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## STATUTORY INSTRUMENTS

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# 1999 No. 1510

## The Social Security Act 1998 (Commencement No. 7 and Consequential and Transitional Provisions) Order 1999

### PART XVIII

#### TRANSITIONAL PROVISIONS

##### Child Support

**48.**—(1) Any decision which fell to be made but was not made before 1st June 1999 by a child support officer shall be made by the Secretary of State.

(2) Except for the purposes of paragraph (6) below and any provision as to the time within which an appeal is to be brought, a decision of a child support officer shall be treated as a decision of the Secretary of State made under—

- (a) subject to sub-paragraph (b) and paragraph (3) below, the provision under which the child support officer made the decision;
- (b) section 17 of the Act where the child support officer made the decision under section 18 or 19 of the Act <sup>M1</sup>.

(3) A fresh maintenance assessment made pursuant to section 16(4) of the Act (periodical reviews) by virtue of the saving in article 3(4) of the Social Security Act 1998 (Commencement No. 2) Order 1998 <sup>M2</sup> shall be treated for the purpose of subsequent decisions as if it were made by virtue of a decision of the Secretary of State under section 17 of the Act (decisions superseding earlier decisions).

(4) For the purposes of a fresh maintenance assessment which falls to be made pursuant to section 16(4) of the Act (periodical reviews) by virtue of the saving in article 3(4) of the Social Security Act 1998 (Commencement No. 2) Order 1998, “relevant week” in the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 <sup>M3</sup> shall mean notwithstanding regulation 1(2) of those Regulations the period of seven days immediately preceding the date on which a request for information or evidence was made under regulation 17(5) of the Child Support (Maintenance Assessment Procedure) Regulations 1992 <sup>M4</sup> as that provision was in force when that request was sent.

(5) The date on which the fresh maintenance assessment mentioned in paragraph (4) above made on or after 1st June 1999 takes effect shall be determined in accordance with the provisions of section 16(5) of the Act and regulations made thereunder as those provisions were in force immediately before 1st June 1999.

(6) An application which was not determined before 1st June 1999 for a review of a decision of a child support officer shall be treated—

- (a) in a case where the application—

- (i) is received within one month of the date of notification of the decision which is the subject of the application or such longer period as may be allowed by article 49 below; and
    - (ii) is made other than on the ground of a relevant change of circumstances, as an application to the Secretary of State for a revision of the decision under section 16 of the Act; and
  - (b) in any other case, as an application to the Secretary of State for a decision under section 17 of the Act superseding the decision.
- (7) A revision under section 16 of the Act of a decision made before 22nd January 1996 to cancel a Category B interim maintenance assessment (within the meaning of regulation 8(3)(b) of the Child Support (Maintenance Assessment Procedure) Regulations 1992 shall have effect as from 22nd January 1996.
- (8) For the purposes of paragraph (9) below, this paragraph applies where a decision of the Secretary of State—
- (a) supersedes a decision of a child support officer; and
  - (b) is made on the basis of information or evidence which was not provided by a relevant person directly.
- (9) Where paragraph (8) above applies, a decision which supersedes an earlier decision shall have effect as from the first day of the maintenance period in which that information or evidence was received by—
- (a) except where sub-paragraph (b) applies, an officer of the Secretary of State exercising functions under the Act; or
  - (b) a child support officer.
- (10) Where—
- (a) a departure direction given under section 28F of the Act (departure directions) has effect on 1st June 1999;
  - (b) the applicant in response to whose application that direction was given made a later application before 1st June 1999 for a departure direction—
    - (i) on grounds additional to the grounds in respect of which the earlier direction was given; or
    - (ii) on the basis that there has been a change of circumstances in respect of any of those grounds; and
  - (c) that later application was not determined before 1st June 1999,
- that application shall be treated as if it were made under section 17 as extended by paragraph 2 of Schedule 4C to the Act<sup>M5</sup> for a decision superseding an earlier decision.
- (11) A decision made by virtue of paragraph (10) above superseding an earlier decision shall have effect as from the first day of the maintenance period in which the later application was made.
- (12) A decision made—
- (a) by the Secretary of State on his own initiative under section 17 as extended by paragraph 2 of Schedule 4C to the Act which supersedes an earlier decision with respect to a departure direction; and
  - (b) on the basis of information or evidence provided to him before 1st June 1999 by a person who is not the applicant in response to whose application the departure direction was given,
- shall have effect as from the first day of the maintenance period in which that information or evidence was provided to the Secretary of State.

(13) A decision—

- (a) of the Secretary of State made before 1st June 1999 with respect to a departure direction; or
- (b) of a child support appeal tribunal upon referral under section 28D(1)(b) of the Act,

may be revised under section 16 as extended by paragraph 1 of Schedule 4C to the Act in consequence of information or evidence—

- (i) received by the Secretary of State from a relevant person within one month of the date of notification of that decision or such longer period as may be allowed by article 49 below; and
- (ii) not acted upon before 1st June 1999.

(14) Except for the purposes of paragraph (16) below, an appeal to a child support appeal tribunal which was not determined before 1st June 1999—

- (a) shall be treated as an appeal to an appeal tribunal;
- (b) brought against a decision of a child support officer shall be treated as an appeal brought against a decision of the Secretary of State; and
- (c) may not be withdrawn without either the consent in writing of every other party to the proceedings or the leave of a legally qualified panel member after every other party to the proceedings has been given a reasonable opportunity to make representations.

(15) In paragraph (14) above and paragraph 28 below, “party to the proceedings” means—

- (a) the absent parent (within the meaning given to that expression in section 3(2) of the Act);
- (b) the person with care (within the meaning given to that expression in section 3(3) of the Act);
- (c) any child who has made an application for a maintenance assessment to be made under section 7 of the Act; and
- (d) the Secretary of State.

(16) Regulations 3(1A) to (11B) and 15 of the Child Support Appeal Tribunals (Procedure) Regulations 1992<sup>M6</sup> (in this article referred to as “the former Procedure Regulations”) shall continue to apply (notwithstanding their revocation) for the purposes specified in paragraph (17) below subject to the modifications to—

- (a) regulation 3 specified in paragraph (18) below; and
- (b) regulation 15 specified in paragraph (19) below.

(17) Paragraph (16) above applies for the purposes of—

- (a) any appeal against a decision—
  - (i) of the Secretary of State made before 1st June 1999 on an application for a departure direction; or
  - (ii) of a child support officer; and
- (b) any application to set aside a decision of a child support appeal tribunal.

(18) The modifications to regulation 3 specified in this paragraph are—

- (a) in paragraph (1A), for the words “in paragraph (1)” there shall be substituted the words “in article 48(17) of the Social Security Act 1998 (Commencement No. 7 and Consequential and Transitional Provisions) Order 1999<sup>M7</sup>”;
- (b) in paragraph (3) for the words “under section 20(1) of the Act” there shall be substituted the words “against a decision of a child support officer”;
- (c) for paragraph (6) there shall be substituted the following paragraph—

“(6) Where an appeal or application is made—

- (a) after the specified time has expired; and
- (b) before 1st July 2000,

that time may for special reasons be extended by a legally qualified panel member to the date of the making of the appeal or application.”;

- (d) in paragraphs (7), (9A), (11) and (11A), for the word “chairman” in each place in which it occurs there shall be substituted the words “legally qualified panel member”;
- (e) in paragraph (8) for the words “any chairman” there shall be substituted the words “a legally qualified panel member”;
- (f) after paragraph (11B) there shall be added the following paragraph—

“(11C) In this regulation—

“legally qualified panel member” has the same meaning as in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999<sup>M8</sup>; and

“tribunal” means an appeal tribunal constituted under section 7 of the Social Security Act 1998<sup>M9</sup>.”.

(19) The modifications to regulation 15 specified in this paragraph are—

- (a) in paragraph (1)—
  - (i) after the words “on an application made” there shall be inserted the words “before 1st July 2000”;
  - (ii) for the words “the tribunal who gave the decision or by another tribunal” there shall be substituted the words “a tribunal”;
- (b) in paragraph (5), the words “regulation 2 and” shall be omitted; and
- (c) after paragraph (5) there shall be added the following paragraph—

“(6) Except in paragraph (1)(a), “tribunal” in this regulation means an appeal tribunal constituted under section 7 of the Social Security Act 1998.”.

(20) Paragraphs (21) to (24) below shall apply where—

- (a) a clerk to a child support appeal tribunal gave a direction under regulation 11(1)<sup>M10</sup> of the former Procedure Regulations; and
- (b) notification under that provision was not received by him before 1st June 1999.

(21) A notification in response to a direction given under regulation 11(1) of the former Procedure Regulations shall be in writing and shall be made within 14 days of receipt of the direction or within such other period as the clerk to an appeal tribunal may direct.

(22) An appeal may be struck out by the clerk to an appeal tribunal where a notification such as is referred to in paragraph (21) above is not received within the period specified in that paragraph.

(23) An appeal which has been struck out in accordance with paragraph (22) above shall be treated for the purpose of reinstatement as if it had been struck out under regulation 46 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

(24) An oral hearing of the appeal shall be held where—

- (a) notification is received by the clerk to the appeal tribunal under paragraph (21) above; or
- (b) the chairman, or in the case of an appeal tribunal which has only one member, that member, is satisfied that such a hearing is necessary to enable the appeal tribunal to reach a decision.

(25) A legally qualified panel member may reinstate an appeal which has been struck out under regulation 6 of the former Procedure Regulations on an application made by any party to the proceedings not later than three months from the date of the order under paragraph (1) of that regulation if he is satisfied that—

- (a) the applicant did not receive a notice under paragraph (2) of that regulation; and
- (b) the conditions in paragraph (2A) of that regulation were not satisfied.

(26) Notwithstanding the revocation of the former Procedure Regulations, information such as was mentioned in regulation 17(2) of those Regulations shall not be disclosed if a written notification is received under that regulation within the period specified in that regulation.

(27) A copy of a statement of—

- (a) the reasons for a child support appeal tribunal’s decision;
- (b) its findings on questions of fact material thereto; and
- (c) the terms of any—
  - (i) direction under section 20(4) of the Act (given before that provision was substituted); and
  - (ii) decision made by the tribunal under section 28H(4)(c) of the Act (before that provision was substituted) or on a referral,

shall be supplied to each party to the proceedings if requested by any of them within 21 days of the date on which notification of the decision was given or sent.

(28) Except for the purposes of—

- (a) the Child Support Commissioners (Procedure) Regulations 1999 <sup>M11</sup>;
- (b) paragraphs (16) and (27) above; or
- (c) determining whether any irregularity resulted from failure to comply with the requirements of the former Procedure Regulations,

a decision of a child support appeal tribunal shall be treated as a decision of an appeal tribunal.

(29) An appeal tribunal shall completely rehear any appeal to a child support appeal tribunal which stands adjourned immediately before 1st June 1999.

(30) For the purpose of section 17(1) of the Act, a decision of a Child Support Commissioner on an appeal from a child support appeal tribunal shall be treated as a decision of a Child Support Commissioner on an appeal from an appeal tribunal.

#### Marginal Citations

- M1** Section 17 is substituted for sections 17 to 19 by section 41 of the Social Security Act 1998.
- M2** S.I. 1998/2780.
- M3** S.I. 1992/1815.
- M4** S.I. 1992/1813; regulation 17 was amended by S.I. 1995/3261 and substituted by S.I. 1999/1047.
- M5** Schedule 4C was inserted by the Social Security Act 1998 (c.14); Schedule 7, paragraph 54.
- M6** S.I. 1992/2641; regulation 3 was amended by S.I. 1995/1045, 1996/2450, 1996/2907, 1996/3196, 1997/827 and 1998/58; regulation 15 was amended by S.I. 1996/2450; the whole instrument is revoked by S.I. 1999/991.
- M7** S.I. 1999/1510 (c.43).
- M8** S.I. 1999/991.
- M9** 1998 c.14.
- M10** Regulation 11(1) was substituted by S.I. 1996/2540 and amended by S.I. 1996/2907 and 1998/58.
- M11** S.I. 1999/1305.

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security Act 1998 (Commencement No. 7 and Consequential and Transitional Provisions) Order 1999, Section 48.