
STATUTORY INSTRUMENTS

2001 No. 156

The Child Support (Variations) Regulations 2000

PART II

APPLICATION AND DETERMINATION PROCEDURE

Application for a variation

4.—(1) Where an application for a variation is made other than in writing and the Secretary of State directs that the application be made in writing, the application shall be made either on an application form provided by the Secretary of State and completed in accordance with the Secretary of State's instructions or in such other written form as the Secretary of State may accept as sufficient in the circumstances of any particular case.

(2) An application for a variation which is made other than in writing shall be treated as made on the date of notification from the applicant to the Secretary of State that he wishes to make such an application.

(3) Where an application for a variation is made in writing other than in the circumstances to which paragraph (1) applies, the application shall be treated as made on the date of receipt by the Secretary of State.

(4) Where paragraph (1) applies and the Secretary of State receives the application within 14 days of the date of the direction, or at a later date but in circumstances where the Secretary of State is satisfied that the delay was unavoidable, the application shall be treated as made on the date of notification from the applicant to the Secretary of State that he wishes to make an application for a variation.

(5) Where paragraph (1) applies and the Secretary of State receives the application more than 14 days from the date of the direction and in circumstances where he is not satisfied that the delay was unavoidable, the application shall be treated as made on the date of receipt.

(6) An application for a variation is duly made when it has been made in accordance with this regulation and section 28A(4) of the Act.

Amendment or withdrawal of application

5.—(1) A person who has made an application for a variation may amend or withdraw his application at any time before a decision under section 11, 16 or 17 of the Act, or a decision not to revise or supersede under section 16 or 17 of the Act, is made in response to the variation application and such amendment or withdrawal need not be in writing unless, in any particular case, the Secretary of State requires it to be.

(2) No amendment under paragraph (1) shall relate to any change of circumstances arising after what would be the effective date of a decision in response to the variation application.

Rejection of an application following preliminary consideration

6.—(1) The Secretary of State may, on completing the preliminary consideration, reject an application for a variation (and proceed to make his decision on the application for a maintenance calculation, or to revise or supersede a decision under section 16 or 17 of the Act, without the variation, or not to revise or supersede a decision under section 16 or 17 of the Act, as the case may be) if one of the circumstances in paragraph (2) applies.

(2) The circumstances are—

- (a) the application has been made in one of the circumstances to which regulation 7 applies;
- (b) the application is made—
 - (i) on a ground in paragraph 2 of Schedule 4B to the Act (special expenses) and the amount of the special expenses, or the aggregate amount of those expenses, as the case may be, does not exceed the relevant threshold provided for in regulation 15;
 - (ii) on a ground in paragraph 3 of that Schedule (property or capital transfers) and the value of the property or capital transferred does not exceed the minimum value in regulation 16(4); or
 - (iii) on a ground referred to in regulation 18 (assets) and the value of the assets does not exceed the figure in regulation 18(3)(a), or on a ground in regulation 19(1) (income not taken into account) and the amount of the income does not exceed the figure in regulation 19(2);
- (c) a request under regulation 8 has not been complied with by the applicant and the Secretary of State is not able to determine the application without the information requested; or
- (d) the Secretary of State is satisfied, on the information or evidence available to him, that the application would not be agreed to, including where, although a ground is stated, the facts alleged in the application would not bring the case within the prescription of the relevant ground in these Regulations.

Prescribed circumstances

7.—(1) This regulation applies where an application for a variation is made under section 28G of the Act and—

- (a) the application is made by a relevant person and a circumstance set out in paragraph (2) applies at the relevant date;
 - (b) the application is made by a non-resident parent and a circumstance set out in paragraph (3) or (4) applies at the relevant date;
 - (c) the application is made by a person with care, or a child to whom section 7 of the Act applies, on a ground in paragraph 4 of Schedule 4B to the Act (additional cases) and a circumstance set out in paragraph (5) applies at the relevant date; or
 - (d) the application is made by a non-resident parent on a ground in paragraph 2 of Schedule 4B to the Act (special expenses) and a circumstance set out in paragraph (6) applies at the relevant date.
- (2) The circumstances for the purposes of this paragraph are that—
- (a) a default maintenance decision is in force with respect to the non-resident parent;
 - (b) the non-resident parent is liable to pay the flat rate of child support maintenance owing to the application of paragraph 4(1)(c) of Schedule 1 to the Act, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Act, or the Transitional Regulations; or

- (c) the non-resident parent is liable to pay child support maintenance at a flat rate of a prescribed amount owing to the application of paragraph 4(2) of Schedule 1 to the Act, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Act, or the Transitional Regulations.
- (3) The circumstances for the purposes of this paragraph are that the non-resident parent is liable to pay child support maintenance—
 - (a) at the nil rate owing to the application of paragraph 5 of Schedule 1 to the Act;
 - (b) at a flat rate owing to the application of paragraph 4(1)(a) of Schedule 1 to the Act, including where the net weekly income of the non-resident parent which is taken into account for the purposes of a maintenance calculation in force in respect of him is £100 per week or less owing to a variation being taken into account or to the application of regulation 18, 19 or 21 of the Transitional Regulations (reduction for relevant departure direction or relevant property transfer); or
 - (c) at a flat rate owing to the application of paragraph 4(1)(b) of Schedule 1 to the Act, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Act, or the Transitional Regulations.
- (4) The circumstances for the purposes of this paragraph are that the non-resident parent is liable to pay an amount of child support maintenance at a rate—
 - (a) of £5 per week or such other amount as may be prescribed owing to the application of paragraph 7(7) of Schedule 1 to the Act (shared care); or
 - (b) equivalent to the flat rate provided for in, or prescribed for the purposes of, paragraph 4(1)(b) of Part 1 of Schedule 1 to the Act owing to the application of—
 - (i) regulation 27(5);
 - (ii) regulation 9 of the Maintenance Calculations and Special Cases Regulations (care provided in part by a local authority); or
 - (iii) regulation 23(5) of the Transitional Regulations.
- (5) The circumstances for the purposes of this paragraph are that—
 - (a) the amount of the net weekly income of the non-resident parent to which the Secretary of State had regard when making the maintenance calculation was the capped amount; or
 - (b) the non-resident parent or a partner of his is in receipt of working families' tax credit (as defined in section 128 of the Contributions and Benefits Act) or disabled person's tax credit (as defined in section 129(1) of that Act) and for this purpose "partner" has the same meaning as in paragraph 10C(4) of Schedule 1 to the Act.
- (6) The circumstances for the purposes of this paragraph are that the amount of the net weekly income of the non-resident parent to which the Secretary of State would have regard after deducting the amount of the special expenses would exceed the capped amount.
- (7) For the purposes of paragraph (1), the "relevant date" means the date from which, if the variation were agreed, the decision under section 16 or 17 of the Act, as the case may be, would take effect.

Provision of information

8.—(1) Where an application has been duly made, the Secretary of State may request further information or evidence from the applicant to enable that application to be determined and any such information or evidence requested shall be provided within one month of the date of notification

(1) Sections 128 and 129 were amended by section 1(2) of Schedule 1 to the Tax Credits Act 1999 (c. 10).

of the request or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case.

(2) Where any information or evidence requested in accordance with paragraph (1) is not provided in accordance with the time limit specified in that paragraph, the Secretary of State may, where he is able to do so, proceed to determine the application in the absence of the requested information or evidence.

Procedure in relation to the determination of an application

9.—(1) Subject to paragraph (3), where the Secretary of State has given the preliminary consideration to an application and not rejected it he—

- (a) shall give notice of the application to the relevant persons other than the applicant, informing them of the grounds on which the application has been made and any relevant information or evidence the applicant has given, except information or evidence falling within paragraph (2);
- (b) may invite representations, which need not be in writing but shall be in writing if in any case he so directs, from the relevant persons other than the applicant on any matter relating to that application, to be submitted to the Secretary of State within 14 days of the date of notification or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case; and
- (c) shall set out the provisions of paragraphs (2)(b) and (c), (4) and (5) in relation to such representations.

(2) The information or evidence referred to in paragraphs (1)(a), (4)(a) and (7), are—

- (a) details of the nature of the long-term illness or disability of the relevant other child which forms the basis of a variation application on the ground in regulation 11 where the applicant requests they should not be disclosed and the Secretary of State is satisfied that disclosure is not necessary in order to be able to determine the application;
- (b) medical evidence or medical advice which 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; or
- (c) the address of a relevant person or qualifying child, or any other information which could reasonably be expected to lead to that person or child being located, where the Secretary of State considers that there would be a risk of harm or undue distress to that person or that child or any other children living with that person if the address or information were disclosed.

(3) The Secretary of State need not act in accordance with paragraph (1)—

- (a) where regulation 29 applies (variation may be taken into account notwithstanding that no application has been made);
- (b) where the variation agreed is one falling within paragraph 3 of Schedule 4B to the Act (property or capital transfer), the Secretary of State ceases to have jurisdiction to make a maintenance calculation and subsequently acquires jurisdiction in respect of the same non-resident parent, person with care and any child in respect of whom the earlier calculation was made;
- (c) if he is satisfied on the information or evidence available to him that the application would not be agreed to, but if, on further consideration of the application, he is minded to agree to the variation he shall, before doing so, comply with the provisions of this regulation; or
- (d) where—
 - (i) a variation has been agreed in relation to a maintenance calculation;

(ii) the decision as to the maintenance calculation is replaced with a default maintenance decision under section 12(1)(b) of the Act;

(iii) the default maintenance decision is revised in accordance with section 16(1B) of the Act,

and the Secretary of State is satisfied, on the information or evidence available to him, that there has been no material change of circumstances relating to the variation since the date from which the maintenance calculation referred to in head (i) ceased to have effect.

(4) Where the Secretary of State receives representations from the relevant persons—

(a) he may, if he considers it reasonable to do so, send a copy of the representations concerned (excluding material falling within paragraph (2)) to the applicant and invite any comments he may have within 14 days or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case; and

(b) where the Secretary of State acts under sub-paragraph (a) he shall not proceed to determine the application until he has received such comments or the period referred to in that sub-paragraph has expired.

(5) Where the Secretary of State has not received representations from the relevant persons notified in accordance with paragraph (1) within the time limit specified in sub-paragraph (b) of that paragraph, he may proceed to agree or not (as the case may be) to a variation in their absence.

(6) In considering an application for a variation, the Secretary of State shall take into account any representations received at the date upon which he agrees or not (as the case may be) to the variation from the relevant persons, including any representation received in accordance with paragraphs (1) (b), 4(a) and (7).

(7) Where any information or evidence requested by the Secretary of State under regulation 8 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 such information or evidence falls within paragraph (2), send a copy of such information or evidence to the relevant persons and may invite them to submit representations, which need not be in writing unless the Secretary of State so directs in any particular case, on that information or evidence.

(8) The Secretary of State may, if he considers it appropriate, treat an application for a variation made on one ground as if it were an application made on a different ground, and, if he does intend to do so, he shall include this information in the notice and invitation to make representations referred to in paragraphs (1), (4) and (7).

(9) Two or more applications for a variation with respect to the same maintenance calculation or application for a maintenance calculation, made or treated as made, may be considered together.