

[...]

(3) In subsection (3), for paragraph (c) substitute–

- “(c) on an appeal by the Secretary of State, refer the case to a child support appeal tribunal with directions for its determination; or
- (d) on any other appeal, refer the case to a child support officer or, if he considers it appropriate, to a child support appeal tribunal with directions for its determination.”

8.amends 1991 c. 48, see Annex I, page 591

9. In section 30 (collection and enforcement of maintenance payments other than child support maintenance), at the end add–

“(5A) Regulations made under subsection (1) or (2) prescribing payments which may be collected by the Secretary of State may make provision for the payment to him by such person or persons as may be prescribed of such fees as may be prescribed.”

10–12. amend 1991 c. 48, see Annex I, page 591

13. In section 47 (fees), in subsections (1) and (2) in each case after “takes” insert “, or proposes to take,”.

14–16. amend 1991 c. 48, see Annex I, page 591

¹ Paras. 3(2), 4 to 6, & 7(2) repealed (1.6.99) by Sch. 8 to S.S. Act 1998 (c. 14).

17. [...]¹

18 and 19. amend 1991, c. 48, see Annex I, page 591

[...]¹

Social Security Administration Act 1992 (c. 5)

20. In section 170(5) of the Social Security Administration Act 1992 (the Social Security Advisory Committee)-

Para. 20(a) revoked (3.3.03) for the purposes of certain cases only (see S.I. 2003/192 Act page 4141) by the Child Support, Pensions & Social Security Act 2000 (c. 19), Sch. 9, Part I.

- (a) in the definition of "the relevant enactments", after paragraph (aa) insert –
 - "(ab) section 10 of the Child Support Act 1995;" and
- (b) in the definition of "the relevant Northern Ireland enactments", after paragraph (aa) insert–
 - "(ab) any enactment corresponding to section 10 of the Child Support Act 1995 having effect with respect to Northern Ireland; and".

¹ Paras. 17 & 19(2) repealed (1.6.99) by Sch. 8 to S.S. Act 1998 (c. 14).

