

---

STATUTORY INSTRUMENTS

---

**1996 No. 2907**

**The Child Support Departure Direction and  
Consequential Amendments Regulations 1996**

**PART II**

**PROCEDURE ON AN APPLICATION FOR A DEPARTURE  
DIRECTION AND PRELIMINARY CONSIDERATION**

**Application for a departure direction**

4.—(1) Every application shall be made in writing on a form (a “departure direction application form”) provided by the Secretary of State, or in such other manner, being in writing, as the Secretary of State may accept as sufficient in the circumstances of any particular case.

(2) Departure direction application forms shall be supplied without charge by such persons as the Secretary of State authorises for that purpose.

(3) Every application shall be given or sent to the Secretary of State or to such persons as he may authorise for that purpose.

(4) Where an application is defective at the date when it is received, or has been made in writing but not on the departure direction application form provided by the Secretary of State, the Secretary of State may refer that application to the person who made it or, as the case may be, supply him with a departure direction application form.

(5) In a case to which paragraph (4) applies, if the departure direction application form is received by the Secretary of State properly completed—

- (a) within the specified period, he shall treat the application as if it had been duly made in the first instance;
- (b) outside the specified period, unless he is satisfied that the delay has been unavoidable, he shall treat the application as a fresh application made on the date upon which the properly completed departure direction application form was received.

(6) An application which is made on a departure direction application form is, for the purposes of paragraph (5), properly completed if completed in accordance with the instructions on the form and defective if not so completed.

(7) In a case to which paragraph (4) applies, the specified period for the purposes of paragraph (5) shall be the period of 14 days commencing with the date upon which, in accordance with paragraph (4), the application is referred to the person who made the defective application or a departure direction application form is given or sent to the person who made a written application but not on a departure direction application form.

(8) For the purposes of paragraph (7), the provisions of regulation 2 shall apply to an application referred to in paragraph (4).

(9) A person applying for a departure direction may authorise a representative, whether or not legally qualified, to receive notices and other documents on his behalf, and to act on his behalf in relation to an application.

(10) Where a person has, under paragraph (9), authorised a representative who is not legally qualified, he shall confirm that authorisation in writing, or as otherwise required, to the Secretary of State, unless such authorisation has already been approved by the Secretary of State under regulation 53 of the Maintenance Assessment Procedure Regulations (authorisation of representative).

(11) This paragraph applies where a departure direction has effect, and a later application by the applicant in response to whose application that direction was given is made on grounds which are—

- (a) additional to the grounds in respect of which the earlier direction was given;
- (b) not additional to the grounds in respect of which the earlier direction was given but there has been a change of circumstances in respect of one or more but not all of those grounds.

(12) Where—

- (a) paragraph (11)(a) applies, the later application may be treated as an application in respect of which the earlier direction was given;
- (b) paragraph (11)(b) applies, the later application may be treated as an application in respect of which the earlier direction was given in relation to which there have been no changes of circumstances.

(13) Where a departure direction has effect and the Secretary of State is satisfied that a ground in respect of which the application for that direction was made no longer applies, he shall treat the applicant for that direction as having applied for a later direction in respect of the grounds which remain applicable.

(14) Regulation 8(1) shall apply to cases to which paragraph (11) applies but only in relation to the additional grounds or, as the case may be, those in relation to which there has been stated to be a change of circumstances and shall not apply to cases to which paragraph (13) applies.

### **Amendment or withdrawal of application**

5. A person who has made an application may amend or withdraw his application by notice in writing to the Secretary of State at any time prior to a determination being made in relation to that application.

### **Provision of information**

6.—(1) Where an application has been made, the Secretary of State may request further information or evidence from the applicant to enable that application to be determined.

(2) Any information or evidence requested by the Secretary of State in accordance with paragraph (1) shall be given within 14 days of the request for such information or evidence having been given or sent.

(3) Where the time limit specified in paragraph (2) is not complied with, the Secretary of State may determine that application, in the absence of that information or evidence.

### **Rejection of application on completion of a preliminary consideration**

7.—(1) The Secretary of State may, on completing a preliminary consideration of an application, reject that application on the ground set out in section 28B(2)(b) of the Act if it appears to him that the difference between the current amount and the revised amount is less than £1.00.

(2) Where an application has been rejected in accordance with paragraph (1), the Secretary of State shall, as soon as reasonably practicable, give notice of that rejection to the relevant persons.

### **Procedure in relation to the determination of an application**

**8.—**(1) Subject to paragraph (4), where an application has not failed within the meaning of section 28D of the Act, the Secretary of State shall—

- (a) give notice of that application to the relevant persons other than the applicant;
- (b) send to them details of the grounds on which the application has been made and any relevant information or evidence the applicant has given, except details, information or evidence falling within paragraph (2);
- (c) invite representations in writing from the relevant persons other than the applicant on any matter relating to that application; and
- (d) set out the provisions of paragraphs (2), (5) and (6) in relation to such representations.

(2) The details, information or evidence referred to in paragraphs (1)(b), (6) and (7) are—

- (a) medical evidence or medical advice that has not been disclosed to the applicant or a relevant person and which the Secretary of State considers would be harmful to the health of the applicant or that relevant person if disclosed to him;
- (b) the address of a relevant person, or of any child in relation to whom the assessment was made in respect of which the application has been made, or any other information which could reasonably be expected to lead to that person or that child being located, where that person has not agreed to disclosure of that address or that information, it is not known to the other party to that assessment and—
  - (i) the Secretary of State is satisfied that that address or that information is not necessary for the determination of that application; or
  - (ii) the Secretary of State is satisfied that that address or that information is necessary for the determination of that application and that there would be a risk of harm or undue distress to that person or that child if disclosure were made.

(3) Subject to paragraph (4), the notice referred to in paragraph (1)(a) shall be given as soon as reasonably practicable after—

- (a) completion of the preliminary consideration of that application under section 28B of the Act; or
- (b) where the Secretary of State has requested information or evidence under regulation 6, receipt of that information or evidence or the expiry of the period of 14 days referred to in regulation 6(2).

(4) The provisions of paragraphs (1) and (3) shall not apply where information or evidence requested in accordance with regulation 6 has not been received by the Secretary of State within the period specified in paragraph (2) of that regulation and the Secretary of State is satisfied on the information or evidence available to him that a departure direction should not be given.

(5) Where the Secretary of State does not receive written representations from a relevant person within 14 days of the date on which representations were invited under paragraph (1), (6) or (7) he may, in the absence of written representations from that person, proceed to determine the application.

(6) The Secretary of State may, if he considers it reasonable to do so, send to the applicant a copy of any written representations made following an invitation under paragraph (1)(c), whether or not they were received within the time specified in paragraph (5), except to the extent that the representations contain information or evidence which falls within paragraph (2), and invite him to submit representations in writing on any matters contained in those representations.

(7) Where any information or evidence requested by the Secretary of State under regulation 6 is received after notification has been given under paragraph (1), the Secretary of State may, if he considers it reasonable to do so and except where that information or evidence falls within paragraph (2), send a copy of such information or evidence to the relevant persons and invite them to submit representations in writing on that information or evidence.

(8) In deciding whether to give a departure direction, the Secretary of State shall take into account—

- (a) any information or evidence given by the applicant for that direction; and
- (b) any written representations made by the applicant or by a relevant person and received by him at the date upon which he determines the application, and may in addition take into account—
  - (i) any relevant information or evidence received by him or by a child support officer, in relation to any application for a maintenance assessment or for a review of a maintenance assessment made in respect of the absent parent, person with care and any child in respect of whom the current assessment was made;
  - (ii) any relevant information or evidence acquired by him in connection with any of his functions under any of the benefit Acts or the Jobseekers Act 1995(1).

(9) Where the Secretary of State has determined an application he shall, as soon as is reasonably practicable—

- (a) notify the relevant persons of that determination;
- (b) where a departure direction has been given, refer the case to a child support officer.

(10) A notification under paragraph (9)(a) shall set out—

- (a) the reasons for that determination;
- (b) where a departure direction has been given, the basis on which the amount of child support maintenance is to be fixed by any assessment made in consequence of that direction.

(11) The Secretary of State may reconsider any application which has been determined by him or by a child support appeal tribunal under section 28D(1)(b) of the Act where, after the determination of that application, he receives further information or evidence which he is satisfied is relevant to that application.

### **Departure directions and persons in receipt of income support or income-based jobseeker's allowance**

9.—(1) The costs referred to in regulations 13 to 18 shall not constitute special expenses where they are incurred by a person to or in respect of whom income support or income-based jobseeker's allowance is paid.

(2) A transfer shall not constitute a transfer of property for the purposes of paragraph 3(1)(b) or 4(1)(b) of Schedule 4B to the Act, or of regulations 21 and 22, where the application is made by an absent parent to or in respect of whom income support or income-based jobseeker's allowance is paid at the time that application is made.

(3) A case shall not constitute a case under regulations 23 to 29 where the application is made by an absent parent to or in respect of whom income support or income-based jobseeker's allowance is paid.

### **Departure directions and interim maintenance assessments**

**10.**—(1) For the purposes of section 28A(1) of the Act, the term “maintenance assessment” does not include—

- (a) a Category A or Category C interim maintenance assessment;
- (b) a Category B interim maintenance assessment where the application is made under paragraph 2 of Schedule 4B to the Act in respect of expenses prescribed by regulation 18 and that Category B interim maintenance assessment was made because the applicant fell within paragraph (3)(b) of regulation 8 of the Maintenance Assessment Procedure Regulations<sup>(2)</sup>;
- (c) a Category D interim maintenance assessment, where the application is made under paragraph 3 or 4 of Schedule 4B to the Act or by an absent parent under paragraph 2 or 5 of that Schedule.

(2) For the purposes of this regulation, Category A, Category B, Category C and Category D interim maintenance assessments are defined in regulation 8(3) of the Maintenance Assessment Procedure Regulations (categories of interim maintenance assessment).

### **Departure application and review under section 17 of the Act**

**11.** Where the effective date of any fresh assessment made on completion of a review under section 17 of the Act<sup>(3)</sup> is later than the effective date of any departure direction given in response to an application for a direction, the provisions of regulations 20, 21 and 22 of the Maintenance Assessment Procedure Regulations shall apply to that review as if for references in those regulations to the original assessment there were substituted references to the fresh assessment made in consequence of the departure direction.

### **Meaning of “benefit” for the purposes of section 28E of the Act**

**12.** For the purposes of section 28E of the Act, “benefit” means income support, income-based jobseeker’s allowance, family credit, disability working allowance, housing benefit, and council tax benefit.

---

(2) S.I.1992/1813. Regulation 8 was substituted by S.I. 1995/3261.

(3) Section 17 of the Child Support Act 1991 was amended by section 12 of the Child Support Act 1995.