
STATUTORY INSTRUMENTS

1996 No. 635

The Child Support Departure Direction (Anticipatory Application) Regulations 1996

PART II

Procedure on an application for a departure direction and preliminary consideration

Application for a departure direction

4.—(1) Any person who applies for a departure direction shall do so 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) A completed departure direction application form shall be given or sent to the Secretary of State or to such persons as he may authorise for that purpose.

(4) An application shall be an effective application if it has been made in accordance with the Secretary of State’s instructions.

(5) Where an application is not effective, the Secretary of State may—

- (a) give or send a departure direction application form or, as appropriate, a fresh departure direction application form to the person who made the application, and request that the application be re-submitted so as to comply with the provisions of paragraph (4); or
- (b) request the person who made the application to provide such additional information or evidence as the Secretary of State may specify.

(6) If a completed departure direction application form, or, as the case may be, the additional information or evidence requested, is received by the Secretary of State—

- (a) within the specified period, he shall treat the application as made on the date on which the earlier or earliest application would have been treated as made had it been an effective application;
- (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 departure direction application form, or the additional information or evidence, was received.

(7) Where a completed departure direction application form or the additional information or evidence requested by the Secretary of State in accordance with paragraph (5) is not provided by the applicant within the specified period, his application shall be deemed to have been withdrawn.

(8) For the purposes of paragraphs (6) and (7), the specified period shall be the period of 14 days commencing with the date upon which notice of the Secretary of State’s request is given or sent to the applicant.

(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).

Amendment or withdrawal of application

5. A person who has made an effective 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. 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.

Procedure in relation to the determination of an application

8.—(1) 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 a copy of the application and any relevant information the applicant has given except where the Secretary of State considers that information to be harmful information;
 - (c) invite representations in writing from the relevant persons on any matter relating to that application; and
 - (d) set out the provisions of paragraphs (4) and (5) in relation to such representations.
- (2) The notice referred to in paragraph (1) 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).

(3) For the purposes of this regulation “harmful information” means 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.

(4) 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) or (6), he may, in the absence of written representations from that person, proceed to determine the application.

(5) The Secretary of State may, if he considers it reasonable to do so, send 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 (4), to the applicant and invite him to submit representations in writing on any matters contained in those representations and the provisions of paragraph (4) shall apply to any representations so made.

(6) 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 he considers that information to be harmful information, 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.

(7) Except where a person gives written permission to the Secretary of State that the information in relation to him mentioned in sub-paragraphs (a) and (b) may be conveyed to other persons, any document given or sent under the provisions of paragraph (1), (5), (6) or (9) shall not contain—

- (a) the address of any person other than the recipient of the document in question (other than the address of the office of the Secretary of State) or any other information the use of which could reasonably be expected to lead to any such person being located;
- (b) any other information, the use of which could reasonably be expected to lead to any person other than a qualifying child or relevant person being identified.

(8) In deciding whether to make a departure direction under section 28F of the Act, the Secretary of State shall take into account—

- (a) any information 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 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 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.

Disclosure of information by a child support officer

9. A child support officer may disclose to the Secretary of State, for the purposes of the determination of an application, information held by him for the purposes of the Act which has been provided by or in relation to a person in connection with an application for a maintenance assessment, a review of a maintenance assessment, or otherwise in connection with an assessment which is or has been in force.

Departure directions and interim maintenance assessments

10.—(1) No application may be made where a maintenance assessment in force is a Category A interim maintenance assessment, as defined in paragraph (3)(a) of regulation 8 of the Maintenance Assessment Procedure Regulations⁽²⁾ (categories of interim maintenance assessment) or a Category C interim maintenance assessments, as defined in paragraph (3)(c) of that regulation.

(2) No application may be made in reliance on regulation 18 (costs of supporting certain children) where the maintenance assessment in force at the time of that application is a Category B interim maintenance assessment, as defined in paragraph (3)(b) of regulation 8 of the Maintenance Assessment Procedure Regulations and that Category B interim maintenance assessment was made because the applicant fell within that paragraph.

(3) No application may be made by an absent parent against whom there is in force a Category D interim maintenance assessment, as defined in paragraph (3)(d) of regulation 8 of the Maintenance Assessment Procedure Regulations.

Lapse of an application

11. Where a case falls within subsection (6) of section 28B of the Act, the prescribed period for the purposes of paragraph (b) of that subsection shall be the period of 14 days commencing on the date on which the Secretary of State gives or sends the notification mentioned in paragraph (a) of that subsection.

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) Regulation 8(3) was substituted by regulation 16 of [S.I. 1995/3261](#).