
STATUTORY INSTRUMENTS

2001 No. 156

The Child Support (Variations) Regulations 2000

PART VII

**EFFECT OF A VARIATION ON THE MAINTENANCE
CALCULATION AND EFFECTIVE DATES**

Effective dates

22.—(1) Subject to paragraph (2), where the application for a variation is made in the circumstances referred to in section 28A(3) of the Act (before the Secretary of State has reached a decision under section 11 or 12(1) of the Act) and the application is agreed to, the effective date of the maintenance calculation which takes account of the variation shall be—

- (a) where the ground giving rise to the variation existed from the effective date of the maintenance calculation as provided for in the Maintenance Calculation Procedure Regulations, that date; or
- (b) where the ground giving rise to the variation arose after the effective date referred to in sub-paragraph (a), the first day of the maintenance period in which the ground arose.

(2) Where the ground for the variation applied for under section 28A(3) of the Act is a ground in regulation 12 (prior debts) or 14 (special expenses—payments in respect of certain mortgages, loans or insurance policies) and payments falling within regulation 12 or 14 which have been made by the non-resident parent constitute voluntary payments for the purposes of section 28J of the Act and Regulations made under that section, the date from which the maintenance calculation shall take account of the variation on this ground shall be the date on which the maintenance period begins which immediately follows the date on which the non-resident parent is notified under the Maintenance Calculation Procedure Regulations of the amount of his liability to pay child support maintenance.

(3) Where the ground for the variation applied for under section 28A(3) of the Act has ceased to exist by the date the maintenance calculation is made, that calculation shall take account of the variation for the period ending on the last day of the maintenance period in which the ground existed.

Effect on maintenance calculation—special expenses

23.—(1) Subject to paragraph (2) and regulations 26 and 27, where the variation agreed to is one falling within regulation 10 to 14 (special expenses) effect shall be given to the variation in the maintenance calculation by deducting from the net weekly income of the non-resident parent the weekly amount of those expenses.

(2) Where the income which is taken into account in the maintenance calculation is the capped amount and the variation agreed to is one falling within regulation 10 to 14 then—

- (a) the weekly amount of the expenses shall first be deducted from the actual net weekly income of the non-resident parent;

- (b) the amount by which the capped amount exceeds the figure calculated under sub-paragraph (a) shall be calculated; and
- (c) effect shall be given to the variation in the maintenance calculation by deducting from the capped amount the amount calculated under sub-paragraph (b).

Effect on maintenance calculation—property or capital transfer

24. Subject to regulation 27, where the variation agreed to is one falling within regulation 16 (property or capital transfers)—

- (a) the maintenance calculation shall be carried out in accordance with Part 1 of Schedule 1 to the Act and Regulations made under that Part; and
- (b) the equivalent weekly value of the transfer calculated as provided in regulation 17 shall be deducted from the amount of child support maintenance which he would otherwise be liable to pay to the person with care with respect to whom the transfer was made.

Effect on maintenance calculation—additional cases

25. Subject to regulations 26 and 27, where the variation agreed to is one falling within regulations 18 to 20 (additional cases), effect shall be given to the variation in the maintenance calculation by increasing the net weekly income of the non-resident parent which would otherwise be taken into account by the weekly amount of the additional income except that, where the amount of net weekly income calculated in this way would exceed the capped amount, the amount of net weekly income taken into account shall be the capped amount.

Effect on maintenance calculation—maximum amount payable where the variation is on additional cases ground

26.—(1) Subject to regulation 27, where this regulation applies the amount of child support maintenance which the non-resident parent shall be liable to pay shall be whichever is the lesser of—

- (a) a weekly amount calculated by aggregating an amount equivalent to the flat rate stated in or prescribed for the purposes of paragraph 4(1)(b) of Schedule 1 to the Act with the amount calculated by applying that Schedule to the Act to the additional income arising under the variation, other than the weekly amount of any benefit, pension or allowance the non-resident parent receives which is prescribed for the purposes of that paragraph; or
- (b) a weekly amount calculated by applying Part 1 of Schedule 1 to the Act to the additional income arising under the variation.

(2) This regulation applies where the variation agreed to is one to which regulation 25 applies and the non-resident parent's liability calculated as provided in Part 1 of Schedule 1 to the Act and Regulations made under that Schedule would, but for the variation, be—

- (a) a flat rate under paragraph 4(1)(b) of that Schedule;
- (b) a flat rate but is less than that amount or nil, owing to the application of paragraph 8 of that Schedule; or
- (c) a flat rate under paragraph 4(1)(b) of that Schedule but for the application of paragraph 5(a) of that Schedule.

(3) For the purposes of paragraph (1)—

- (a) any benefit, pension or allowance taken into account in the additional income referred to in sub-paragraph (b) shall not include—

- (i) in the case of industrial injuries benefit under section 94 of the Contributions and Benefits Act, any increase in that benefit under section 104 (constant attendance) or 105 (exceptionally severe disablement) of that Act;
 - (ii) in the case of a war disablement pension within the meaning in section 150(2) of the Contributions and Benefits Act, any award under the following articles of the Naval, Military and Air Forces Etc., (Disablement and Death) Service Pensions Order 1983 (“the Service Pensions Order”): article 14 (constant attendance allowance), 15 (exceptionally severe disablement allowance), 16 (severe disablement occupational allowance) or 26A (mobility supplement)(1) or any analogous allowances payable in conjunction with any other war disablement pension; and
 - (iii) any award under article 18 of the Service Pensions Order (unemployability allowances) which is an additional allowance in respect of a child of the non-resident parent where that child is not living with the non-resident parent;
- (b) “additional income” for the purposes of sub-paragraphs (a) and (b) means such income after the application of a variation falling within regulations 10 to 14 (special expenses); and
- (c) “weekly amount” for the purposes of sub-paragraphs (a) and (b) means the aggregate of the amounts referred to in the relevant sub-paragraph—
- (i) adjusted as provided in regulation 27(3) as if the reference in that regulation to child support maintenance were to the weekly amount; and
 - (ii) after any deduction provided for in regulation 27(4) as if the reference in that regulation to child support maintenance were to the weekly amount.

Effect on maintenance calculation—general

27.—(1) Subject to paragraphs (4) and (5), where more than one variation is agreed to in respect of the same period regulations 23 to 26 shall apply and the results shall be aggregated as appropriate.

(2) Paragraph 7(2) to (7) of Schedule 1 to the Act (shared care) shall apply where the rate of child support maintenance is affected by a variation which is agreed to and paragraph 7(2) shall be read as if after the words “as calculated in accordance with the preceding paragraphs of this Part of this Schedule” there were inserted the words “, Schedule 4B and Regulations made under that Schedule”.

(3) Subject to paragraphs (4) and (5), where the non-resident parent shares the care of a qualifying child within the meaning in Part 1 of Schedule 1 to the Act, or where the care of such a child is shared in part by a local authority, the amount of child support maintenance the non-resident parent is liable to pay the person with care, calculated to take account of any variation, shall be reduced in accordance with the provisions of paragraph 7 of that Part or regulation 9 of the Maintenance Calculations and Special Cases Regulations, as the case may be.

(4) Subject to paragraph (5), where the variation agreed to is one falling within regulation 16 (property or capital transfers) the equivalent weekly value of the transfer calculated as provided in regulation 17 shall be deducted from the amount of child support maintenance the non-resident parent would otherwise be liable to pay the person with care in respect of whom the transfer was made after aggregation of the effects of any other variations as provided in paragraph (1) or deduction for shared care as provided in paragraph (3).

(5) If the application of regulation 24, or paragraph (3) or (4), 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 a figure equivalent to the flat rate of child support maintenance payable under paragraph 4(1)(b) of Schedule 1 to the Act, he shall instead be

(1) S.I. 1983/883. Article 26A was inserted by article 4 of S.I. 1983/1116 and amended by S.I. 1983/1821, 1986/592, 1990/1308, 1991/766, 1992/710, 1995/766 and 1997/286.

liable to pay child support maintenance at a rate equivalent to that rate apportioned (if appropriate) as provided in paragraph 6 of Schedule 1 to the Act.

(6) The effect of a variation shall not be applied for any period during which a circumstance referred to in regulation 7 applies.

(7) For the purposes of regulations 23 and 25 “net weekly income” means as calculated or estimated under the Maintenance Calculations and Special Cases Regulations.

Transitional provisions—conversion decisions

28. Where the variation is being applied for in connection with a subsequent decision within the meaning given in the Transitional Regulations, and the decision to be revised or superseded under section 16 or 17 of the Act, as the case may be, takes into account a relevant property transfer as defined and provided for in those Regulations—

- (a) for the purposes of regulations 23 and 25 “capped amount” shall mean the income for the purposes of paragraph 10(3) of Schedule 1 to the Act less any deduction in respect of the relevant property transfer;
- (b) for the purposes of regulation 26(3)(b) the additional income for the purposes of paragraph (1) of that regulation shall be after deduction in respect of the relevant property transfer;
- (c) regulation 27(4) shall be read as if the aggregation referred to included any deduction in respect of the relevant property transfer; and
- (d) regulation 27(5) shall be read as if after the reference to paragraph (3) or (4) there were a reference to any deduction in respect of the relevant property transfer.

Situations in which a variation previously agreed to may be taken into account in calculating maintenance liability

29.—(1) This regulation applies where a variation has been agreed to in relation to a maintenance calculation.

(2) In the circumstances set out in paragraph (3), the Secretary of State may take account of the effect of such a variation upon the rate of liability for child support maintenance notwithstanding the fact that an application has not been made.

(3) The circumstances are—

- (a) that the decision as to the maintenance calculation is superseded under section 17 of the Act on a change of circumstances so that the non-resident parent becomes liable to pay child support maintenance at the nil rate, or another rate which means that the variation cannot be taken into account; and
- (b) that the superseding decision referred to in sub-paragraph (a) is itself superseded under section 17 of the Act on a change of circumstances so that the non-resident parent becomes liable to pay a rate of child support maintenance which can be adjusted to take account of the variation.

Circumstances for the purposes of section 28F(3) of the Act

30. The circumstances prescribed for the purposes of section 28F(3) of the Act (Secretary of State shall not agree to a variation) are—

- (a) the prescribed circumstances in regulation 6(2) or 7; and
- (b) where the Secretary of State considers it would not be just and equitable to agree to the variation having regard to any of the factors referred to in regulation 21.

