



Child Support Act 1991

1991 CHAPTER 48

The basic principles

1 The duty to maintain

- (1) For the purposes of this Act, each parent of a qualifying child is responsible for maintaining him.
- (2) For the purposes of this Act, an absent parent shall be taken to have met his responsibility to maintain any qualifying child of his by making periodical payments of maintenance with respect to the child of such amount, and at such intervals, as may be determined in accordance with the provisions of this Act.
- (3) Where a maintenance assessment made under this Act requires the making of periodical payments, it shall be the duty of the absent parent with respect to whom the assessment was made to make those payments.

2 Welfare of children: the general principle

Where, in any case which falls to be dealt with under this Act, the Secretary of State or any child support officer is considering the exercise of any discretionary power conferred by this Act, he shall have regard to the welfare of any child likely to be affected by his decision.

3 Meaning of certain terms used in this Act

- (1) A child is a “qualifying child” if—
 - (a) one of his parents is, in relation to him, an absent parent; or
 - (b) both of his parents are, in relation to him, absent parents.
- (2) The parent of any child is an “absent parent”, in relation to him, if—
 - (a) that parent is not living in the same household with the child; and
 - (b) the child has his home with a person who is, in relation to him, a person with care.

- (3) A person is a “person with care”, in relation to any child, if he is a person—
 - (a) with whom the child has his home;
 - (b) who usually provides day to day care for the child (whether exclusively or in conjunction with any other person); and
 - (c) who does not fall within a prescribed category of person.
- (4) The Secretary of State shall not, under subsection (3)(c), prescribe as a category—
 - (a) parents;
 - (b) guardians;
 - (c) persons in whose favour residence orders under section 8 of the Children Act 1989 are in force;
 - (d) in Scotland, persons having the right to custody of a child.
- (5) For the purposes of this Act there may be more than one person with care in relation to the same qualifying child.
- (6) Periodical payments which are required to be paid in accordance with a maintenance assessment are referred to in this Act as “child support maintenance”.
- (7) Expressions are defined in this section only for the purposes of this Act.

4 Child support maintenance

- (1) A person who is, in relation to any qualifying child or any qualifying children, either the person with care or the absent parent may apply to the Secretary of State for a maintenance assessment to be made under this Act with respect to that child, or any of those children.
- (2) Where a maintenance assessment has been made in response to an application under this section the Secretary of State may, if the person with care or absent parent with respect to whom the assessment was made applies to him under this subsection, arrange for—
 - (a) the collection of the child support maintenance payable in accordance with the assessment;
 - (b) the enforcement of the obligation to pay child support maintenance in accordance with the assessment.
- (3) Where an application under subsection (2) for the enforcement of the obligation mentioned in subsection (2)(b) authorises the Secretary of State to take steps to enforce that obligation whenever he considers it necessary to do so, the Secretary of State may act accordingly.
- (4) A person who applies to the Secretary of State under this section shall, so far as that person reasonably can, comply with such regulations as may be made by the Secretary of State with a view to the Secretary of State or the child support officer being provided with the information which is required to enable—
 - (a) the absent parent to be traced (where that is necessary);
 - (b) the amount of child support maintenance payable by the absent parent to be assessed; and
 - (c) that amount to be recovered from the absent parent.
- (5) Any person who has applied to the Secretary of State under this section may at any time request him to cease acting under this section.

- (6) It shall be the duty of the Secretary of State to comply with any request made under subsection (5) (but subject to any regulations made under subsection (8)).
- (7) The obligation to provide information which is imposed by subsection (4)—
 - (a) shall not apply in such circumstances as may be prescribed; and
 - (b) may, in such circumstances as may be prescribed, be waived by the Secretary of State.
- (8) The Secretary of State may by regulations make such incidental, supplemental or transitional provision as he thinks appropriate with respect to cases in which he is requested to cease to act under this section.
- (9) No application may be made under this section if there is in force with respect to the person with care and absent parent in question a maintenance assessment made in response to an application under section 6.

5 Child support maintenance: supplemental provisions

- (1) Where—
 - (a) there is more than one person with care of a qualifying child; and
 - (b) one or more, but not all, of them have parental responsibility for (or, in Scotland, parental rights over) the child;no application may be made for a maintenance assessment with respect to the child by any of those persons who do not have parental responsibility for (or, in Scotland, parental rights over) the child.
- (2) Where more than one application for a maintenance assessment is made with respect to the child concerned, only one of them may be proceeded with.
- (3) The Secretary of State may by regulations make provision as to which of two or more applications for a maintenance assessment with respect to the same child is to be proceeded with.

6 Applications by those receiving benefit

- (1) Where income support, family credit or any other benefit of a prescribed kind is claimed by or in respect of, or paid to or in respect of, the parent of a qualifying child she shall, if—
 - (a) she is a person with care of the child; and
 - (b) she is required to do so by the Secretary of State,authorise the Secretary of State to take action under this Act to recover child support maintenance from the absent parent.
- (2) The Secretary of State shall not require a person (“the parent”) to give him the authorisation mentioned in subsection (1) if he considers that there are reasonable grounds for believing that—
 - (a) if the parent were to be required to give that authorisation; or
 - (b) if she were to give it,there would be a risk of her, or of any child living with her, suffering harm or undue distress as a result.

Status: This is the original version (as it was originally enacted).

- (3) Subsection (2) shall not apply if the parent requests the Secretary of State to disregard it.
- (4) The authorisation mentioned in subsection (1) shall extend to all children of the absent parent in relation to whom the parent first mentioned in subsection (1) is a person with care.
- (5) That authorisation shall be given, without unreasonable delay, by completing and returning to the Secretary of State an application—
 - (a) for the making of a maintenance assessment with respect to the qualifying child or qualifying children; and
 - (b) for the Secretary of State to take action under this Act to recover, on her behalf, the amount of child support maintenance so assessed.
- (6) Such an application shall be made on a form (“a maintenance application form”) provided by the Secretary of State.
- (7) A maintenance application form shall indicate in general terms the effect of completing and returning it.
- (8) Subsection (1) has effect regardless of whether any of the benefits mentioned there is payable with respect to any qualifying child.
- (9) A person who is under the duty imposed by subsection (1) shall, so far as she reasonably can, comply with such regulations as may be made by the Secretary of State with a view to the Secretary of State or the child support officer being provided with the information which is required to enable—
 - (a) the absent parent to be traced;
 - (b) the amount of child support maintenance payable by the absent parent to be assessed; and
 - (c) that amount to be recovered from the absent parent.
- (10) The obligation to provide information which is imposed by subsection (9)—
 - (a) shall not apply in such circumstances as may be prescribed; and
 - (b) may, in such circumstances as may be prescribed, be waived by the Secretary of State.
- (11) A person with care who has authorised the Secretary of State under subsection (1) but who subsequently ceases to fall within that subsection may request the Secretary of State to cease acting under this section.
- (12) It shall be the duty of the Secretary of State to comply with any request made under subsection (11) (but subject to any regulations made under subsection (13)).
- (13) The Secretary of State may by regulations make such incidental or transitional provision as he thinks appropriate with respect to cases in which he is requested under subsection (11) to cease to act under this section.
- (14) The fact that a maintenance assessment is in force with respect to a person with care shall not prevent the making of a new maintenance assessment with respect to her in response to an application under this section.

7 Right of child in Scotland to apply for assessment

- (1) A qualifying child who has attained the age of 12 years and who is habitually resident in Scotland may apply to the Secretary of State for a maintenance assessment to be made with respect to him if—
 - (a) no such application has been made by a person who is, with respect to that child, a person with care or an absent parent; or
 - (b) the Secretary of State has not been authorised under section 6 to take action under this Act to recover child support maintenance from the absent parent (other than in a case where he has waived any requirement that he should be so authorised).
- (2) An application made under subsection (1) shall authorise the Secretary of State to make a maintenance assessment with respect to any other children of the absent parent who are qualifying children in the care of the same person as the child making the application.
- (3) Where a maintenance assessment has been made in response to an application under this section the Secretary of State may, if the person with care, the absent parent with respect to whom the assessment was made or the child concerned applies to him under this subsection, arrange for—
 - (a) the collection of the child support maintenance payable in accordance with the assessment;
 - (b) the enforcement of the obligation to pay child support maintenance in accordance with the assessment.
- (4) Where an application under subsection (3) for the enforcement of the obligation mentioned in subsection (3)(b) authorises the Secretary of State to take steps to enforce that obligation whenever he considers it necessary to do so, the Secretary of State may act accordingly.
- (5) Where a child has asked the Secretary of State to proceed under this section, the person with care of the child, the absent parent and the child concerned shall, so far as they reasonably can, comply with such regulations as may be made by the Secretary of State with a view to the Secretary of State or the child support officer being provided with the information which is required to enable—
 - (a) the absent parent to be traced (where that is necessary);
 - (b) the amount of child support maintenance payable by the absent parent to be assessed; and
 - (c) that amount to be recovered from the absent parent.
- (6) The child who has made the application (but not the person having care of him) may at any time request the Secretary of State to cease acting under this section.
- (7) It shall be the duty of the Secretary of State to comply with any request made under subsection (6) (but subject to any regulations made under subsection (9)).
- (8) The obligation to provide information which is imposed by subsection (5)—
 - (a) shall not apply in such circumstances as may be prescribed by the Secretary of State; and
 - (b) may, in such circumstances as may be so prescribed, be waived by the Secretary of State.

- (9) The Secretary of State may by regulations make such incidental, supplemental or transitional provision as he thinks appropriate with respect to cases in which he is requested to cease to act under this section.

8 Role of the courts with respect to maintenance for children

- (1) This subsection applies in any case where a child support officer would have jurisdiction to make a maintenance assessment with respect to a qualifying child and an absent parent of his on an application duly made by a person entitled to apply for such an assessment with respect to that child.
- (2) Subsection (1) applies even though the circumstances of the case are such that a child support officer would not make an assessment if it were applied for.
- (3) In any case where subsection (1) applies, no court shall exercise any power which it would otherwise have to make, vary or revive any maintenance order in relation to the child and absent parent concerned.
- (4) Subsection (3) does not prevent a court from revoking a maintenance order.
- (5) The Lord Chancellor or in relation to Scotland the Lord Advocate may by order provide that, in such circumstances as may be specified by the order, this section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—
- (a) a written agreement (whether or not enforceable) provides for the making, or securing, by an absent parent of the child of periodical payments to or for the benefit of the child; and
 - (b) the maintenance order which the court makes is, in all material respects, in the same terms as that agreement.
- (6) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—
- (a) a maintenance assessment is in force with respect to the child;
 - (b) the amount of the child support maintenance payable in accordance with the assessment was determined by reference to the alternative formula mentioned in paragraph 4(3) of Schedule 1; and
 - (c) the court is satisfied that the circumstances of the case make it appropriate for the absent parent to make or secure the making of periodical payments under a maintenance order in addition to the child support maintenance payable by him in accordance with the maintenance assessment.
- (7) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—
- (a) the child is, will be or (if the order were to be made) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation (whether or not while in gainful employment); and
 - (b) the order is made solely for the purposes of requiring the person making or securing the making of periodical payments fixed by the order to meet some or all of the expenses incurred in connection with the provision of the instruction or training.
- (8) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

- (a) a disability living allowance is paid to or in respect of him; or
 - (b) no such allowance is paid but he is disabled,
- and the order is made solely for the purpose of requiring the person making or securing the making of periodical payments fixed by the order to meet some or all of any expenses attributable to the child's disability.
- (9) For the purposes of subsection (8), a child is disabled if he is blind, deaf or dumb or is substantially and permanently handicapped by illness, injury, mental disorder or congenital deformity or such other disability as may be prescribed.
 - (10) This section shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if the order is made against a person with care of the child.
 - (11) In this Act "maintenance order", in relation to any child, means an order which requires the making or securing of periodical payments to or for the benefit of the child and which is made under—
 - (a) Part II of the Matrimonial Causes Act 1973;
 - (b) the Domestic Proceedings and Magistrates' Courts Act 1978;
 - (c) Part III of the Matrimonial and Family Proceedings Act 1984;
 - (d) the Family Law (Scotland) Act 1985;
 - (e) Schedule 1 to the Children Act 1989; or
 - (f) any other prescribed enactment,and includes any order varying or reviving such an order.

9 Agreements about maintenance

- (1) In this section "maintenance agreement" means any agreement for the making, or for securing the making, of periodical payments by way of maintenance, or in Scotland aliment, to or for the benefit of any child.
- (2) Nothing in this Act shall be taken to prevent any person from entering into a maintenance agreement.
- (3) The existence of a maintenance agreement shall not prevent any party to the agreement, or any other person, from applying for a maintenance assessment with respect to any child to or for whose benefit periodical payments are to be made or secured under the agreement.
- (4) Where any agreement contains a provision which purports to restrict the right of any person to apply for a maintenance assessment, that provision shall be void.
- (5) Where section 8 would prevent any court from making a maintenance order in relation to a child and an absent parent of his, no court shall exercise any power that it has to vary any agreement so as—
 - (a) to insert a provision requiring that absent parent to make or secure the making of periodical payments by way of maintenance, or in Scotland aliment, to or for the benefit of that child; or
 - (b) to increase the amount payable under such a provision.

10 Relationship between maintenance assessments and certain court orders and related matters

- (1) Where an order of a kind prescribed for the purposes of this subsection is in force with respect to any qualifying child with respect to whom a maintenance assessment is made, the order—
 - (a) shall, so far as it relates to the making or securing of periodical payments, cease to have effect to such extent as may be determined in accordance with regulations made by the Secretary of State; or
 - (b) where the regulations so provide, shall, so far as it so relates, have effect subject to such modifications as may be so determined.
- (2) Where an agreement of a kind prescribed for the purposes of this subsection is in force with respect to any qualifying child with respect to whom a maintenance assessment is made, the agreement—
 - (a) shall, so far as it relates to the making or securing of periodical payments, be unenforceable to such extent as may be determined in accordance with regulations made by the Secretary of State; or
 - (b) where the regulations so provide, shall, so far as it so relates, have effect subject to such modifications as may be so determined.
- (3) Any regulations under this section may, in particular, make such provision with respect to—
 - (a) any case where any person with respect to whom an order or agreement of a kind prescribed for the purposes of subsection (1) or (2) has effect applies to the prescribed court, before the end of the prescribed period, for the order or agreement to be varied in the light of the maintenance assessment and of the provisions of this Act;
 - (b) the recovery of any arrears under the order or agreement which fell due before the coming into force of the maintenance assessment,
as the Secretary of State considers appropriate and may provide that, in prescribed circumstances, an application to any court which is made with respect to an order of a prescribed kind relating to the making or securing of periodical payments to or for the benefit of a child shall be treated by the court as an application for the order to be revoked.
- (4) The Secretary of State may by regulations make provision for—
 - (a) notification to be given by the child support officer concerned to the prescribed person in any case where that officer considers that the making of a maintenance assessment has affected, or is likely to affect, any order of a kind prescribed for the purposes of this subsection;
 - (b) notification to be given by the prescribed person to the Secretary of State in any case where a court makes an order which it considers has affected, or is likely to affect, a maintenance assessment.
- (5) Rules may be made under section 144 of the Magistrates' Courts Act 1980 (rules of procedure) requiring any person who, in prescribed circumstances, makes an application to a magistrates' court for a maintenance order to furnish the court with a statement in a prescribed form, and signed by a child support officer, as to whether or not, at the time when the statement is made, there is a maintenance assessment in force with respect to that person or the child concerned.

In this subsection—

“maintenance order” means an order of a prescribed kind for the making or securing of periodical payments to or for the benefit of a child; and
“prescribed” means prescribed by the rules.