

Child Support, Pensions and Social Security Act 2000

CHAPTER 19.

Note: The material reproduced below is limited to what is relevant to child support. This includes sections 1–29, 84–87, Schedules 1–3 and parts of 8. Other parts of the act are reproduced in the Law Relating to Social Security.

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An Act to amend the law relating to child support; to amend the law relating to occupational and personal pensions and war pensions; to amend the law relating to social security benefits and social security administration; to amend the law relating to national insurance contributions; to amend Part III of the Family Law Reform Act 1969 and Part III of the Family Law Act 1986; and for connected purposes.

[28th July 2000]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

PART I CHILD SUPPORT

Maintenance calculations and interim and default maintenance decisions

1.—(1) In the Child Support Act 1991 (“the 1991 Act”), for section 11 (maintenance assessments) there shall be substituted-

Maintenance calculations and terminology.

“Maintenance calculations.

11. —(1) An application for a maintenance calculation made to the Secretary of State shall be dealt with by him in accordance with the provision made by or under this Act.

(2) The Secretary of State shall (unless he decides not to make a maintenance calculation in response to the application, or makes a decision under section 12) determine the application by making a decision under this section about whether any child support maintenance is payable and, if so, how much.

(3) Where—

- (a) a parent is treated under section 6(3) as having applied for a maintenance calculation; but
- (b) the Secretary of State becomes aware before determining the application that the parent has ceased to fall within section 6(1),

he shall, subject to subsection (4), cease to treat that parent as having applied for a maintenance calculation.

(4) If it appears to the Secretary of State that subsection

(10) of section 4 would not have prevented the parent with care concerned from making an application for a maintenance calculation under that section he shall—

- (a) notify her of the effect of this subsection; and
- (b) if, before the end of the period of one month beginning with the day on which notice was sent to her, she asks him to do so, treat her as having applied not under section 6 but under section 4.

(5) Where subsection (3) applies but subsection (4) does not, the Secretary of State shall notify—

- (a) the parent with care concerned; and
- (b) the non-resident parent (or alleged non-resident parent), where it appears to him that that person is aware that the parent with care has been treated as having applied for a maintenance calculation.

(6) The amount of child support maintenance to be fixed by a

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maintenance calculation shall be determined in accordance with Part I of Schedule 1 unless an application for a variation has been made and agreed.

(7) If the Secretary of State has agreed to a variation, the amount of child support maintenance to be fixed shall be determined on the basis he determines under section 28F(4).

(8) Part II of Schedule 1 makes further provision with respect to maintenance calculations.”

(2) In the 1991 Act—

(a) for “maintenance assessment”, wherever it occurs, there shall be substituted “maintenance calculation”; and

(b) for “assessment” (or any variant of that term), wherever it occurs, there shall be substituted “calculation” (or the corresponding variant) preceded, where appropriate, by “a” instead of “an”.

(3) For Part I of Schedule 1 to the 1991 Act, there shall be substituted the Part I set out in Schedule 1 to this Act.

Applications under section 4 of the Child Support Act 1991.

2.—(1) *In section 4 of the 1991 Act (child support maintenance), subsection (10) shall be amended as follows.*

(2) *In paragraph (a), after “maintenance order” there shall be inserted “made before a prescribed date”.*

(3) *After paragraph (a), there shall be inserted—*

“(aa) a maintenance order made on or after the date prescribed for the purposes of paragraph (a) is in force in respect of them, but has been so for less than the period of one year beginning with the date on which it was made; or”.

Applications by those claiming or receiving benefit.

3.—For section 6 of the 1991 Act (applications by those receiving benefit) there shall be substituted—

“Applications by those claiming or receiving benefit.

6.—(1) This section applies where income support, an income-based jobseeker’s allowance or any other benefit of a prescribed kind is claimed by or in respect of, or paid to or in respect of, the parent of a qualifying child who is also a person with care of the child.

(2) In this section, that person is referred to as “the parent”.

(3) Secretary of State may—

(a) treat the parent as having applied for a maintenance calculation with respect to the qualifying child and all other children of the non-resident parent in relation to whom the parent is also a person with care; and

(b) take action under this Act to recover from the non-resident parent, on the parent’s behalf, the child support maintenance so determined.

(4) Before doing what is mentioned in subsection (3), the Secretary of State must notify the parent in writing of the effect of subsections (3) and (5) and section 46.

(5) The Secretary of State may not act under subsection (3) if the parent asks him not to (a request which need not be in writing).

(6) Subsection (1) has effect regardless of whether any of the benefits mentioned there is payable with respect to any qualifying child.

(7) Unless she has made a request under subsection (5), the parent shall, so far as she reasonably can, comply with such regulations as may be made by the Secretary of State with a view to the Secretary of State’s being provided with the information which is required to enable—

- (a) the non-resident parent to be identified or traced;
 - (b) the amount of child support maintenance payable by him to be calculated; and
 - (c) that amount to be recovered from him.
- (8) The obligation to provide information which is imposed by subsection (7)–
- (a) does not apply in such circumstances as may be prescribed; and
 - (b) may, in such circumstances as may be prescribed, be waived by the Secretary of State.
- (9) If the parent ceases to fall within subsection (1), she may ask the Secretary of State to cease acting under this section, but until then he may continue to do so.
- (10) The Secretary of State must comply with any request under subsection (9) (but subject to any regulations made under subsection (11)).
- (11) The Secretary of State may by regulations make such incidental or transitional provision as he thinks appropriate with respect to cases in which he is asked under subsection (9) to cease to act under this section.

(12) The fact that a maintenance calculation is in force with respect to a person with care does not prevent the making of a new maintenance calculation with respect to her as a result of the Secretary of State’s acting under subsection (3).”

“Default and interim maintenance decisions.

4. For section 12 of the 1991 Act (interim maintenance assessments) there shall be substituted–

- 12.—(1) Where the Secretary of State—
- (a) is required to make a maintenance calculation; or
 - (b) is proposing to make a decision under section 16 or 17,

Default and interim maintenance decisions.

and it appears to him that he does not have sufficient information to enable him to do so, he may make a default maintenance decision.

(2) Where an application for a variation has been made under section 28A(1) in connection with an application for a maintenance calculation (or in connection with such an application which is treated as having been made), the Secretary of State may make an interim maintenance decision.

(3) The amount of child support maintenance fixed by an interim maintenance decision shall be determined in accordance with Part I of Schedule 1.

(4) The Secretary of State may by regulations make provision as to default and interim maintenance decisions.

- (5) The regulations may, in particular, make provision as to–
- (a) the procedure to be followed in making a default or an interim maintenance decision; and
 - (b) a default rate of child support maintenance to apply where a default maintenance decision is made.”

Applications for a variation

5.—(1) The 1991 Act shall be amended as follows

Departure from usual rules for calculating maintenance.

(2) For sections 28A to 28C (which deal respectively with applications for departure directions, their preliminary consideration, and the imposition of a regular payments condition) there shall be substituted–

“Variations

Application for variation of usual rules for calculating maintenance.

28A.—(1) Where an application for a maintenance calculation is made under section 4 or 7, or treated as made under section 6, the person with care or the non-resident parent or (in the case of an application under section 7) either of them or the child concerned may apply to the Secretary of

State for the rules by which the calculation is made to be varied in accordance with this Act.

(2) Such an application is referred to in this Act as an “application for a variation”.

(3) An application for a variation may be made at any time before the Secretary of State has reached a decision (under section 11 or 12(1)) on the application for a maintenance calculation (or the application treated as having been made under section 6).

(4) A person who applies for a variation—

(a) need not make the application in writing unless the Secretary of State directs in any case that he must; and

(b) must say upon what grounds the application is made.

(5) In other respects an application for a variation is to be made in such manner as may be prescribed.

(6) Schedule 4A has effect in relation to applications for a variation.

Preliminary consideration of applications

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

(2) Where he does so he may, on completing the preliminary consideration, reject the application (and proceed to make his decision on the application for a maintenance calculation without any variation) if it appears to him—

(a) that there are no grounds on which he could agree to a variation;

(b) that he has insufficient information to make a decision on the application for the maintenance calculation under section 11 (apart from any information needed in relation to the application for a variation), and therefore that his decision would be made under section 12(1); or

(c) that other prescribed circumstances apply.

Imposition of regular payments condition.

28C.—(1) Where—

(a) an application for a variation is made by the non-resident parent; and

(b) the Secretary of State makes an interim maintenance decision,

the Secretary of State may also, if he has completed his preliminary consideration (under section 28B) of the application for a variation and has not rejected it under that section, impose on the non-resident parent one of the conditions mentioned in subsection (2) (a “regular payments condition”).

(2) The conditions are that—

(a) the non-resident parent must make the payments of child support maintenance specified in the interim maintenance decision;

(b) the non-resident parent must make such lesser 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 of the imposition of the condition and of the effect of failure to comply with it to—

(a) the non-resident parent;

(b) all the persons with care concerned; and

(c) if the application for the maintenance calculation was made under section 7, the child who made the application.

(4) A regular payments condition shall cease to have effect—

(a) when the Secretary of State has made a decision on the application for a maintenance calculation under section 11 (whether he agrees to a variation or not);

(b) on the withdrawal of the application for a variation.

(5) Where a non-resident parent has failed to comply with a regular payments condition, the Secretary of State may in

prescribed circumstances refuse to consider the application for a variation, and instead reach his decision under section 11 as if no such application had been made.

(6) The question whether a non-resident parent has failed to comply with a regular payments condition is to be determined by the Secretary of State.

(7) Where the Secretary of State determines that a non-resident parent has failed to comply with a regular payments condition he shall give written notice of his determination to—

- (a) that parent;
- (b) all the persons with care concerned; and
- (c) if the application for the maintenance calculation was made under section 7, the child who made the application.”

(3) In section 28D (determination of applications)—

(a) for subsection (1) there shall be substituted—

“(1) Where an application for a variation has not failed, the Secretary of State shall, in accordance with the relevant provisions of, or made under, this Act—

- (a) either agree or not to a variation, and make a decision under section 11 or 12(1); or
- (b) refer the application to an appeal tribunal for the tribunal to determine what variation, if any, is to be made.”;
- (b) in each of subsections (2) and (3), for “an application for a departure direction” there shall be substituted “an application for a variation”; and
- (c) in subsection (2), in paragraph (a) “lapsed or” shall be omitted, at the end of paragraph (b) “or” shall be inserted, and after that paragraph there shall be inserted—

“(c) the Secretary of State has refused to consider it under section 28C(5).”

(4) In section 28E (matters to be taken into account)—

- (a) in subsections (1), (3) and (4), for “any application for a departure direction” (wherever appearing) there shall be substituted “whether to agree to a variation”; and
- (b) in subsection (4)(a), for “a departure direction were made” there shall be substituted “the Secretary of State agreed to a variation”.

(5) For section 28F (departure directions) there shall be substituted—

“Agreement
to a variation.

28F.—(1) The Secretary of State may agree to a variation if—

- (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 agree to a variation.

(2) In considering whether it would be just and equitable in any case to agree to a variation, the Secretary of State—

- (a) must have regard, in particular, to the welfare of any child likely to be affected if he did agree to a variation; and
- (b) must, or as the case may be must not, take any prescribed factors into account, or must take them into account (or not) in prescribed circumstances.

(3) The Secretary of State shall not agree to a variation (and shall proceed to make his decision on the application for a maintenance calculation without any variation) if he is satisfied that—

- (a) he has insufficient information to make a decision on the application for the maintenance calculation under section 11, and therefore that his decision would be made under section 12(1); or
- (b) other prescribed circumstances apply.

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(4) Where the Secretary of State agrees to a variation, he shall—

- (a) determine the basis on which the amount of child support maintenance is to be calculated in response to the application for a maintenance calculation (including an application treated as having been made); and
- (b) make a decision under section 11 on that basis.

(5) If the Secretary of State has made an interim maintenance decision, it is to be treated as having been replaced by his decision under section 11, and except in prescribed circumstances any appeal connected with it (under section 20) shall lapse.

(6) In determining whether or not to agree to a variation, the Secretary of State shall comply with regulations made under Part II of Schedule 4B.”

Applications for a variation: further provisions.

6.—(1) For Schedule 4A to the 1991 Act there shall be substituted the Schedule 4A set out in Part I of Schedule 2.

(2) For Schedule 4B to that Act there shall be substituted the Schedule 4B set out in Part II of Schedule 2.

Variations: revision and supersession.

7. For section 28G of the 1991 Act (effect and duration of departure directions) there shall be substituted—

“Variations: revision and supersession. **28G.—**(1) An application for a variation may also be made when a maintenance calculation is in force.

(2) The Secretary of State may by regulations provide for—

- (a) sections 16, 17 and 20; and
- (b) sections 28A to 28F and Schedules 4A and 4B,

to apply with prescribed modifications in relation to such applications.

(3) The Secretary of State may by regulations provide that, in prescribed cases (or except in prescribed cases), a decision under section 17 made otherwise than pursuant to an application for a variation may be made on the basis of a variation agreed to for the purposes of an earlier decision without a new application for a variation having to be made.”

Revision and supersession of decisions

Revision of decisions.

8.—(1) Section 16 of the 1991 Act (revision of decisions) shall be amended as follows.

(2) In subsection (1), for “of the Secretary of State under section 11, 12 or 17” there shall be substituted “to which subsection (1A) applies”.

(3) After subsection (1), there shall be inserted—

“(1A) This subsection applies to—

- (a) a decision of the Secretary of State under section 11, 12 or 17;
- (b) a reduced benefit decision under section 46;
- (c) a decision of an appeal tribunal on a referral under section 28D(1)(b).

(1B) Where the Secretary of State revises a decision under section 12(1)—

- (a) he may (if appropriate) do so as if he were revising a decision under section 11; and
- (b) if he does that, his decision as revised is to be treated as one under section 11 instead of section 12(1) (and, in particular, is to be so treated for the purposes of an appeal against it under section 20).”

9.—(1) Section 17 of the 1991 Act (decisions superseding earlier decisions) shall be amended as follows.

Decisions superseding earlier decisions.

(2) In subsection (1), for paragraph (c) there shall be substituted—

- “(c) any reduced benefit decision under section 46;
- (d) any decision of an appeal tribunal on a referral under section 28D(1)(b);
- (e) any decision of a Child Support Commissioner on an appeal from such a decision as is mentioned in paragraph (b) or (d).”

(3) For subsection (4) there shall be substituted—

“(4) Subject to subsection (5) and section 28ZC, a decision under this section shall take effect as from the beginning of the maintenance period in which it is made or, where applicable, the beginning of the maintenance period in which the application was made.

(4A) In subsection (4), a “maintenance period” is (except where a different meaning is prescribed for prescribed cases) a period of seven days, the first one beginning on the effective date of the first decision made by the Secretary of State under section 11 or (if earlier) his first default or interim maintenance decision (under section 12) in relation to the non-resident parent in question, and each subsequent one beginning on the day after the last day of the previous one.”

Appeals

10. For section 20 of the 1991 Act (appeals to appeal tribunals) there shall be substituted—

Appeals to appeal tribunals.

“Appeals to appeal tribunals.

20.—(1) A qualifying person has a right of appeal to an appeal tribunal against—

- (a) a decision of the Secretary of State under section 11, 12 or 17 (whether as originally made or as revised under section 16);
- (b) a decision of the Secretary of State not to make a maintenance calculation under section 11 or not to supersede a decision under section 17;
- (c) a reduced benefit decision under section 46;
- (d) the imposition (by virtue of section 41A) of a requirement to make penalty payments, or their amount;
- (e) the imposition (by virtue of section 47) of a requirement to pay fees.

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

- (a) in relation to paragraphs (a) and (b)—
 - (i) the person with care, or non-resident parent, with respect to whom the Secretary of State made the decision, or
 - (ii) in a case relating to a maintenance calculation which was applied for under section 7, either of those persons or the child concerned;
- (b) in relation to paragraph (c), the person in respect of whom the benefits are payable;
- (c) in relation to paragraph (d), the parent who has been required to make penalty payments; and
- (d) in relation to paragraph (e), the person required to pay fees.

(3) A person with a right of appeal under this section shall be given such notice as may be prescribed of—

- (a) that right; and
- (b) the relevant decision, or the imposition of the requirement.

(4) Regulations may make—

- (a) provision as to the manner in which, and the time within which, appeals are to be brought; and

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(b) such provision with respect to proceedings before appeal tribunals as the Secretary of State considers appropriate.

(5) The regulations may in particular make any provision of a kind mentioned in Schedule 5 to the Social Security Act 1998.

(6) No appeal lies by virtue of subsection (1)(c) unless the amount of the person's benefit is reduced in accordance with the reduced benefit decision; and the time within which such an appeal may be brought runs from the date of notification of the reduction.

(7) In deciding an appeal under this section, an appeal tribunal—

(a) need not consider any issue that is not raised by the appeal; and

(b) shall not take into account any circumstances not obtaining at the time when the Secretary of State made the decision or imposed the requirement.

(8) If an appeal under this section is allowed, the appeal tribunal may—

(a) itself make such decision as it considers appropriate; or

(b) remit the case to the Secretary of State, together with such directions (if any) as it considers appropriate.”

Redetermination of appeals.

11. After section 23 of the 1991 Act there shall be inserted—

“Redetermination of appeals.

23A.—(1) This section applies where an application is made to a person under section 24(6)(a) for leave to appeal from a decision of an appeal tribunal.

(2) If the person who constituted, or was the chairman of, the appeal tribunal considers that the decision was erroneous in law, he may set aside the decision and refer the case either for redetermination by the tribunal or for determination by a differently constituted tribunal.

(3) If each of the principal parties to the case expresses the view that the decision was erroneous in point of law, the person shall set aside the decision and refer the case for determination by a differently constituted tribunal.

(4) The “principal parties” are—

(a) the Secretary of State; and

(b) those who are qualifying persons for the purposes of section 20(2) in relation to the decision in question.”

Information

Information required by Secretary of State.

12. In section 14 of the 1991 Act (information required by the Secretary of State), in subsection (1), after “such an application” there shall be inserted “(or application treated as made), or needed for the making of any decision or in connection with the imposition of any condition or requirement under this Act,”.

Information - offences.

13. After section 14 of the 1991 Act there shall be inserted—

“Information - offences. **14A.**—(1) This section applies to—

(a) persons who are required to comply with regulations under section 4(4) or 7(5); and

(b) persons specified in regulations under section 14(1)(a).

(2) Such a person is guilty of an offence if, pursuant to a request for information under or by virtue of those regulations—

(a) he makes a statement or representation which he knows to be false; or

(b) he provides, or knowingly causes or knowingly allows to be provided, a document or other information which he knows to be false in a material particular.

(3) Such a person is guilty of an offence if, following such a request, he fails to comply with it.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that he had a reasonable excuse for failing to comply.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

14.—(1) Section 15 of the 1991 Act (powers of inspectors) shall be amended as follows. Inspectors.

(2) For subsections (1) to (4) there shall be substituted—

“(1) The Secretary of State may appoint, on such terms as he thinks fit, persons to act as inspectors under this section.

(2) The function of inspectors is to acquire information which the Secretary of State needs for any of the purposes of this Act.

(3) Every inspector is to be given a certificate of his appointment.

(4) An inspector has power, at any reasonable time and either alone or accompanied by such other persons as he thinks fit, to enter any premises which—

- (a) are liable to inspection under this section; and
- (b) are premises to which it is reasonable for him to require entry in order that he may exercise his functions under this section,

and may there make such examination and inquiry as he considers appropriate.

(4A) Premises liable to inspection under this section are those which are not used wholly as a dwelling house and which the inspector has reasonable grounds for suspecting are—

- (a) premises at which a non-resident parent is or has been employed;
- (b) premises at which a non-resident parent carries out, or has carried out, a trade, profession, vocation or business;
- (c) premises at which there is information held by a person (“A”) whom the inspector has reasonable grounds for suspecting has information about a non-resident parent acquired in the course of A’s own trade, profession, vocation or business.”

(3) In subsection (6), for the words from “any person who” to the end of paragraph (d) there shall be substituted “any such person”.

(4) After subsection (10) there shall be inserted—

“(11) In this section, “premises” includes—

- (a) moveable structures and vehicles, vessels, aircraft and hovercraft;
- (b) installations that are offshore installations for the purposes of the Mineral Workings (Offshore Installations) Act 1971; and
- (c) places of all other descriptions whether or not occupied as land or otherwise,

and references in this section to the occupier of premises are to be construed, in relation to premises that are not occupied as land, as references to any person for the time being present at the place in question.”

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Parentage

Presumption of parentage in child support cases.

15.—(1) In section 26(2) of the 1991 Act (cases in which the Secretary of State may assume a person to be the parent of a child for the purpose of making a maintenance calculation under that Act), before Case A there shall be inserted—

“Case A1 Where—

- (a) the child is habitually resident in England and Wales;
- (b) the Secretary of State is satisfied that the alleged parent was married to the child’s mother at some time in the period beginning with the conception and ending with the birth of the child; and
- (c) the child has not been adopted.

Case A2 Where—

- (a) the child is habitually resident in England and Wales;
- (b) the alleged parent has been registered as father of the child under section 10 or 10A of the Births and Deaths Registration Act 1953, or in any register kept under section 13 (register of births and still-births) or section 44 (Register of Corrections Etc) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, or under Article 14 or 18(1)(b)(ii) of the Births and Deaths Registration (Northern Ireland) Order 1976; and
- (c) the child has not subsequently been adopted.

Case B1 Where the result of a scientific test (within the meaning of section 27A) taken by the alleged parent would be relevant to determining the child’s parentage, and the alleged parent—

- (a) refuses to take such a test; or
- (b) has submitted to such a test, and it shows that there is no reasonable doubt that the alleged parent is a parent of the child.”

(2) In that provision, after Case B there shall be inserted—

Where the Secretary of State is satisfied that the alleged parent is a parent of the child in question by virtue of section 27 or 28 of that Act (meaning of “mother” and of “father” respectively).”

Disqualification from driving

Disqualification from driving.

16.—(1) After section 39 of the 1991 Act there shall be inserted—

39A.—(1) Where the Secretary of State has sought—

- (a) in England and Wales to levy an amount by distress under this Act; or
- (b) to recover an amount by virtue of section 36 or 38,

“Commitment to prison and disqualification from driving.

and that amount, or any portion of it, remains unpaid he may apply to the court under this section.

(2) An application under this section is for whichever the court considers appropriate in all the circumstances of—

- (a) the issue of a warrant committing the liable person to prison; or
- (b) an order for him to be disqualified from holding or obtaining a driving licence.

(3) On any such application the court shall (in the presence of the liable person) inquire as to—

- (a) whether he needs a driving licence to earn his living;
- (b) his means; and

(c) whether there has been wilful refusal or culpable neglect on his part.

(4) The Secretary of State may make representations to the court as to whether he thinks it more appropriate to commit the liable person to prison or to disqualify him from holding or obtaining a driving licence; and the liable person may reply to those representations.

(5) In this section and section 40B, “driving licence” means a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988.

(6) In this section “the court” means—

- (a) in England and Wales, a magistrates’ court;
- (b) in Scotland, the sheriff.”

(2) In section 40 of the 1991 Act (commitment to prison), subsections (1) and (2) shall be omitted.

(3) Before section 41 of the 1991 Act there shall be inserted—

“Disqualification from driving: further provision.

40B.—(1) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the liable person, it may—

- (a) order him to be disqualified, for such period specified in the order but not exceeding two years as it thinks fit, from holding or obtaining a driving licence (a “disqualification order”); or
- (b) make a disqualification order but suspend its operation until such time and on such conditions (if any) as it thinks just.

(2) The court may not take action under both section 40 and this section.

(3) A disqualification order must state the amount in respect of which it is made, which is to be the aggregate of—

- (a) the amount mentioned in section 35(1), or so much of it as remains outstanding; and
- (b) an amount (determined in accordance with regulations made by the Secretary of State) in respect of the costs of the application under section 39A.

(4) A court which makes a disqualification order shall require the person to whom it relates to produce any driving licence held by him, and its counterpart (within the meaning of section 108(1) of the Road Traffic Act 1988).

(5) On an application by the Secretary of State or the liable person, the court—

- (a) may make an order substituting a shorter period of disqualification, or make an order revoking the disqualification order, if part of the amount referred to in subsection (3) (the “amount due”) is paid to any person authorised to receive it; and
- (b) must make an order revoking the disqualification order if all of the amount due is so paid.

(6) The Secretary of State may make representations to the court as to the amount which should be paid before it would be appropriate to make an order revoking the disqualification order under subsection (5)(a), and the person liable may reply to those representations.

(7) The Secretary of State may make a further application under section 39A if the amount due has not been paid in full when the period of disqualification specified in the disqualification order expires.

(8) Where a court—

- (a) makes a disqualification order;
- (b) makes an order under subsection (5); or
- (c) allows an appeal against a disqualification order,

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it shall send notice of that fact to the Secretary of State; and the notice shall contain such particulars and be sent in such manner and to such address as the Secretary of State may determine.

(9) Where a court makes a disqualification order, it shall also send the driving licence and its counterpart, on their being produced to the court, to the Secretary of State at such address as he may determine.

(10) Section 80 of the Magistrates' Courts Act 1980 (application of money found on defaulter) shall apply in relation to a disqualification order under this section in relation to a liable person as it applies in relation to the enforcement of a sum mentioned in subsection (1) of that section.

(11) The Secretary of State may by regulations make provision in relation to disqualification orders corresponding to the provision he may make under section 40(11).

(12) In the application to Scotland of this section—

(a) in subsection (2) for “section 40” substitute “section 40A”;

(b) in subsection (3) for paragraph (a) substitute—
“(a) the appropriate amount under section 38;”;

(c) subsection (10) is omitted; and

(d) for subsection (11) substitute—

“(11) The power of the Court of Session by Act of Sederunt to regulate the procedure and practice in civil proceedings in the sheriff court shall include power to make, in relation to disqualification orders, provision corresponding to that which may be made by virtue of section 40A(8).”

(4) In section 164(5) of the Road Traffic Act 1988 (power of constables to require production of driving licence etc.), after “Road Traffic Offenders Act 1988” there shall be inserted “, section 40B of the Child Support Act 1991”.

(5) In section 27(3) of the Road Traffic Offenders Act 1988 (offence of failing to produce a licence), for the word “then,” there shall be substituted “, or if the holder of the licence does not produce it and its counterpart as required by section 40B of the Child Support Act 1991, then,”.

Civil imprisonment:
Scotland.

17.—(1) In section 40 of the 1991 Act (commitment to prison), for subsections (12) to (14) there shall be substituted—

“(12) This section does not apply to Scotland.”

(2) After section 40 there shall be inserted—

“Commitment to
prison: Scotland.

40A.—(1) If, but only if, the sheriff is satisfied that there has been wilful refusal or culpable neglect on the part of the liable person he may—

(a) issue a warrant for his committal to prison; or

(b) fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as he thinks just.

(2) A warrant under this section—

(a) shall be made in respect of an amount equal to the aggregate of—

(i) the appropriate amount under section 38; and

(ii) an amount (determined in accordance with regulations made by the Secretary of State) in respect of the expenses of commitment; and

(b) shall state that amount.

(3) No warrant may be issued under this section against a person who is under the age of 18.

(4) A warrant issued under this section shall order the liable person—

(a) to be imprisoned for a specified period; but

(b) to be released (unless he is in custody for some other reason) on payment of the amount stated in the warrant.

(5) The maximum period of imprisonment which may be imposed by virtue of subsection (4) is six weeks.

(6) The Secretary of State may by regulations make provision for the period of imprisonment specified in any warrant issued under this section to be reduced where there is part payment of the amount in respect of which the warrant was issued.

(7) A warrant issued under this section may be directed to such person as the sheriff thinks fit.

(8) The power of the Court of Session by Act of Sederunt to regulate the procedure and practice in civil proceedings in the sheriff court shall include power to make provision—

- (a) as to the form of any warrant issued under this section;
- (b) allowing an application under this section to be renewed where no warrant is issued or term of imprisonment is fixed;
- (c) that a statement in writing to the effect that wages of any amount have been paid to the liable person during any period, purporting to be signed by or on behalf of his employer, shall be sufficient evidence of the facts stated;
- (d) that, for the purposes of enabling an inquiry to be made as to the liable person's conduct and means, the sheriff may issue a citation to him to appear before the sheriff and (if he does not obey) may issue a warrant for his arrest;
- (e) that for the purpose of enabling such an inquiry, the sheriff may issue a warrant for the liable person's arrest without issuing a citation;
- (f) as to the execution of a warrant of arrest."

Financial penalties.

18.—(1) In section 41 of the 1991 Act (arrears of child support maintenance), subsections (3) to (5) (which provide for the payment of interest on arrears) shall cease to have effect. Financial penalties

(2) For section 41A of the 1991 Act (arrears: alternative to interest payments) there shall be substituted—

"Penalty payments. **41A.—**(1) The Secretary of State may by regulations make provision for the payment to him by non-resident parents who are in arrears with payments of child support maintenance of penalty payments determined in accordance with the regulations.

(2) The amount of a penalty payment in respect of any week may not exceed 25 percent of the amount of child support maintenance payable for that week, but otherwise is to be determined by the Secretary of State.

(3) The liability of a non-resident parent to make a penalty payment does not affect his liability to pay the arrears of child support maintenance concerned.

(4) Regulations under subsection (1) may, in particular, make provision—

- (a) as to the time at which a penalty payment is to be payable;
- (b) for the Secretary of State to waive a penalty payment, or part of it.

(5) The provisions of this Act with respect to—

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

apply equally (with any necessary modifications) to penalty payments payable by virtue of regulations under this section.

(6) The Secretary of State shall pay penalty payments received by him into the Consolidated Fund.

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Reduced benefit decisions.

19. For section 46 of the 1991 Act (failure to comply with obligations imposed by section 6) there shall be substituted—

“Reduced benefit decisions.

46.—(1) This section applies where any person (“the parent”)—

- (a) has made a request under section 6(5);
- (b) fails to comply with any regulation made under section 6(7); or
- (c) having been treated as having applied for a maintenance calculation under section 6, refuses to take a scientific test (within the meaning of section 27A).

(2) The Secretary of State may serve written notice on the parent requiring her, before the end of a specified period—

- (a) in a subsection (1)(a) case, to give him her reasons for making the request;
- (b) in a subsection (1)(b) case, to give him her reasons for failing to do so; or
- (c) in a subsection (1)(c) case, to give him her reasons for her refusal.

(3) When the specified period has expired, the Secretary of State shall consider whether, having regard to any reasons given by the parent, there are reasonable grounds for believing that—

- (a) in a subsection (1)(a) case, if the Secretary of State were to do what is mentioned in section 6(3);
- (b) in a subsection (1)(b) case, if she were to be required to comply; or
- (c) in a subsection (1)(c) case, if she took the scientific test,

there would be a risk of her, or of any children living with her, suffering harm or undue distress as a result of his taking such action, or her complying or taking the test.

(4) If the Secretary of State considers that there are such reasonable grounds, he shall—

- (a) take no further action under this section in relation to the request, the failure or the refusal in question; and
- (b) notify the parent, in writing, accordingly.

(5) If the Secretary of State considers that there are no such reasonable grounds, he may, except in prescribed circumstances, make a reduced benefit decision with respect to the parent.

(6) In a subsection (1)(a) case, the Secretary of State may from time to time serve written notice on the parent requiring her, before the end of a specified period—

- (a) to state whether her request under section 6(5) still stands; and
- (b) if so, to give him her reasons for maintaining her request,

and subsections (3) to (5) have effect in relation to such a notice and any response to it as they have effect in relation to a notice under subsection (2)(a) and any response to it.

(7) Where the Secretary of State makes a reduced benefit decision he must send a copy of it to the parent.

(8) A reduced benefit decision is to take effect on such date as may be specified in the decision.

(9) Reasons given in response to a notice under subsection (2) or (6) need not be given in writing unless the Secretary of State directs in any case that they must.

(10) In this section—

- (a) “comply” means to comply with the requirement or with the regulation in question; and “complied” and “complying” are to be construed accordingly;
- (b) “reduced benefit decision” means a decision that the amount payable by way of any relevant benefit to, or in respect of, the parent concerned be reduced by such amount, and for such period, as may be prescribed;

- (c) “relevant benefit” means income support or an income-based jobseeker’s allowance or any other benefit of a kind prescribed for the purposes of section 6; and
- (d) “specified”, in relation to a notice served under this section, means specified in the notice; and the period to be specified is to be determined in accordance with regulations made by the Secretary of State.”

Miscellaneous

20.—(1) After section 28I of the 1991 Act there shall be inserted—

Voluntary payments

“Voluntary payments.

28J.—(1) This section applies where—

- (a) a person has applied for a maintenance calculation under section 4(1) or 7(1), or is treated as having applied for one by virtue of section 6;
 - (b) the Secretary of State has neither made a decision under section 11 or 12 on the application, nor decided not to make a maintenance calculation; and
 - (c) the non-resident parent makes a voluntary payment.
- (2) A “voluntary payment” is a payment—
- (a) on account of child support maintenance which the non-resident parent expects to become liable to pay following the determination of the application (whether or not the amount of the payment is based on any estimate of his potential liability which the Secretary of State has agreed to give); and
 - (b) made before the maintenance calculation has been notified to the non-resident parent or (as the case may be) before the Secretary of State has notified the non-resident parent that he has decided not to make a maintenance calculation.
- (3) In such circumstances and to such extent as may be prescribed—
- (a) the voluntary payment may be set off against arrears of child support maintenance which accrued by virtue of the maintenance calculation taking effect on a date earlier than that on which it was notified to the non-resident parent;
 - (b) the amount payable under a maintenance calculation may be adjusted to take account of the voluntary payment.
- (4) A voluntary payment shall be made to the Secretary of State unless he agrees, on such conditions as he may specify, that it may be made to the person with care, or to or through another person.
- (5) The Secretary of State may by regulations make provision as to voluntary payments, and the regulations may in particular—
- (a) prescribe what payments or descriptions of payment are, or are not, to count as “voluntary payments”;
 - (b) prescribe the extent to which and circumstances in which a payment, or a payment of a prescribed description, counts.”
- (2) Section 41B of the 1991 Act (repayment of overpaid child support maintenance) shall be amended as follows.
- (3) After subsection (1) there shall be inserted—
- “(1A) This section also applies where the non-resident parent has made a voluntary payment and it appears to the Secretary of State—
- (a) that he is not liable to pay child support maintenance; or
 - (b) that he is liable, but some or all of the payment amounts to an overpayment,

and, in a case falling within paragraph (b), it also appears to him that subsection (1)(a) or (b) applies.”

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- (4) For subsection (7) there shall be substituted—
“(7) For the purposes of this section—
(a) a payment made by a person under a maintenance calculation which was not validly made; and
(b) a voluntary payment made in the circumstances set out in subsection (1A)(a),

shall be treated as an overpayment of child support maintenance made by a non-resident parent.”

Recovery of child support maintenance by deduction from benefit.

21. For section 43 of the 1991 Act (contribution to maintenance by deduction from benefit) there shall be substituted—

“Recovery of child support maintenance by deduction from benefit.

43.—(1) This section applies where—

- (a) a non-resident parent is liable to pay a flat rate of child support maintenance (or would be so liable but for a variation having been agreed to), and that rate applies (or would have applied) because he falls within paragraph 4(1)(b) or (c) or 4(2) of Schedule 1; and
(b) such conditions as may be prescribed for the purposes of this section are satisfied.

(2) The power of the Secretary of State to make regulations under section 5 of the Social Security Administration Act 1992 by virtue of subsection (1)(p) (deductions from benefits) may be exercised in relation to cases to which this section applies with a view to securing that payments in respect of child support maintenance are made or that arrears of child support maintenance are recovered.

(3) For the purposes of this section, the benefits to which section 5 of the 1992 Act applies are to be taken as including war disablement pensions and war widows' pensions (within the meaning of section 150 of the Social Security Contributions and Benefits Act 1992 (interpretation)).”

Jurisdiction

22.—(1) Section 44 of the 1991 Act (jurisdiction) shall be amended as follows.

(2) In subsection (1), after “United Kingdom” there shall be inserted “, except in the case of a non-resident parent who falls within subsection (2A)”.

(3) After subsection (2) there shall be inserted—

“(2A) A non-resident parent falls within this subsection if he is not habitually resident in the United Kingdom, but is—

- (a) employed in the civil service of the Crown, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;
(b) a member of the naval, military or air forces of the Crown, including any person employed by an association established for the purposes of Part XI of the Reserve Forces Act 1996;
(c) employed by a company of a prescribed description registered under the Companies Act 1985 in England and Wales or in Scotland, or under the Companies (Northern Ireland) Order 1986; or
(d) employed by a body of a prescribed description.”

(4) Subsection (3) shall cease to have effect.

Abolition of the child maintenance bonus.

23. Section 10 of the Child Support Act 1995 (which provides for the child maintenance bonus) shall cease to have effect.

Periodical reviews.

24. Article 3(4) of the Social Security Act 1998 (Commencement No. 2) Order 1998 (which saved section 16 of the 1991 Act for certain purposes) is revoked; and accordingly that section shall cease to have effect for all purposes.

Regulations

25. In section 52 of the 1991 Act (regulations and orders), for subsection (2) there shall be substituted—

“(2) No statutory instrument containing (whether alone or with other provisions) regulations made under—

- (a) section 6(1), 12(4) (so far as the regulations make provision for the default rate of child support maintenance mentioned in section 12(5)(b)), 28C(2)(b), 28F(2)(b), 30(5A), 41(2), 41A, 41B(6), 43(1), 44(2A)(d), 46 or 47;
- (b) paragraph 3(2) or 10A(1) of Part I of Schedule 1; or
- (c) Schedule 4B,

or an order made under section 45(1) or (6), shall be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

(2A) No statutory instrument containing (whether alone or with other provisions) the first set of regulations made under paragraph 10(1) of Part I of Schedule 1 as substituted by section 1(3) of the Child Support, Pensions and Social Security Act 2000 shall be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament.”

26. Schedule 3 (amendment of enactments) shall have effect.

Amendments

27.—(1) This section applies where—

- (a) a maintenance assessment is made before a prescribed date following an application for one under section 4, 6 or 7 of the 1991 Act; or
- (b) a fresh maintenance assessment has been made following either a periodic review under section 16 of the 1991 Act or a review under section 17 of that Act (as they had effect before their substitution by section 40 or 41 respectively of the Social Security Act 1998),

Temporary compensation payment scheme.

and the effective date of the assessment is earlier than the date on which the assessment was made, with the result that arrears of child support maintenance have become due under the assessment.

(2) The Secretary of State may in regulations provide that this section has effect as if it were modified so as—

- (a) to apply to cases of arrears of child support maintenance having become due additional to those referred to in subsection (1);
- (b) not to apply to any such case as is referred to in subsection (1).

(3) If this section applies, the Secretary of State may in prescribed circumstances agree with the absent parent, on terms specified in the agreement, that—

- (a) the absent parent will not be required to pay the whole of the arrears, but only some lesser amount; and
- (b) the Secretary of State will not, while the agreement is complied with, take action to recover any of the arrears.

(4) The terms which may be specified are to be prescribed in or determined in accordance with regulations made by the Secretary of State.

[See S.I. 2002/1854 at page 9121 for modifications to sub section (5) where the years 2002 and 2003 are substituted for 2005 and 2006.]

(5) An agreement may be entered into only if it is made before 1st April [¹2005]and expires before 1st April [¹2006].

(6) If the absent parent enters into such an agreement, the Secretary of State may, while the absent parent complies with it, refrain from taking action under the 1991 Act to recover the arrears.

¹ Words substituted (17.7.02) in s. 27(5) by S.I. 2002/1854, reg. 2(a) & (b).

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- (7) Upon the expiry of the agreement, if the absent parent has complied with it—
- (a) he ceases to be liable to pay the arrears; and
 - (b) the Secretary of State may make payments of such amounts and at such times as he may determine to the person with care.

(8) If the absent parent fails to comply with the agreement he becomes liable to pay the full amount of any outstanding arrears (as well as any other amount payable in accordance with the assessment).

(9) The Secretary of State may by regulations provide for this section to have effect as if there were substituted for the dates in subsection (5) such later dates as are prescribed.

(10) In this section, “prescribed” means prescribed in regulations made by the Secretary of State.

(11) Regulations under this section shall be made by statutory instrument.

(12) No statutory instrument containing regulations under subsection (9) is to be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament; but otherwise a statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Pilot schemes.

28.—(1) [...¹]

Interpretation,
transitional provisions,
savings, etc.

29.—(1) In this Part, “the 1991 Act” means the Child Support Act 1991.

(2) The Secretary of State may in regulations make such transitional and transitory provisions, and such incidental, supplementary, savings and consequential provisions, as he considers necessary or expedient in connection with the coming into force of this Part or any provision in it.

¹ S. 28 repealed (29.7.13) by the Child Maintenance and Other Payments Act 2008 (c. 6), Sch. 8.

(3) The regulations may, in particular—

- (a) provide for the amount of child support maintenance payable by or to any person to be at a transitional rate (or more than one such rate successively) resulting from the phasing-in by way of prescribed steps of any increase or decrease in the amount payable following the coming into force of this Part or any provision in it;
- (b) provide for a departure direction or any finding in relation to a previous determination of child support maintenance to be taken into account in a decision as to the amount of child support maintenance payable by or to any person.

(4) Section 175(3) and (5) of the Social Security Contributions and Benefits Act 1992 (supplemental power in relation to regulations) applies to regulations made under this section as it applies to regulations made under that Act.

(5) The power to make regulations under this section is exercisable by statutory instrument.

(6) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

PART V

MISCELLANEOUS SUPPLEMENTAL

Supplemental

84.—*There shall be paid out of money provided by Parliament—*

Expenses.

- (a) *any expenditure incurred by the Secretary of State for or in connection with the carrying out of his functions under this Act; and*
- (b) *any increase attributable to this Act in the sums which are payable out of money so provided under any other Act.*

85.—*(1) The enactments mentioned in Schedule 9 (which include some spent provisions) are hereby repealed to the extent specified in the third column of that Schedule.*

Repeals.

(2) The repeals specified in that Schedule have effect subject to the commencement provisions and savings contained, or referred to, in the notes set out in that Schedule.

86.—*(1) This section applies to the following provisions of this Act—*

Commencement and transitional provisions.

- (a) *Part I (other than section 24);*
- (b) *Part II (other than sections 38 and 39 and paragraphs 4 to 6, 8(1), (3) and (4) and 13 of Schedule 5);*
- (c) *Part III;*
- (d) *sections 82 and 83 and Schedule 8;*
- (e) *Parts I to VII and IX of Schedule 9.*

(2) The provisions of this Act to which this section applies shall come into force on such day as may be appointed by order made by statutory instrument; and different days may be appointed under this section for different purposes.

(3) The power to make an order under subsection (2) shall be exercisable—

- (a) *except in a case falling within paragraph (b), by the Secretary of State; and*

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(b) *in the case of an order bringing into force any of the provisions of sections 82 and 83, Schedule 8 or Part IX of Schedule 9, by the Lord Chancellor.*

(4) *In the case of Part I (other than section 24) and of sections 62 to 66, the power under subsection (2) to appoint different days for different purposes includes power to appoint different days for different areas.*

(5) *The Secretary of State may by regulations make such transitional provision as he considers necessary or expedient in connection with the bringing into force of any of the following provisions of this Act—*

(a) *sections 43 to 46 and section (1) of Part III of Schedule 9;*

(b) *sections 68 to 70 and Schedule 7 and Part VII of Schedule 9.*

(6) *Regulations under subsection (5) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.*

(7) *Section 174(2) to (4) of the Pensions Act 1995 (supplementary provision in relation to powers to make subordinate legislation under that Act) shall apply in relation to the power to make regulations under subsection (5) as it applies to any power to make regulations under that Act.*

(8) *In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978.*

87.—(1) *This Act may be cited as the Child Support, Pensions and Social Security Act 2000.*

(2) *The following provisions of this Act extend to Northern Ireland—*

(a) *so much of section 46 as amends section 21(3) of the Pensions Act 1995;*

(b) *sections 57 to 61 (except section 60(5));*

(c) *section 73;*

(d) *sections 78 to 81;*

(e) *in Schedule 3, paragraphs 8 and 9, and in paragraph 11, sub-paragraph (2) (and sub-paragraph (1) so far as it relates to that sub-paragraph);*

(f) *paragraph 6 of Schedule 5; and*

(g) *this Part, except—*

(i) *sections 82 and 83 and Schedule 8; and*

(ii) *so much of this Part as gives effect to any repeal other than the repeals mentioned in subsection (3).*

(3) *The repeals mentioned in subsection (2)(g) (which extend to Northern Ireland) are—*

(a) *the repeals, in Part I of Schedule 9, that relate to the Tax Credits Act 1999;*

(b) *the repeals, in sections (1), (6) and (11) of Part III of that Schedule, that relate to—*

(i) *section 21(3) of the Pensions Act 1995;*

(ii) *paragraph 49(a)(ii) of Schedule 3 to the Pensions (Northern Ireland) Order 1995; and*

(iii) *section 52(5) of the Pension Schemes (Northern Ireland) Act 1993;*

(c) *the repeals in Part IV of that Schedule (except so far as relating to the Courts and Legal Services Act 1990); and*

(d) *the repeals in section (2) of Part VIII of that Schedule.*

(4) *Subject to that, this Act does not extend to Northern Ireland.*

SCHEDULES

SCHEDULE 1

SUBSTITUTED PART I OF SCHEDULE I TO THE CHILD SUPPORT
ACT 1991

“PART I

CACULATION OF WEEKLY AMOUNT OF CHILD SUPPORT
MAINTENANCE

General rule

1.—(1) The weekly rate of child support maintenance is the basic rate unless a reduced rate, a flat rate or the nil rate applies.

(2) Unless the nil rate applies, the amount payable weekly to a person with care is—

- (a) the applicable rate, if paragraph 6 does not apply; or
- (b) if paragraph 6 does apply, that rate as apportioned between the persons with care in accordance with paragraph 6,

as adjusted, in either case, by applying the rules about shared care in paragraph 7 or 8.

Basic rate

2.—(1) The basic rate is the following percentage of the non-resident parent’s net weekly income—

- (a) 15 percent; where he has one qualifying child;
- (b) 20 percent; where he has two qualifying children;
- (c) 25 percent; where he has three or more qualifying children.

(2) If the non-resident parent also has one or more relevant other children, the appropriate percentage referred to in sub-paragraph (1) is to be applied instead to his net weekly income less—

- (a) 15 percent; where he has one relevant other child;
- (b) 20 percent; where he has two relevant other children;
- (c) 25 percent; where he has three or more relevant other children.

3.—(1) A reduced rate is payable if—

- (a) neither a flat rate nor the nil rate applies; and
- (b) the non-resident parent’s net weekly income is less than £200 but more than £100.

(2) The reduced rate payable shall be prescribed in, or determined in accordance with, regulations.

(3) The regulations may not prescribe, or result in, a rate of less than £5.

Flat rate

4.—(1) Except in a case falling within sub-paragraph (2), a flat rate of £5 is payable if the nil rate does not apply and—

- (a) the non-resident parent’s net weekly income is £100 or less; or
- (b) he receives any benefit, pension or allowance prescribed for the purposes of this paragraph of this sub-paragraph; or
- (c) he or his partner (if any) receives any benefit prescribed for the purposes of this paragraph of this sub-paragraph.

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- (2) A flat rate of a prescribed amount is payable if the nil rate does not apply and—
- (a) the non-resident parent has a partner who is also a non-resident parent;
 - (b) the partner is a person with respect to whom a maintenance calculation is in force; and
 - (c) the non-resident parent or his partner receives any benefit prescribed under sub-paragraph (1)(c).

(3) The benefits, pensions and allowances which may be prescribed for the purposes of sub-paragraph (1)(b) include ones paid to the non-resident parent under the law of a place outside the United Kingdom.

Nil rate

5. The rate payable is nil if the non-resident parent—
- (a) is of a prescribed description; or
 - (b) has a net weekly income of below £5.

Apportionment

6.—(1) If the non-resident parent has more than one qualifying child and in relation to them there is more than one person with care, the amount of child support maintenance payable is (subject to paragraph 7 or 8) to be determined by apportioning the rate between the persons with care.

(2) The rate of maintenance liability is to be divided by the number of qualifying children, and shared among the persons with care according to the number of qualifying children in relation to whom each is a person with care.

Shared care- basic and reduced rate

7.—(1) This paragraph applies only if the rate of child support maintenance payable is the basic rate or a reduced rate.

(2) If the care of a qualifying child is shared between the non-resident parent and the person with care, so that the non-resident parent from time to time has care of the child overnight, the amount of child support maintenance which he would otherwise have been liable to pay the person with care, as calculated in accordance with the preceding paragraphs of this Part of this Schedule, is to be decreased in accordance with this paragraph.

(3) First, there is to be a decrease according to the number of such nights which the Secretary of State determines there to have been, or expects there to be, or both during a prescribed twelve-month period.

- (4) The amount of that decrease for one child is set out in the following Table—

Number of nights	Fraction to subtract
52 to 103	One-seventh
104 to 155	Two-sevenths
156 to 174	Three-sevenths
175 or more	One-half

(5) If the person with care is caring for more than one qualifying child of the non-resident parent, the applicable decrease is the sum of the appropriate fractions in the Table divided by the number of such qualifying children.

(6) If the applicable fraction is one-half in relation to any qualifying child in the care of the person with care, the total amount payable to the person with care is then to be further decreased by £7 for each such child.

(7) If the application of the preceding provisions of this paragraph would decrease the weekly amount of child support maintenance (or the aggregate of all such amounts) payable by the non-resident parent to the person with care (or all of them) to less than £5, he is instead liable to pay child support maintenance at the rate of £5 a week, apportioned (if appropriate) in accordance with paragraph 6.

Shared care- flat rate

8.—(1) This paragraph applies only if—

- (a) the rate of child support maintenance payable is a flat rate; and
- (b) that rate applies because the non-resident parent falls within paragraph 4(1)(b) or (c) or 4(2).

(2) If the care of a qualifying child is shared as mentioned in paragraph 7(2) for at least 52 nights during a prescribed 12-month period, the amount of child support maintenance payable by the non-resident parent to the person with care of that child is nil.

Regulations about shared care

9. The Secretary of State may by regulations provide—

- (a) for which nights are to count for the purposes of shared care under paragraphs 7 and 8, or for how it is to be determined whether a night counts;
- (b) for what counts, or does not count, as “care” for those purposes; and
- (c) for paragraph 7(3) or 8(2) to have effect, in prescribed circumstances, as if the period mentioned there were other than 12 months, and in such circumstances for the Table in paragraph 7(4) (or that Table as modified pursuant to regulations made under paragraph 10A(2)(a)), or the period mentioned in paragraph 8(2), to have effect with prescribed adjustments.

Net weekly income

10.—(1) For the purposes of this Schedule, net weekly income is to be determined in such manner as is provided for in regulations.

(2) The regulations may, in particular, provide for the Secretary of State to estimate any income or make an assumption as to any fact where, in his view, the information at his disposal is unreliable, insufficient, or relates to a typical period in the life of the non-resident parent.

(3) Any amount of net weekly income (calculated as above) over £2,000 is to be ignored for the purposes of this Schedule.

Regulations about rates, figures, etc.

10A.—(1) The Secretary of State may by regulations provide that—

- (a) paragraph 2 is to have effect as if different percentages were substituted for those set out there;
- (b) paragraph 3(1) or (3), 4(1), 5, 7(7) or 10(3) is to have effect as if different amounts were substituted for those set out there.

(2) The Secretary of State may by regulations provide that—

- (a) the Table in paragraph 7(4) is to have effect as if different numbers of nights were set out in the first column and different fractions were substituted for those set out in the second column;

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- (b) paragraph 7(6) is to have effect as if a different amount were substituted for that mentioned there, or as if the amount were an aggregate amount and not an amount for each qualifying child, or both.

Regulations about income

10B. The Secretary of State may by regulations provide that, in such circumstances and to such extent as may be prescribed—

- (a) where the Secretary of State is satisfied that a person has intentionally deprived himself of a source of income with a view to reducing the amount of his net weekly income, his net weekly income shall be taken to include income from that source of an amount estimated by the Secretary of State;
- (b) a person is to be treated as possessing income which he does not possess;
- (c) income which a person does possess is to be disregarded.

References to various terms

10C.—(1) References in this Part of this Schedule to “qualifying children” are to those qualifying children with respect to whom the maintenance calculation falls to be made.

- (2) References in this Part of this Schedule to “relevant other children” are to—
 - (a) children other than qualifying children in respect of whom the non-resident parent or his partner receives child benefit under Part IX of the Social Security Contributions and Benefits Act 1992; and
 - (b) such other description of children as may be prescribed.
- (3) In this Part of this Schedule, a person “receives” a benefit, pension, or allowance for any week if it is paid or due to be paid to him in respect of that week.
- (4) In this Part of this Schedule, a person’s “partner” is—
 - (a) if they are a couple, the other member of that couple;
 - (b) if the person is a husband or wife by virtue of a marriage entered into 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.
- (5) In sub-paragraph (4)(a), “couple” means a man and a woman who are—
 - (a) married to each other and are members of the same household; or
 - (b) not married to each other but are living together as husband and wife.”.

SCHEDULE 2

SUBSTITUTED SCHEDULES 4A AND 4B TO THE 1991 ACT

PART I

SUBSTITUTED SCHEDULE 4A

“SCHEDULE 4A

APPLICATION FOR A VARIATION

Interpretation

1. In this Schedule, “regulations” means regulations made by the Secretary of State.

Applications for a variation

2. Regulations may make provision—

- (a) as to the procedure to be followed in considering an application for a variation;
- (b) as to the procedure to be followed when an application for a variation is referred to an appeal tribunal under section 28D(1)(b).

Completion of preliminary consideration

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

Information

4. If any information which is required (by regulations under this Act) to be furnished to the Secretary of State in connection with an application for a variation has not been furnished within such period as may be prescribed, the Secretary of State may nevertheless proceed to consider the application.

Joint consideration of applications for a variation and appeals

5.—(1) Regulations may provide for two or more applications for a variation with respect to the same application for a maintenance calculation to be considered together.

(2) In sub-paragraph (1), the reference to an application for a maintenance calculation includes an application treated as having been made under section 6.

(3) An appeal tribunal considering an application for a variation under section 28D(1)(b) may consider it at the same time as an appeal under section 20 in connection with an interim maintenance decision, if it considers that to be appropriate.”

PART II
SUBSTITUTED SCHEDULE 4B

“SCHEDULE 4B

APPLICATION FOR A VARIATION: THE CASES AND CONTROLS

PART I

THE CASES

General

1.—(1) The cases in which a variation may be agreed 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 variation is being considered.

Special expenses

2.—(1) A variation applied for by a non-resident parent may be agreed with respect to his special expenses.

(2) In this paragraph “special expenses” means the whole, or any amount above a prescribed amount, 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 by a non-resident parent in maintaining contact with the child, or with any of the children, with respect to whom the application for a maintenance calculation has been made (or treated as made);
- (b) costs attributable to a long-term illness or disability of a relevant other child (within the meaning of paragraph 10C(2) of Schedule 1);
- (c) debts of a prescribed description incurred, before the non-resident parent became a non-resident parent in relation to a child with respect to whom the maintenance calculation has been applied for (or treated as having been applied for)—
 - (i) for the joint benefit of both parents;
 - (ii) for the benefit of any such child; or
 - (iii) for the benefit of any other child falling within a prescribed category;
- (d) boarding school fees for a child in relation to whom the application for a maintenance calculation has been made (or treated as made);
- (e) the cost to the non-resident parent of making payments in relation to a mortgage on the home he and the person with care shared, if he no longer has an interest in it, and she and a child in relation to whom the application for a maintenance calculation has been made (or treated as made) still live there.

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

- (a) “disability” and “illness” have such meaning as may be prescribed; and
- (b) 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)(d), the Secretary of State may prescribe—

- (a) the meaning of “boarding school fees”; and

- (b) components of such fees (whether or not itemised as such) which are, or are not, to be taken into account,

and may provide for estimating any such component.

Property or capital transfers

3.—(1) A variation may be agreed in the circumstances set out in sub-paragraph (2) if before 5th April 1993—

- (a) a court order of a prescribed kind was in force with respect to the non-resident parent and either the person with care with respect to the application for the maintenance calculation or the child, or any of the children, with respect to whom that application was made; or
- (b) an agreement of a prescribed kind between the non-resident parent and any of those persons was in force.

(2) The circumstances are that in consequence of one or more transfers of property of a prescribed kind and exceeding (singly or in aggregate) a prescribed minimum value—

- (a) the amount payable by the non-resident parent by way of maintenance was less than would have been the case had that transfer or those transfers not been made; or
- (b) no amount was payable by the non-resident parent by way of maintenance.

(3) For the purposes of sub-paragraph (2), “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 application for a maintenance calculation has been made.

Additional cases

4.—(1) The Secretary of State may by regulations prescribe other cases in which a variation may be agreed.

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

- (a) the non-resident parent has assets which exceed a prescribed value;
- (b) a person’s lifestyle is inconsistent with his income for the purposes of a calculation made under Part I of Schedule 1;
- (c) a person has income which is not taken into account in such a calculation;
- (d) a person has unreasonably reduced the income which is taken into account in such a calculation.

PART II

REGULATORY CONTROLS

5.—(1) The Secretary of State may by regulations make provision with respect to the variations from the usual rules for calculating maintenance which may be allowed when a variation is agreed.

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

(3) Regulations under this paragraph may, in particular, make provision for a variation to result in—

- (a) a person’s being treated as having more, or less, income than would be taken into account without the variation in a calculation under Part I of Schedule 1;

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(b) a person's being treated as liable to pay a higher, or a lower, amount of child support maintenance than would result without the variation from a calculation under that Part.

(4) 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 variation, not to exceed such amount as may be prescribed or as may be determined in accordance with the regulations.

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

6. The Secretary of State may by regulations provide for the application, in connection with child support maintenance payable following a variation, of paragraph 7(2) to (7) of Schedule 1 (subject to any prescribed modifications)."

SCHEDULE 3

AMENDMENT OF ENACTMENTS RELATING TO CHILD SUPPORT

1 – 10. legislation not reproduced in this volume

The Child Support Act 1991 (c. 48)

11.—(1) The 1991 Act shall be amended as follows.

(2) For “absent parent” (or any variant of that expression), wherever it occurs, there shall be substituted “non-resident parent” (or the corresponding variant) preceded, where appropriate, by “a” instead of “an”.

(3) In section 4 (child support maintenance)—

- (a) in subsection (4)(a), after “be” there shall be inserted “identified or”; and
- (b) in subsection (9), after “an application” there shall be inserted “treated as made”.

(4) In section 7 (right of a child in Scotland to apply for assessment)—

- (a) in subsection (1), for paragraph (b) there shall be substituted—
“(b) no parent has been treated under section 6(3) as having applied for a maintenance calculation with respect to the child.”; and
- (b) in subsection (10)—
 - (i) after “qualifying child if” there shall be inserted “(a)”; and
 - (ii) after “maintenance order” there shall be inserted “made before a prescribed date”; and
 - (iii) at the end there shall be inserted “or

a maintenance order made on or after the date prescribed for the purposes of paragraph (a) is in force in respect of them, but has been so for less than the period of one year beginning with the date on which it was made.”.

(5) In section 8 (role of the courts with respect to maintenance for children)—

- (a) in subsection (1), after “duly made” there shall be inserted “(or treated as made)”; and
- (b) in subsection (3), at the beginning insert “Except as provided in subsection (3A),”; and
- (c) for subsection (3A) there shall be substituted—

“(3A) Unless a maintenance calculation has been made with respect to the child concerned, subsection (3) does not prevent a court from varying a maintenance order in relation to that child and the non-resident parent concerned—

- (a) if the maintenance order was made on or after the date prescribed for the purposes of section 4(10)(a) or 7(10)(a); or
- (b) where the order was made before then, in any case in which section 4(10) or 7(10) prevents the making of an application for a maintenance calculation with respect to or by that child.”; and
- (d) in subsection (6), for paragraph (b) there shall be substituted—
“(b) the non-resident parent’s net weekly income exceeds the figure referred to in paragraph 10(3) of Schedule 1 (as it has effect from time to time pursuant to regulations made under paragraph 10A(1)(b)); and”.

(6) In section 9 (agreements about maintenance), in subsection (6), for paragraphs (a) and (b) there shall be substituted—

- “(a) no parent has been treated under section 6(3) as having applied for a maintenance calculation with respect to the child; or

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(b) a parent has been so treated but no maintenance calculation has been made.”.

(7) In section 14 (information required by Secretary of State), in subsection (1), after “any application” there shall be inserted “made or treated as made”.

(8) In section 26 (disputes about parentage), in subsection (1), after “made” there shall be inserted “or treated as made”.

(9) In section 27A (recovery of fees for scientific tests)–

(a) in subsection (1)(a), after “made” there shall be inserted “or treated as made”; and

(b) in subsection (1)(b), after “made” there shall be inserted “or, as the case may be, treated as made”.

(10) In section 28 (power of the Secretary of State to bring or defend actions of declarator), in subsection (1)(a)–

(a) after “made”, where it first occurs, there shall be inserted “or treated as made”; and

(b) for “or assessment was made” there shall be substituted “was made or treated as made or the calculation was made”.

(11) In section 28ZA (decisions involving issues that arise on appeal in other cases), in subsection (1)–

(a) in paragraph (a), for the words “in relation to a maintenance assessment” there shall be substituted “or with respect to a reduced benefit decision under section 46”; and

(b) for paragraph (b) there shall be substituted–

“(b) an appeal is pending against a decision given in relation to a different matter by a Child Support Commissioner or a court.”

(12) In section 28ZB (appeals involving issues that arise on appeal in other cases)–

(a) in subsection (1), for paragraph (a) there shall be substituted–

“(a) an appeal (“appeal A”) in relation to a decision or the imposition of a requirement falling within section 20(1) is made to an appeal tribunal, or from an appeal tribunal to a Child Support Commissioner;” and

(b) in subsection (4), for the words “or assessment” there shall be substituted “or the imposition of the requirement”.

(13) In section 28ZC (restrictions on liability in certain cases of error)–

(a) in subsection (1)(b)(i), at the end there shall be inserted “or one treated as having been so made, or under section 46 as to the reduction of benefit”;

(b) in subsection (1)(b)(ii), for the words from “a decision” to the end there shall be substituted “any decision (made after the commencement date) referred to in section 16(1A)”;

(c) in subsection (1)(b)(iii), for the words from “a decision” to the end there shall be substituted “any decision (made after the commencement date) referred to in section 17(1)”;

(d) in subsection (3), after “liability” there shall be inserted “or the reduction of a person’s benefit”; and

(e) in subsection (6), in the definition of “adjudicating authority”, at the end there shall be inserted “or, in the case of a decision made on a referral under section 28D(1)(b), an appeal tribunal”.

(14) Sections 28H (departure directions: decisions and appeals) and 28I (transitional provisions relating to departure directions) shall cease to have effect.

(15) In section 30 (collection and enforcement of certain forms of maintenance), for subsection (2) there shall be substituted—

“(2) The Secretary of State may, except in prescribed cases, arrange for the collection of any periodical payments, or secured periodical payments, of a prescribed kind which are payable for the benefit of a child even though he is not arranging for the collection of child support maintenance with respect to that child.”

(16) In section 32 (regulations about deduction from earnings orders), in subsection (2), after paragraph (b) there shall be inserted—

“(bb) for the amount or amounts which are to be deducted from the liable person’s earnings not to exceed a prescribed proportion of his earnings (as determined by the employer);”.

(17) In section 33 (liability orders), after subsection (5) there shall be inserted— (6) Where regulations have been made under section 29(3)(a)—

- (a) the liable person fails to make a payment (for the purposes of subsection (1)(a) of this section); and
- (b) a payment is not paid (for the purposes of subsection (3)),

unless the payment is made to, or through, the person specified in or by virtue of those regulations for the case of the liable person in question.”

(18) In section 47 (fees), after subsection (3) there shall be inserted—

“(4) 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 (with any necessary modifications) to fees payable by virtue of regulations made under this section.”

(19) In section 51 (supplementary power to make regulations), in subsection (2)—

- (a) For paragraph (a)(ii) and (iii) there shall be substituted—

“(ii) the making of decisions under section 11;

(iii) the making of decisions under section 16 or 17;”;

- (b) for paragraph (b) there shall be substituted—

“(b) extending the categories of case to which section 16, 17 or 20 applies;”.

(20) In section 54 (interpretation)—

- (a) in the definition of “application for a departure direction”, for “departure direction” there shall be substituted “variation”, and after “28A” there shall be inserted “or 28G”;

- (b) after the definition of “deduction from earnings order” there shall be inserted— “default maintenance decision” has the meaning given in section 12;”;

- (c) in the definition of “interim maintenance assessment”, for the word “assessment” there shall be substituted the word “decision”;

- (d) for the definition of “maintenance assessment” there shall be substituted— “maintenance calculation” means a calculation of maintenance made under this Act and, except in prescribed circumstances, includes a default maintenance decision and an interim maintenance decision;”;

- (e) the definitions of “assessable income”, “current assessment”, “departure direction” and “maintenance requirement” shall be omitted; and

- (f) after the definition of “qualifying child” there shall be inserted—

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““voluntary payment” has the meaning given in section 28J.”.

(21) In section 58 (short title, commencement and extent)—

- (a) in subsection (9), after “35” there shall be inserted “, 40”; and
- (b) in subsection (10), after “28” there shall be inserted “, 40A”.

(22) In Schedule 1 (maintenance assessments)—

(a) paragraph 13 (which relates to assessments under which the amount payable is nil) shall cease to have effect;

(b) in paragraph 14 (which provides for consolidated applications and assessments), the existing text shall be sub-paragraph (1) of that paragraph, and after that sub-paragraph there shall be inserted—

“(2) In sub-paragraph (1), the references (however expressed) to applications for maintenance calculations include references to applications treated as made.”; and

(c) in paragraph 16 (which is about the termination of assessments)—

- (i) in sub-paragraph (1), paragraphs (d) and (e) shall cease to have effect,
- (ii) sub-paragraphs (2) to (9) shall cease to have effect; and
- (iii) in sub-paragraph (10), the words “, or should be cancelled” shall cease to have effect.

12. legislation not reproduced in this volume

The Child Support Act 1995 (c. 34)

13.—(1) The Child Support Act 1995 shall be amended as follows.

(2) In section 18 (deferral of right to apply for maintenance assessment), subsection (5) (which enables the Secretary of State by order to repeal any of the provisions of section 18) shall cease to have effect.

(3) Section 24 (which provides for the making of regulations under which compensation could be paid for a reduction in child support maintenance attributable to changes in child support legislation, and which is now spent) shall cease to have effect.

Prisoners’ Earnings Act 1996 (c. 33)

14. —In section 1 of the Prisoners’ Earnings Act 1996 (power to make deductions and impose levies), in subsection (4), in paragraph (d) of the definition of “net weekly earnings”, for “maintenance assessment” there shall be substituted “maintenance calculations”.

The Social Security Act 1998 (c. 14)

15.—(1) The Social Security Act 1998 shall be amended as follows.

(2) In Schedule 2 (decisions against which no appeal lies), for paragraph 8 and the heading preceding it there shall be substituted—

“Reduction in accordance with reduced benefit decision

8. A decision to reduce the amount of a person’s benefit in accordance with a reduced benefit decision (within the meaning of section 46 of the Child Support Act).”.

SCHEDULE 8

DECLARATIONS OF STATUS: CONSEQUENTIAL AMENDMENTS

1 – 10. legislation not reproduced in this volume

The Child Support Act 1991 (c. 48)

11. *The Child Support Act 1991 shall be amended as follows.*

12. *In section 26(2) (cases where Secretary of State may make maintenance calculation despite denial of parentage), in Case C (where there has been a declaration under section 56 of the Family Law Act 1986), after “section” there shall be inserted “55A or”:*

13. *For section 27 (declarations of parentage) there shall be substituted—
“Applications for declaration of parentage under Family Law Act 1986.*

27.—(1) *This section applies where—*

- (a) *an application for a maintenance calculation has been made (or is treated as having been made), or a maintenance calculation is in force, with respect to a person (“the alleged parent”) who denies that he is a parent of a child with respect to whom the application or calculation was made or treated as made;*
- (b) *the Secretary of State is not satisfied that the case falls within one of those set out in section 26(2); and*
- (c) *the Secretary of State or the person with care makes an application for a declaration under section 55A of the Family Law Act 1986 as to whether or not the alleged parent is one of the child’s parents.*

(2) *Where this section applies—*

- (a) *if it is the person with care who makes the application, she shall be treated as having a sufficient personal interest for the purposes of subsection (3) of that section; and*
- (b) *if it is the Secretary of State who makes the application, that subsection shall not apply.*

(3) *This section does not apply to Scotland.”*

14. *In section 27A(2)(b) (Secretary of State to recover fees for scientific tests if a court has made a declaration of parentage under section 27), for “section 27” there shall be substituted “section 55A of the Family Law Act 1986”:*

15. legislation not reproduced in this volume

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SCHEDULE 9

REPEALS AND REVOCATIONS

PART I

CHILD SUPPORT

.....various repeals